

## SAMOA

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**2004, No. 5**

**AN ACT to establish a Planning and Urban Management Agency and to implement a framework for planning the use, development, management and protection of land in Samoa in the present and long-term interests of all Samoans and for related purposes.      [21<sup>st</sup> January 2004]**

**BE IT ENACTED** by the Legislative Assembly of Samoa in Parliament assembled as follows:

**PART I  
PRELIMINARY**

**1. Short title and commencement-**(1) This Act may be cited as the Planning and Urban Management Act 2004.

(2) This Act shall commence or any part or section thereof on the day or days nominated by the Minister.

(3) Notice of commencement of this Act or any part or section thereof shall be published in Samoan and English in the *Savali* and one other newspaper circulating in Samoa.

**2. Interpretation** – In this Act, unless the context otherwise requires:

“Agency” means the Planning and Urban Management Agency:

“Area” includes two or more areas of land that are not adjoining:

“Board” means the Planning and Urban Management Board established under section 5:

“Building” includes –

- (a) A structure and part of a building or a structure; and
- (b) Fences, walls, out-buildings, service installations and other appurtenances of a building; and
- (c) A boat or a pontoon which is permanently moored or fixed to land;

“Chief Executive Officer” means the Chief Executive Officer of the Ministry of Natural Resources and Environment and includes the former Director of the Department of Lands, Surveys and Environment:

“Development” includes the use of land (whether for a long term or temporary purpose), the erection of a building or other structure, the carrying out of a work, subdivision, and any other activity regulated under this Act:

“Development application” means an application for consent under Part V to carry out development:

“Development consent” means consent under Part V to carry out development:

“District” means an area of land defined as a territorial constituency by the Territorial Constituencies Act 1963:

“Environment” includes:

- (a) Ecosystems and their constituent parts, including people and communities; and
- (b) All natural and physical resources; and
- (c) Amenity values; and
- (d) The social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters;

“Land” includes –

- (a) Buildings and other structures permanently fixed to land; and
- (b) Land covered with water; and
- (c) Any estate, interest, easement, privilege or right in or over land;

“Minister” means the Minister of Natural Resources and Environment and includes the former Minister of Lands, Surveys and Environment:

“Ministry” means the Ministry of Natural Resources and Environment and includes the former Department of Lands, Surveys and Environment:

“Planning Tribunal” and “Tribunal” means the Planning Tribunal established under Part VII of this Act:

“Public authority” means –

- (a) A Government Ministry or Department; or
- (b) A statutory State-owned corporation; or
- (c) A statutory body representing the State; or
- (d) A public authority constituted by or under an Act;

“Region” means a collection of two or more districts:

“Relevant authority” means a public authority considered by the Agency to have a function or functions relevant to a development application:

“Stakeholder” means a person with an interest in land which may be affected by a sustainable management plan or a draft sustainable management plan or a development application:

“Subdivision” means the division of land into two or more parts which can be disposed of separately:

“Use” in relation to land includes use or proposed use for the purpose for which the land has been or is being or may be developed:

“Work” includes any change to the natural or existing condition or topography of land including the removal, destruction or lopping of trees and the removal of vegetation or topsoil.

## **PART II PLANNING AND URBAN MANAGEMENT AGENCY**

**3. Establishment of the Planning and Urban Management Agency** - There is established a Division of the Ministry to be known as the Planning and Urban Management Agency.

**4. Planning and Urban Management Agency** - The Agency shall consist of -

- (a) The Planning and Urban Management Board;
- (b) The Divisional Head appointed under section 6; and
- (c) Such other officers and employees holding office within the Agency in accordance with section 7.

**5. Planning and Urban Management Board**-(1) A Planning and Urban Management Board is hereby established.

(2) The Board will consist of -

- (a) The Minister, who shall be Chairperson;
- (b) 10 members, comprising 5 government and 5 community representatives as determined from time to time by the Head of State, acting on the advice of Cabinet.

(3) Board members shall hold office until such time as they resign or are replaced by the Head of State, acting on the advice of Cabinet.

(4) The meetings of the Board shall be held at such times and places as the Chairperson may determine,

**PROVIDED THAT** the Chairperson shall convene a meeting of the Board as soon as practicable after receiving a written request to do so by at least two members, such request stating the reason for the meeting and the business to be considered by the Board.

(5) At all meetings of the Board –

(a) The Chairperson and in the Chairperson's absence a Deputy Chairperson elected by the Board shall preside;

(b) The quorum necessary for the transaction of business shall be not less than 6 members, one of whom shall be either the Chairperson or the Deputy Chairperson;

(c) Every question before a meeting of the Board shall be determined by a majority of the members present;

(d) The Chairperson of a meeting shall have a deliberative vote and in the case of an equality of votes, shall also have a casting vote;

(e) Minutes shall be kept by an officer of the Agency in a manner and form approved by the Board, such minutes shall be given to each member prior to the next meeting after having been endorsed by the Chairperson of the meeting at which they were taken.

(6) Every Board Member and every special planning committee member (referred to in section 16) shall be paid out of the funds of the Agency, such remuneration and such travelling expenses and other allowances, as may from time to time be approved by Cabinet.

**6. Administrative Head**—(1) The Divisional Head shall be responsible to the Board in respect of the functions of the Board as provided for under this Act.

(2) An Assistant Chief Executive Officer, appointed from time to time in accordance with the provisions of the Public Service Act 1977, shall be the administrative head of the Agency.

**7. Appointment of other Officers and Employees** - Such Public servants as may be necessary for the proper discharge of the Agencies functions may be appointed to be officers and employees of the Agency.

### **PART III OBJECTIVES, FUNCTIONS AND POWERS**

**8. Objectives of this Act** - In the performance of any function, power or duty under this Act, the following objectives shall be pursued -

- (a) To provide for the fair, orderly, economic and sustainable use, development and management of land including the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity;
- (b) To enable land use and development planning and policy to be integrated with environmental, social, economic, conservation and resource management policies at national, regional, district, village and site specific levels;
- (c) To create an appropriate urban structure and form for the development of Apia and other centres so as to provide equitable and orderly access to transportation, recreational, employment and other opportunities;
- (d) To secure a pleasant, efficient and safe working, living and recreational environment for all Samoans and visitors to Samoa;
- (e) To protect public utilities and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community;

- (f) To balance the present and future interests of all Samoans.

**9. Functions of the Board** - The functions of the Board are-

- (a) To implement the provisions of this Act in accordance with its objectives;
- (b) To exercise the powers conferred by this Act so as to meet its objectives including:
  - (i) facilitating the preparation and approval of sustainable management plans;
  - (ii) ensuring that such plans are amended as appropriate and otherwise made as relevant as possible;
  - (iii) undertaking development assessments in accordance with Part V, and giving approvals or declining to do so;
  - (iv) preparing and approving Planning Provisions and any requirements development standards or guidelines provided for by this Act, or which may facilitate its implementation or advance its objectives;
  - (v) issuing such orders and taking such other action as is provided for by this Act; and
  - (vi) otherwise taking such enforcement action as is provided for;
- (c) To exercise any other power or function conferred on it by law, or as directed by Cabinet;
- (d) To appoint special planning committees to advise on the preparation and contents of a proposed sustainable management plan and on any other related matters;
- (e) To promote strategic planning and coordinated action in relation to the sustainable use of land and natural resources;
- (f) To ensure that the operation of this Act and the performance of the functions of the Agency are coordinated with the exercise by any other agencies of related functions and powers;

- (g) To liaise with and assist other Ministries and agencies to meet the objectives of this Act;
- (h) To preserve those buildings areas or other places of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value;
- (i) To promote education and community awareness concerning urban and planning issues;
- (j) To assist with the coordination of the provision of infrastructure and services by Ministries and public authorities for the benefit of the community;
- (k) To ensure that persons affected by the operation of this Act are given due notification and are accorded such rights as are provided for;
- (l) To encourage the resolution of outcomes, disagreements and disputes arising from the operations of this Act by the reaching of consensus decisions;
- (m) To facilitate such reviews of decisions as are provided for in this Act.

**10. Powers of the Board-**(1) The Board shall have such powers as are provided for by this Act or any other law, or which are necessary or incidental so as to enable the proper performance of its functions and the furtherance of the objectives of this Act.

(2) Notwithstanding any other provision of any Act, the Chief Executive Officer shall have the power to consider applications under Part II of the Surveys Ordinance Act and any approval given under that Act shall be in accordance with the Board's requirements.

**11. Delegation of Powers by the Board** - The Board may from time to time, by written notice, either generally or particularly, delegate to such of its committees, officers or employees it thinks fit, all or any of the powers exercisable under this or any other law.

**PART IV**  
**SUSTAINABLE MANAGEMENT PLANS**

**12. Making of sustainable management plans** - A national, regional, district, village or site specific sustainable management plan may be made in accordance with this Part to achieve any of the objectives of this Act.

**13. Preparation of Plans** - A sustainable management plan may be prepared by the Agency with the approval of the Board and where the Board is acting under direction from Cabinet.

**14. Statement of aims etc in plan**-(1) A sustainable management plan shall state the aims, objectives, policies and strategies whereby that plan is designed to achieve any of the objectives of this Act.

(2) Except as provided in subsection (3), a statement referred to in subsection (1) does not affect the construction or effect of any other provision of the plan in which the statement is made.

(3) Where a provision of a sustainable management plan is genuinely capable of different interpretations, that interpretation which best meets the aims, objectives, policies and strategies stated in that plan shall be preferred.

(4) A failure to comply in any respect with subsection (1) does not affect the validity, construction or effect of a sustainable management plan.

**15. Contents of sustainable management plans**-(1) A sustainable management plan may -

- (a) Make any provision which relates to the use, development, protection or conservation of any land in a specific area;
- (b) Regulate the use or development of any land, whether by requiring development consent, imposing development standards, or otherwise;
- (c) Prohibit the use or development of any land;

- (d) Designate land as being reserved for public purposes;
  - (e) Include strategic plans, policy statements, codes or guidelines relating to the use or development of land;
  - (f) Set out requirements for the provision of public utility services to land;
  - (g) Require specified things to be done to the satisfaction of the Agency or the Board;
  - (h) Require specified information to be provided with an application for development consent;
  - (i) Apply, adopt or incorporate any document which relates to the use, development or protection of land;
  - (j) Provide that any use or development of land is conditional on an agreement being entered into with the Board.
- (2) A provision of a sustainable management plan may operate for a specified period.
- (3) The Board may issue directions or guidelines as to the form and content of any sustainable management plan.

**16. Special Planning Committees-**(1) The Board may appoint a special planning committee to advise on the preparation and contents of a proposed sustainable management plan and on any other related matters.

(2) Every member of a special planning committee shall be paid such remuneration, travelling allowance and expenses as may be prescribed by regulation and shall be paid out of money to be appropriated by the Legislative Assembly for the purpose.

**17. Notification of intention to prepare a plan-**(1) Where the Agency is directed to prepare a sustainable management plan, the Agency shall give public notice in accordance with the regulations stating –

- (a) The Agency's proposal to prepare the plan;
- (b) The reasons for preparing the plan;
- (c) The aim and objectives of the proposed plan;

- (d) A description of the land to be affected by the proposed plan; and
  - (e) Any other matters which the Agency considers relevant.
- (2) Every owner, occupier and person with an interest in the land affected by the proposed plan whose name and address is readily ascertainable, shall also be notified in accordance with subsection (1).

**18. Consultation-**(1) The Agency shall consult with all stakeholders where possible and shall provide them with all relevant information on the environment of the planning area so far as it relates to the aims and objectives of the proposed sustainable management plan, including, where relevant, information on –

- (a) Population and development trends;
  - (b) Current policy framework;
  - (c) Land tenure;
  - (d) Water catchments and drainage;
  - (e) Provision of infrastructure;
  - (f) Hazards;
  - (g) Environmental capacity, including land capability; and
  - (h) Heritage.
- (2) The Agency shall consider all information obtained from the consultation process.

**19. Preparation of a draft plan-** When the Agency is satisfied that all information from the consultation process has been collected and assessed, a draft sustainable management plan shall be prepared.

**20. Notification of draft plan-**(1) When the draft sustainable management plan has been prepared, the Agency shall give public notice stating –

- (a) The places at which, the dates on which, and the times during which the draft sustainable management plan may be inspected by the public; and

(b) That affected stakeholders may make written submissions to the Agency during the time specified in the notice.

(2) The Agency shall send a similar notice to each owner, occupier and person having an interest in the land affected by the draft sustainable management plan whose name and addresses are readily available.

**21. Submissions on draft plan-**(1) Any stakeholder affected by the draft sustainable management plan may, during the period specified in the notice, make submissions in writing to the Agency.

(2) The Agency shall consider all submissions made to it and shall, wherever possible, reach consensus with stakeholders on the contents of the draft sustainable management plan.

**22. Agency's recommendations to Board on draft plan-**(1) When the Agency has considered all submissions and has reached consensus or has made all reasonable attempts to reach consensus with the stakeholders, it shall provide the Board with a report recommending –

- (a) That the draft plan be abandoned; or
- (b) That the plan making process be recommenced because the contents of the final plan are likely to be substantially different from the contents of the exhibited draft plan;
- (c) That the draft plan be amended; or
- (d) That the draft plan be approved unchanged.

(2) Where a special planning committee has been appointed, the Agency may ask the committee to consider and approve the Agency's report and the final draft sustainable management plan prior to submission to the Board.

**23. Decision by Board on draft plan-**(1) The Board shall consider the Agency's report on the draft plan and may decide to accept any of the Agency's recommendations or make any decision which in the opinion of the Board best achieves the objectives of this Act.

(2) The decision of the Board shall not come into effect until the expiration of 28 days from the date of public notification of that decision or, where the decision is appealed, until the Planning Tribunal has determined the appeal.

**24. Notification of Board's decision on draft plan** - After the Board had made its decision on the draft sustainable management plan, the Agency shall give a public notice in accordance with the regulations stating –

- (a) The Board's decision; and
- (b) That the draft sustainable management plan will come into effect after the expiration of 28 days from the date of the notice.
- (c) That any stakeholder who has previously made a submission to the Agency on the draft sustainable management plan and who is dissatisfied with the Board's decision may appeal to the Planning Tribunal during the period of 28 days from the date of the notice in the form and manner specified in the notice.

**25. Appeal to Planning Tribunal**–(1) Any stakeholder who has previously made a submission to the Agency on the draft sustainable management plan and is dissatisfied with the Board's decision may appeal that decision to the Planning Tribunal within the prescribed time in the prescribed form and manner specified in the notice.

(2) After hearing the appeal, the Planning Tribunal may confirm, amend, or cancel the decision of the Board, or make any decision which the Board might have made.

(3) The Board shall comply with the decision of the Planning Tribunal.

**26. When a sustainable management plan takes effect**–

(1) Where the Board decides to approve a sustainable management plan and that decision is not appealed, or where the Planning Tribunal confirms the Board's decision to approve

the plan or directs the Board to approve the plan, the final sustainable management plan shall be signed by the Board and Notice of Approval of the Plan shall be published in Samoan and English in the Savali and one other newspaper circulating in Samoa and shall take effect on and from the date of publication or a later date specified in the plan.

(2) The Notice of Approval under subsection (1) shall state how a copy of the plan may be obtained.

**27. Relationship between plans-**(1) All sustainable management plans must be consistent with any statement of economic strategy made under the Public Finance Management Act 2001.

(2) In the event of an inconsistency between plans, then, to the extent of the inconsistency and unless otherwise provided:

- (a) There is no general presumption that a plan of one kind prevails over a plan of another kind, and
- (b) The provisions of a later plan prevail over those of an earlier plan, whether of the same or a different kind.

(3) A statement of economic strategy made under the Public Finance Management Act 2001 prevails over any plan made before or after that strategy to the extent of any inconsistency, if the strategy expressly so provides.

(4) A national sustainable management plan prevails over a regional plan, or a district plan, or a village plan, or a site specific plan made before or after the national plan to the extent of any inconsistency, if the national plan expressly so provides.

(5) A regional plan prevails over a district plan or a village plan or a site specific plan made before or after the regional plan to the extent of any inconsistency, if the regional plan expressly so provides.

(6) A district plan prevails over a village plan or a site specific plan made before or after the district plan to the extent of any inconsistency, if the district plan expressly so provides.

(7) A village plan prevails over a site specific plan made before or after the village plan to the extent of any inconsistency, if the village plan expressly so provides.

(8) Nothing in this section prevents a plan from being expressly amended by a later plan, of the same or a different kind, to provide for the way in which an inconsistency between them is to be resolved.

**28. Amendment of plans-**(1) The Agency may prepare an amendment to any provision of a sustainable management plan.

(2) Any such amendment must first be approved by the Board.

(3) The procedure prescribed in this Part shall apply equally to an amendment, provided that in the case of a minor amendment the Board may approve the recommendation of the Agency to amend the plan without the need to give notice or consult with stakeholders.

**29. Review of plans -** The Agency may review a sustainable management plan at any time that the Board directs.

**30. Availability of plans –** All sustainable management plans shall be available for public inspection at the office of the Agency during normal business hours.

**31. Validity of plans –** The validity of a sustainable management plan shall not be challenged on the ground that the law relating to the making of the plan has not been complied with except by legal proceedings commenced in the Supreme Court by a stakeholder within 28 days of the plan taking effect.

**32. Development standards-**(1) In relation to the carrying out of development, including any matter identified in a sustainable management plan, the Board may cause to be prepared and may approve a set of development standards by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) The area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point;
  - (b) The proportion or percentage of the area of a site which a building or work may occupy;
  - (c) The character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work;
  - (d) The cubic content and floor space of a building;
  - (e) The intensity and density of the use of any land, building or work;
  - (f) The provision of public access, open space, landscaped space, tree planting and other treatment for the conservation, protection or enhancement of the environment;
  - (g) The provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading and unloading of vehicles;
  - (h) The volume, nature and type of traffic generated by the development;
  - (i) Road patterns;
  - (j) Surface and wastewater;
  - (k) Drainage;
  - (l) The carrying out of earthworks;
  - (m) The effects of development on patterns of wind, sunlight, daylight and shadows;
  - (n) The provision of services, facilities and amenities demanded by development;
  - (o) The emission of pollution and means for its prevention, control and mitigation; and
  - (p) Such other matters as may be prescribed.
- (2) The Board must publish notice of the approval of the set of development standards in Samoan and English in the *Savali* and one other newspaper circulating in Samoa.

**33. Samoa Planning Provisions-**(1) To assist in providing a consistent and coordinated framework for sustainable management plans and other matters contained in this Act, the Board may cause to be prepared and may approve standard planning provisions to be called the Samoa Planning Provisions.

(2) The Samoa Planning Provisions may contain any matter which may be included in a sustainable management plan under section 15, and any other matter which may enhance planning practice, including planning guidelines.

(3) The Board must publish notice of the approval of the Samoa Planning Provisions in Samoan and English in the Savali and one other newspaper circulating in Samoa.

## **PART V PLANNING AND DEVELOPMENT ASSESSMENT**

**34. Development needing consent-**(1) All development needs consent under this Act unless a sustainable management plan or regulations provide otherwise.

(2) Development needing consent shall not be carried out unless:

- (a) Such consent has been obtained and is in force; and
- (b) The development is carried out in accordance with the consent.

**35. Development not needing consent-**(1) Development specified in a sustainable management plan or regulations as not needing consent may be carried out without consent under this Act.

(2) A sustainable management plan or regulations may provide that development of a specified class or description that is of minimal environmental impact is exempt development.

(3) If development is exempt development, the development may be carried out, in accordance with the sustainable management plan or regulations (as the case may be), on land to which the provision applies without the need for development consent.

**36. Prohibited development** – A sustainable management plan or regulations may provide that specified development is prohibited.

**37. Application for development consent-(1)** Where development consent is required, a person must apply to the Agency for consent to carry out development.

- (2) The development application must –
- (a) Be made in the prescribed form; and
  - (b) Be accompanied by the prescribed fee; and
  - (c) Be accompanied by any information required by the Agency, a sustainable management plan or the regulations; and
  - (d) Otherwise be in accordance with this Act.

(3) The regulations may specify other requirements that are to be complied with or submitted with a development application.

**38. Applicant not the owner** – Where the applicant for development consent is not the owner of the land to which the development application applies, the application must -

- (a) Be signed by the owner of the land; or
- (b) Include a declaration by the applicant that the owner of the land approves of the applicant's application.

**39. Action by Agency on application-(1)** The Agency shall consider every development application.

(2) The Agency may require an applicant to provide it or a relevant authority with more information before it deals with the development application.

**40. Changes to applications** – Changes to a development application after the applicant has submitted it to the Agency shall be in accordance with this Act or any regulations.

**41. Submission of a development plan**—(1) Where circumstances so require, the Agency may require the applicant to submit with the development application a development plan which assesses the strategic planning, land use and development setting of the proposal.

(2) A development plan under subsection (1) shall show, and is not limited to, -

- (a) Site analysis;
- (b) Building envelopes;
- (c) Property boundaries;
- (d) Existing environment;
- (e) Arrangements for –
  - (i) electricity;
  - (ii) roads;
  - (iii) water;
  - (iv) effluent disposal; and
  - (v) telecommunications;
- (f) Made and unmade roads;
- (g) Access and egress;
- (h) How the proposed development relates to the existing or likely use and development of adjoining and nearby land; and
- (i) Where a staged subdivision, how the balance of the land may be subdivided.

(3) Where the Agency decides that a development plan should be submitted with a development application, the format, structure, subject matter and any procedures for the preparation of the development plan shall be specified in writing by the Agency to the applicant.

(4) The development plan shall generally conform to the provisions of any sustainable management plan, or draft sustainable management plan, which may apply to the land to which the development application relates.

**42. Environmental Impact Assessment**—(1) The Agency may require an applicant under section 37 to provide an environmental impact assessment in relation to the proposed development to which the development application relates.

(2) Where the Agency decides that an environmental impact assessment shall be prepared, the format, structure, subject matter of any such assessment and any other related matter, shall be specified in writing by the Agency to the applicant and the applicant shall comply with the Agencies requirements under this section.

**43. Notification of application**—(1) As soon as practicable after a development application is made for consent to carry out development, the Agency shall:

(a) Cause a notice of the application to be publicly notified in accordance with the regulations, and

(b) Give written notice of the application in accordance with the regulations –

(i) to such persons as appear to it to own or occupy the land adjoining the land to which the application relates, unless, in its opinion, such persons would not be detrimentally affected by the granting of development consent; and

(ii) if practicable, to such other persons as appear to it to own or occupy land the use or enjoyment of which, in its opinion, may be detrimentally affected if the development is carried out; and

(iii) to such other persons as are required to be notified by a sustainable management plan or the regulations; and

(iv) to any other person that it considers may be detrimentally affected by the granting of development consent.

(2) Notwithstanding subsection (1), where the Agency considers that the circumstances are appropriate, it may request that all or any of the notices referred to in that subsection be given by the applicant.

(3) The Agency may give any further notice that it considers appropriate of an application for a use or development which is likely to be of interest or concern to the community.

**44. Referral to relevant authorities**—(1) Before determining a development application, the Agency may consult with every public authority considered by the Agency to be a relevant authority for applications of that kind.

(2) The Agency may advise the relevant authority of any sustainable management plan or draft sustainable management plan relating to the land the subject of the development application.

(3) A relevant authority shall consider every development application referred to it and may tell the Agency in writing that:-

- (a) It does not object to the granting of development consent; or
- (b) It does not object if the development consent is subject to the conditions specified by the relevant authority; or
- (c) It objects to the granting of the development consent on any specified ground.

(4) The relevant authority may also give the Agency its comments on the application.

**45. Submissions on development applications**—(1) Any person who may be affected by a development application may make a submission, by way of objection or otherwise, to the Agency in the manner and form prescribed by the regulations.

(2) A submission to the application by way of objection must state how the objector would be affected by the grant of development consent.

(3) The Agency may reject an objection that it considers has been made primarily to secure or maintain a direct or indirect commercial advantage for the objector.

**46. Matters the Agency shall consider** - In determining a development application, the Agency shall consider-

- (a) All submissions received, including objections;
- (b) Any decision and comments of a relevant authority;
- (c) The provisions of any sustainable management plan or draft sustainable management plan;

- (d) The contents of any development plan which the Agency has requested the applicant to supply;
- (e) Any strategic plan, policy statement, development standards, guideline, or the like, which has been adopted by a public authority;
- (f) The potential environmental effects of any development proposal, including any environmental impact assessment which has been prepared;
- (g) Potential social and economic effects;
- (h) Likely effects on cultural and natural heritage;
- (i) The sustainability of the proposed development;
- (j) Suitability of the site for the proposed development, including consideration of natural hazards such as flooding, earthquake, cyclone, subsidence, slip, drainage and erosion;
- (k) The character of the proposed development, including its bulk, size and shape;
- (l) Adequacy of arrangements relating to waste water, sanitation and access to the proposed development;
- (m) Provision of private and public open space;
- (n) Adequacy of arrangements made for the parking of vehicles generated by the proposed development;
- (o) Proposed safety features of the development, including fire safety features;
- (p) Adequacy of the structure of buildings and other structures to fulfil the purpose for which they are to be used;
- (q) The public interest;
- (r) The objectives of this Act, including the need to reach consensus; and
- (s) Any other relevant matter.

**47. Decision on application** – The Agency may decide to –

- (a) Grant a development consent; or
  - (b) Grant a development consent subject to conditions;
- or

- (c) Refuse to grant a development consent on any ground it thinks fit.

**48. Conditions-**(1) The Agency may include in a development consent any condition that it thinks fit, including –

- (a) A condition that a sustainable management plan requires to be included;
- (b) A condition that specified matters are to be done to the satisfaction of the Agency or a relevant authority or a person;
- (c) A condition that the development consent is not to come into effect unless a specified development is cancelled or amended;
- (d) A condition that the use be for a specified time;
- (e) A condition that the land be restored to a specified state at the end of a specified time;
- (f) A condition that the development is to be carried out in stages over the periods specified in the development consent, including the need to obtain any further development consent for each stage;
- (g) A condition that the owner of the land or the applicant is to enter into an agreement with the Board requiring specified outcomes that the development shall achieve;
- (h) A condition that plans, drawings and other documents be prepared by the applicant and lodged with the Agency for approval before the use or development or a specified part of it starts;
- (i) A condition requiring changes to be made to any plan or drawing forming part of the application for the development consent.

(2) The Agency shall not include in a development consent a condition which is inconsistent with:

- (a) The contents of a sustainable management plan;
- (b) Current building regulations; or
- (c) A determination by the Planning Tribunal in respect of land to which the development consent applies.

**49. Condition requiring developer contributions-(1)**

Where the Agency is satisfied that a development the subject of a development application will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the Agency may grant consent to the application subject to a condition requiring:

- (a) The dedication of land free of cost; or
- (b) The payment of a monetary contribution; or
- (c) Both (a) and (b).

(2) Such a condition shall only be applied to require a reasonable dedication or contribution for the provision, extension or augmentation of public works, amenities and services.

(3) The Agency may prepare and approve a developer contributions plan under this section for the purposes of establishing the relationship between the proposed development and the imposition of such a condition.

**50. Development consent where there are no submissions**

- Where no person has made a submission to the Agency on the development application and the Agency decides in favour of the application, the Agency shall issue a notice of development consent in the prescribed form to the applicant.

**51. Development consent where there are submissions-**

(1) The Agency shall give the applicant and each person who made a submission a notice in the prescribed form of its decision to grant a development consent.

(2) The notice shall set out any conditions to which the development consent will be subject.

**52. Refusal of development application-(1)** The Agency shall give the applicant and each person who made a submission a notice in the prescribed form of its decision to refuse the development application.

(2) The notice shall set out the grounds on which the development application is refused, and may state whether those grounds were those of the Agency or a relevant authority.

**53. Advice on right of appeal** - A notice issued pursuant to section 51 or 52 must include advice that the applicant or a person who has made a submission on the development application and who is dissatisfied with the decision of the Agency has the right to appeal to the Planning Tribunal within 28 days of the issue of the notice.

**54. Appeal**-(1) An applicant or a person who has made a submission on the development application and who is dissatisfied with the decision of the Agency may appeal to the Planning Tribunal within 28 days of the issue of the notice of the decision.

(2) An appeal shall be filed with the Planning Tribunal in the prescribed form.

(3) After hearing the appeal, the Planning Tribunal may make any order as in the circumstances may appear to the Tribunal to be just, including an order -

- (a) Directing that development consent shall not be granted; or
- (b) Granting development consent and directing the Agency to issue the consent; or
- (c) Granting development consent, directing that the consent shall or shall not, as the case may be, contain any specified conditions and directing the Agency to issue the consent; or
- (d) Confirming a requirement placed on a development application; or
- (e) Changing a requirement placed on a development application; or
- (f) Directing the Agency to consider a development application as made without a requirement having been complied with; or
- (g) Directing that a consent shall or shall not contain any specified condition; or
- (h) Directing that any time limit shall or shall not be extended; or
- (i) Cancelling a consent.

**55. When a development consent begins and expires-(1)**

A development consent operates, as the case may require, from the date –

- (a) Specified in the development consent; or
- (b) Of the decision of the Planning Tribunal.

(2) A development consent expires, as the case may require, if –

- (a) The development or any stage of it does not start within the time specified in the notice of development consent; or
- (b) No time is specified in the notice of development consent, within 2 years after the issue of the development consent; or
- (c) The use is discontinued for a period of 2 years.

**56. Extension of time for development consent-(1)** The owner or occupier of the land to which the development consent applies may ask the Agency for an extension of time for the development consent within 3 months before the expiry of the consent or within 3 months after the consent has expired and the Agency may in its discretion grant an extension of time for the development consent.

(2) If the time is extended after the development consent has lapsed, the extension operates from the day the development consent expires.

**57. Revocation or modification of development consent-**

(1) If at any time it appears to the Board, having regard to the provisions of any draft planning policy or of any draft sustainable management plan, that any development for which consent under this Part is in force in relation to a development application should not be carried out or completed, or should not be carried out or completed except with modifications, the Board may, by instrument in writing, revoke or modify that consent.

(2) Before revoking or modifying the consent under subsection (1) the Board shall:

- (a) By notice in writing inform, in accordance with the regulations:
    - (i) each person who in the Board's opinion will be adversely affected by the revocation or modification of the consent; and
    - (ii) such persons as may be prescribed by the regulations,of the intention to revoke or modify the consent; and
  - (b) Afford such persons the opportunity of appearing before the Board, or a person appointed by the Board, to show cause why the revocation or modification should not be effected.
- (3) The revocation or modification of a development consent takes effect, subject to this section, from the date on which the instrument referred to in subsection (1) is served on the owner of the land to which the consent applies.
- (4) Within 28 days after the date on which the revocation or modification of the consent takes effect, the applicant for the consent, or any other person entitled to rely on the consent, who is aggrieved by the revocation or modification may appeal to the Planning Tribunal.
- (5) The Planning Tribunal may determine the appeal by affirming, varying or cancelling the instrument of revocation or modification.
- (6) If a development consent is revoked or modified under this section, a person aggrieved by the revocation or modification is entitled to recover from the Minister compensation for expenditure reasonably incurred pursuant to the consent during the period between the date on which the consent becomes effective and the date of service of the notice under subsection (2), which expenditure is rendered abortive by the revocation or modification of that consent.
- (7) The Agency shall, on or as soon as practicable after the date on which the instrument referred to in subsection (1) is served on the owner of the land referred to in subsection (3), cause a copy of the instrument to be sent to each person who is, in the Agency's opinion, likely to be disadvantaged by the revocation or modification of the consent.

(8) This section does not apply to or in respect of a consent granted by the Planning Tribunal or by Cabinet.

**58. Validity of development consents** - A person who has made a submission in accordance with section 45 and has been given a notice under section 52 may bring proceedings in the Supreme Court challenging the validity of the development consent on the ground that the law relating to the granting of the development consent has not been complied with, provided that the proceedings shall be brought within 28 days of the issue of the notice.

**59. Minor amendment of development consents**-(1) The Agency, at the written request of the owner of land or a person with the consent of the owner, may amend the development consent if it is satisfied that the amendment –

- (a) Does not change the effect of any condition required by the Planning Tribunal;
  - (b) Does not change the effect of any condition required by the Agency;
  - (c) Does not change the effect of any condition recommended by a relevant authority;
  - (d) Is consistent with any sustainable management plan or draft sustainable management plan currently applying to the land;
  - (e) Will not cause an increase in detriment to any person or the environment;
  - (f) Does not change the use for which the development consent was issued, other than a minor change to the description of the proposed use.
- (2) The Agency shall give notice of the amendment to -
- (a) The person who made the request;
  - (b) If that person is not the owner of the land, the owner;
  - (c) Any relevant authority.
- (3) A development consent as amended takes effect on and from the day that it is amended by the Agency.

**60. Correction of mistakes-**(1) The Agency may correct a development consent issued by it if the consent contains -

- (a) A clerical mistake or an error arising from any accidental slip or omission; or
  - (b) An evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the consent.
- (2) The Agency shall note the correction in the register referred to in section 101.

**61. Power of Cabinet to call in applications-**(1) Before the Agency makes a decision in respect of a development application, Cabinet may direct the Agency to refer the application to Cabinet.

(2) The Agency shall comply with the direction without delay and shall not proceed further with the application unless otherwise directed by Cabinet.

(3) Cabinet may decide the application on any grounds Cabinet thinks fit, and may direct the Agency to:

- (a) Grant the development consent; or
- (b) Grant the development consent subject to conditions;  
or
- (c) Refuse to grant the development consent.

(4) There shall be no right of appeal to the Planning Tribunal from a decision of Cabinet on a development application.

**62. Continuing uses-**(1) Subject to subsections (2) and (3), nothing in any sustainable management plan or amendment of such plan shall –

- (a) Prevent the continuance of the use of any land (upon which no buildings or works are erected) for the purposes for which it was being lawfully used before the coming into operation of the plan or amendment;

- (b) Prevent the use of any building (which was erected before the coming into operation of the plan or amendment) for any purpose for which the building was lawfully being used immediately before the coming into operation of the plan or any amendment;
  - (c) Prevent the use of any works (which were constructed before the coming into operation of the plan or amendment) for any purpose for which they were being lawfully used immediately before the coming into operation of the plan or amendment;
  - (d) Prevent the use of any building or work for any purpose for which it was being lawfully erected or carried out immediately before the coming into operation of the plan or amendment;
  - (e) Require the removal or alteration of any lawfully constructed building or works.
- (2) Subsection (1) does not apply to a use of land or works –
- (a) Which has stopped for a continuous period of two years; or
  - (b) Which has stopped for two or more periods which together total two years in any period of three years.
- (3) A sustainable management plan may require a use to which subsection (1) applies to comply with the Samoa Planning Provisions referred to in section 33.

**63. Amenity of an area or place-**(1) Notwithstanding section 62(1), where the amenity of an area or place, whether such area or place is subject to a development consent (either public or private) or otherwise, is in the opinion of the Agency compromised by:

- (a) Excessive noise; or
- (b) Excessive dust; or
- (c) Visually offensive signage, material or structures; or
- (d) Poor airspace, lighting or ventilation; or

- (e) Excessive traffic generation; or
- (f) Smell, fumes, vapours; or
- (g) Waste materials, including bulk material, used goods and property; or
- (h) Waste water, sewage and drainage; or
- (i) Stray and domestic animals,

and in the view of the Agency the matters referred to in paragraphs a – i are inconsistent with the objectives of this Act or any standards made under this Act, the Agency may require the owner or occupier by Order under section 80, to undertake the work or activity specified by the Agency in the Order to remove or minimise the nuisance impacting on the amenity of the area or place.

(2) Where:

- (a) An owner or occupier of land who has been served with an Order under subsection (1) fails to comply with the Order within the time specified in the Order; or
- (b) The Agency considers on reasonable grounds that action must be taken as a matter of urgency to remove or minimize the negative effects of any matter referred to in subsection (1),

the Agency may take such action or cause such action to be taken as the Agency reasonably determines to remove or minimize such negative effects and the reasonable costs of the Agency in taking or causing such action shall be recoverable by the Agency against the said owner or occupier, or both, as the case may be, in any court of competent jurisdiction as a debt due to the Government.

(3) Under subsection (2) the Agency may:

- (a) Enter any land, building or works, if necessary by the use of reasonable force; and
- (b) Require any member of the Police Service to assist the Agency or any person acting under the authority of the Agency under this section; and

- (c) Remove any person who is obstructing or attempting to obstruct the Agency or any person acting under the authority of the Agency under this section, if necessary by the use of reasonable force.

## **PART VI COMPENSATION**

**64. Right to compensation-**(1) The owner or occupier of any land may claim compensation from the Government for financial loss suffered as the natural, direct and reasonable consequence of –

- (a) The land being reserved for a public purpose under a sustainable management plan or in an amendment to a sustainable management plan; or
- (b) Access to the land being restricted by the closure of a road by a sustainable management plan; or
- (c) Refusal by the Agency to grant consent to use or develop the land on the ground that the land is or will be needed for a public purpose.

(2) A person does not have a claim for compensation in respect of any land if that person was not the owner or occupier of the land at the time the right to claim compensation arose.

**65. Taking of Land Act 1964 to apply** - Part III of the Taking of Land Act 1964, with any necessary adaptations and changes, applies to the determination of compensation under this Part as if the claim were a claim brought under that Act.

**66. Loss on sale-**(1) The owner of land may claim compensation under section 64 after the sale of land if –

- (a) The owner of the land sold it at a lower price than the owner might reasonably have expected to get if the land or part of the land had not been reserved or proposed to be reserved for a public purpose; and

- (b) Before selling the land, the owner gave the Board not less than 60 days notice in writing of the owner's intention to sell the land.
- (2) The owner is not required to give notice under subsection (1)(b) if –
  - (a) The owner and the Board have agreed that the owner does not have to give notice; or
  - (b) Before or after the sale, Cabinet exempts the owner from giving notice on the ground that the requirement to give notice would cause hardship to the owner.
- (3) A person does not have a claim for compensation in respect of the sale of land which the person acquired after –
  - (a) Notice is published in Samoan and English in the Savali and one other newspaper circulating in Samoa of a proposed sustainable management plan or amendment to a sustainable management plan which shows the land as being reserved for a public purpose; or
  - (b) The approval of a sustainable management plan or amendment reserving the land for public purposes unless a subsequent amendment to the plan provides or proposes more stringent planning controls over the use or development of the land.

## **PART VII PLANNING TRIBUNAL**

**67. The Tribunal** - There shall be a Planning Tribunal which shall consist of:

- (a) A Judge nominated from time to time by the Chief Justice of the Supreme Court who shall be the Chairperson; and
- (b) Two persons appointed by, and holding office at the pleasure of, the Head of State, acting on the advice of Cabinet.

**68. Deputies** - Cabinet shall from time to time as occasion may arise appoint a fit and proper person to be the deputy of any member of the Tribunal appointed under paragraph (b) of section 67.

**69. Assessors**—(1) The Tribunal may, where it requires assistance with matters of a professional, technical or specialised nature, appoint any person or persons who in its opinion has or have expert knowledge of those matters to be an assessor for the purposes of the appeal.

(2) Any assessor appointed under subsection (1) shall sit with the Tribunal and in all respects act as an extra member thereof for the hearing and determination of the appeal, except that the assessor shall have no vote in the determination of the appeal.

**70. Jurisdiction** - The Tribunal shall have the jurisdiction and powers conferred on it by this Act.

**71. Evidence** - On the hearing of any proceedings, the Tribunal may summon witnesses, examine witnesses on oath or otherwise, receive such evidence as it thinks fit, and receive any statement, document, information, or matter which in the opinion of the Tribunal may assist it to deal with the matters before it, whether or not the same would be admissible in a court of law.

**72. Onus of proof** - In any proceedings the onus of proof shall rest upon the party bringing the proceedings.

**73. Hearing**—(1) At the hearing of any proceedings any party may be represented by counsel or, with leave of the Tribunal, any other advocate.

(2) At the hearing of any proceedings, the person bringing the proceedings shall be entitled to be present.

(3) Appeals affecting more than one appellant shall not be heard together, unless the Tribunal so directs.

(4) In matters not expressly provided for in this Act or in any regulations made thereunder, the procedure of the Tribunal shall be such as the Tribunal may determine.

(5) Proceedings before the Tribunal shall not be held bad for want of form.

(6) The Tribunal shall within the scope of its jurisdiction be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1964, and, subject to the provisions of this Act, all the provisions of that Act shall apply accordingly.

**74. Decision-**(1) The Tribunal shall decide any proceedings on the merits of the case.

(2) In regard to an appeal, the Tribunal has the same power, duty, and discretion in respect of a decision appealed against, as the Agency or Board (as the case may be) against whose decision the appeal is brought.

(3) The Tribunal may confirm, amend, or cancel a decision to which an appeal relates.

(4) A decision of a majority of the members shall be the decision of the Tribunal.

(5) Nothing in this section affects any specific power or duty the Tribunal has under this Act or regulations.

**75. Referral of questions of law to Supreme Court-**(1) The Tribunal may, in any proceedings before it, state a case for the opinion of the Supreme Court on any point of law that arises in those proceedings and for that purpose may either conclude the proceedings subject to that opinion, or adjourn them until after that opinion has been given.

(2) The statement of a case to the Supreme Court shall be settled and signed by the Chairperson of the Tribunal and sent to the Registrar of the Supreme Court.

(3) The settling and signing of a case stated by the Chairperson is deemed to be the statement of the case by the Tribunal.

**76. Costs-**(1) On the hearing of any proceedings, the Tribunal may make such order as to costs as it thinks proper.

(2) Where in the opinion of the Tribunal any proceedings are frivolous or vexatious, or should not have been brought, the person bringing the proceedings shall not be entitled to an order for costs under subsection (1) and may be ordered by the Tribunal to pay the cost of the proceedings in whole or in part.

**77. Finality of Tribunal's decision** - The decision of the Tribunal shall be final, except where that decision may be appealed to the Supreme Court on a matter of law.

**78. Offence to attempt to influence Tribunal** - Any person who in any way attempts to improperly influence the Tribunal or any member of the Tribunal commits an offence, and shall be liable on conviction to a term of imprisonment not exceeding two years or to a fine not exceeding 50 penalty units, or both.

**79. Remuneration of Tribunal members**-(1) Each member of the Tribunal, including any assessor appointed under section 69, shall be paid remuneration at such rates as may be determined by the Head of State, acting on the advice of Cabinet, by Order, together with any travelling and other expenses reasonably incurred in respect of their attendance at meetings or hearings of the Tribunal.

(2) All payments pursuant to this section shall be paid out of money appropriated by the Legislative Assembly for the purpose.

## **PART VIII ENFORCEMENT AND LEGAL PROCEEDINGS**

**80. Orders by the Agency**-(1) The Agency may issue an Order and cause the same to be served on any person specified in subsection (3) to do or refrain from doing a thing specified in the Order within a specified time, if a use or development of land contravenes or has contravened, or, unless prevented by the order, will contravene this Act, a sustainable management plan, a condition of a development consent, or an agreement under Part IX.

(2) The regulations may prescribe things which may be the subject of an Order under subsection (1).

(3) An Order under subsection (1) may be issued to one or more of the following persons -

- (a) The owner of the land;
- (b) The occupier of the land;
- (c) Any other person who has an interest in the land;
- (d) Any other person by whom or on whose behalf the use or development was, is being, or is to be carried out.

**81. Enforcement measures-**(1) Where a person fails to comply with the terms of an Order issued under section 80, the Agency may do all such things as are necessary or convenient to give effect to the terms of the order, including the carrying out of any work required by the order.

(2) The Agency may recover the costs of carrying out any work required by the Order from the person in default under the Order in any court of competent jurisdiction as a debt due to the Government.

**82. Powers of entry etc-**(1) Any authorised officer of the Agency or any other person authorised by the Chief Executive Officer may enter any land, dwelling, building or premises at any reasonable time to carry out and enforce this Act, the regulations, a sustainable management plan, a condition of development consent, an order under section 80 or an agreement under Part IX or, if the said authorised officer or other person has a reasonable suspicion, to find out whether any of the matters referred to in this section has been or is being contravened.

(2) In exercising any power under section 81 and this section, the Agency, Chief Executive Officer and any authorised officer of the Agency may exercise the powers detailed in section 63(3).

**83. Enforcement of Act in Supreme Court-**(1) In this section:

- (a) A reference to a breach of this Act is a reference to:
    - (i) a contravention of or failure to comply with this Act, and
    - (ii) a threatened or an apprehended contravention of or a threatened or apprehended failure to comply with this Act; and
  - (b) A reference to this Act includes a reference to the following:
    - (i) the regulations;
    - (ii) a sustainable management plan;
    - (iii) a development consent granted under this Act, including a condition subject to which such consent is granted.
- (2) The Agency or any interested person may bring proceedings in the Supreme Court for an order to remedy or restrain a breach of this Act.
- (3) Proceedings under this section may be brought by an interested person on their own behalf or on their own behalf and other persons (with their consent) or a body corporate or unincorporated body (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.
- (4) Where the Supreme Court is satisfied that a breach of this Act has been committed or that a breach of this Act will, unless restrained by order of the Supreme Court, be committed, it may make such order as it thinks fit to remedy or restrain the breach.
- (5) Without limiting the powers of the Supreme Court under subsection (4), an order made under that subsection may:
- (a) Where the breach of this Act comprises a use of any building, work or land, restrain that use;
  - (b) Where the breach of this Act comprises the erection of a building or the carrying out of a work, require the demolition or removal of that building or work; or
  - (c) Where the breach of this Act has the effect of altering the condition or state of any building, work or land, require the reinstatement, so far as

is practicable, of that building, work or land, as the case may be, to the condition or state the building, work or land was in immediately before the breach was committed.

(6) Where a breach of this Act would not have been committed but for the failure to obtain a development consent, the Supreme Court, upon application being made by the defendant, may:

(a) Adjourn the proceeding to enable a development application to be made to obtain that consent; and

(b) In its discretion, by interlocutory order, restrain the continuance of the commission of the breach while the proceedings are so adjourned.

(7) The functions and powers of the Supreme Court under this section are in addition to and not in derogation from any other functions and powers of the Supreme Court.

**84. Offences – Any person who –**

(a) Carries out development needing development consent without obtaining such consent, or who uses or develops land in contravention of or fails to comply with a sustainable management plan, or a development consent, or an agreement under Part IX; or

(b) Contravenes any provision of this Act, is guilty of an offence and is liable to a fine not exceeding 50 penalty units and, in the case of continuing offences to a further fine not exceeding 1 penalty unit for every day or part of a day during which such offence continues.

**85. Offences by corporations-**(1) Where a person charged with an offence against this Act or the regulations is a body corporate, any person who is concerned or takes part in the management of that body corporate at the time the offence is committed may be charged with the same offence.

(2) Where a body corporate is convicted of an offence against this Act, a person charged under this section with the same offence may also be convicted of the offence and is liable to the penalty for that offence unless that person proves that the act or omission constituting the offence took place without that person's knowledge or consent.

**86. Obstruction of authorised persons** - Every person commits an offence against this Act and is liable to a fine not exceeding 5 penalty units who obstructs, hinders, impedes, resists, or opposes an authorised person in the exercise of any powers conferred on the authorised person by or pursuant to this Act.

## **PART IX AGREEMENTS**

**87. Board may enter into agreements**—(1) The Board may enter into an agreement with any owner of land.

(2) The Board may enter into an agreement under subsection (1) with a person in anticipation of that person becoming the owner of the land.

(3) An agreement entered into with a purchaser in anticipation of the purchaser becoming owner does not bind the vendor unless the vendor assumes the purchaser's rights and obligations under the agreement.

**88. Form and contents of agreement**—(1) An agreement under this Part shall be under seal and must bind the owner of the land to the covenants specified in the agreement.

(2) An agreement may provide for any one or more of the following matters –

- (a) The prohibition, restriction or regulation of the use or development of the land;
- (b) The conditions subject to which the land may be used or developed for specified purposes;
- (c) Any matter intended to achieve or advance –

- (i) the objectives of planning in Samoa; or
  - (ii) the objectives of a sustainable management plan or any amendment to the plan of which notice has been given in accordance with this Act;
- (d) Any matter incidental to any one or more of the matters referred to in this subsection.

**89. Agreement may not breach plan** - An agreement shall not require or allow anything to be done which would breach a sustainable management plan or a development consent.

**90. Amendment of agreements** – Subject to section 91, an agreement may be amended or cancelled by agreement between the Board and the other parties to the agreement.

**91. Application to Planning Tribunal**-(1) An owner of land may apply to the Planning Tribunal for an amendment to a proposed agreement where -

- (a) Under a sustainable management plan or a development consent the use or development of land for specified purposes is conditional upon an agreement being entered into under this Part; and
  - (b) The owner of the land objects to any provisions of the proposed agreement.
- (2) The Planning Tribunal may approve the proposed agreement with or without amendments.
- (3) A purchaser of land who is a party to an agreement under this Part or an owner of land affected by an agreement may apply to the Planning Tribunal for an amendment to the agreement to remove the land from the application of the agreement, if the parties to the agreement cannot agree that the agreement should be amended.
- (4) The Planning Tribunal may approve an amendment under this section where –

- (a) It considers that the land owner is not subject to any further liability under the agreement; or
- (b) It considers it inappropriate that the agreement should continue to apply to the land and the purchaser of the land or the owner of the land, or both, as the case may be.

## **PART X CHARGES AND FEES**

**92. Right to charges and fees** - For the purposes of this Act, the Agency may demand, levy and recover the prescribed charges and fees in accordance with this Part.

**93. Charges and fees fixed by regulation-**(1) Where under the provisions of any Act, regulation or plan the Agency or Board:

- (a) Supplies any service, product, commodity or publication;
  - (b) Makes any registration;
  - (c) Gives any consent;
  - (d) Furnishes any information;
  - (e) Receives any application for its approval;
  - (f) Issues any certificate, requirement or direction;
  - (g) Allows admission to any building,
- the charge or fee shall be as prescribed by regulation or as determined in accordance with the regulations, including as determined by a person specified in the regulations.

(2) In any such regulation, provision may be made requiring a deposit or prepayment (whether refundable or otherwise) in respect of any such charge or fee.

(3) Nothing in this section authorises any charge or fee contrary to the provisions of any Act, regulation or plan.

**94. Liability for charge or fee** - Any charge or fee under this Act shall be paid to the Agency by the person to whom or at whose request the service, consent or information is supplied, given or furnished, or at whose request the registration is made or from whom the application is received, as the case may be.

**95. Recovery of fees etc** - Any charge, fee or money due to the Agency or Board under the provisions of this Act may be recovered as a debt due to the Government in a court of competent jurisdiction.

## **PART XI CERTIFICATES OF COMPLIANCE**

**96. Application for certificate-**(1) Any interested person may apply to the Agency for the issue of a certificate stating that:

- (a) An existing use or development of land complies with the requirements of an applicable sustainable management plan at the date of the certificate; or
  - (b) A proposed use or development (or part of a use or development) of land would comply with the requirements of an applicable sustainable management plan at the date of the certificate.
- (2) The application must state the interest which the applicant has in the use or development or proposed use or development and be accompanied by the prescribed fee.

**97. Certificate of compliance-**(1) The Agency shall consider an application under section 96 and shall –

- (a) Issue a certificate of compliance in accordance with section 96 (1) (a ) or (b); or
  - (b) Refuse to issue the certificate of compliance on a ground set out in subsection (4) or (5).
- (2) A certificate of compliance shall contain an accurate description of the land and other prescribed information and be in the prescribed form.

(3) The Agency may specify in a certificate referred to in section 96(1)(b) any part of the use or development which would require a development consent or is prohibited under the sustainable management plan or draft sustainable management plan at the date of the certificate.

(4) The Agency shall refuse to issue a certificate applied for under section 96(1)(a) if the use or development or any part of the use or development is prohibited under the sustainable management plan or draft sustainable management plan.

(5) The Agency shall refuse to issue a certificate applied for under section 96(1)(b) if the whole of the use or development would require a development consent or is prohibited under the sustainable management plan or draft sustainable management plan.

**98. Appeal against refusal to issue certificate-**(1) The applicant for a certificate may appeal to the Planning Tribunal against the Agency's decision to refuse to issue a certificate of compliance.

(2) In determining the appeal, the Planning Tribunal may -

- (a) Direct that a certificate must not be issued; or
- (b) Direct the Agency to issue the certificate.

(3) The Agency shall comply with the directions of the Planning Tribunal under subsection (2).

**99. Cancellation or amendment of certificate-**(1) Any person may apply to the Planning Tribunal to cancel or amend a certificate of compliance if the person believes that the person or environment has been substantially disadvantaged by a material misrepresentation of fact in relation to the application for the certificate or a material mistake in relation to the issue of the certificate.

(2) The Planning Tribunal shall give the following persons the opportunity to be heard at the hearing of any application under this section -

- (a) The Agency;
- (b) The owner and occupier of the land concerned;
- (c) The applicant.

(3) After hearing an application under this section, the Planning Tribunal may direct the Agency to cancel or amend the certificate and to take any action required in relation to the certificate, if it is satisfied that –

- (a) There has been a material misrepresentation of fact in relation to the application for the certificate or a material mistake in relation to the issue of the certificate; and
- (b) The applicant or the environment was substantially disadvantaged by the misrepresentation or mistake; and
- (c) It would be just and fair in the circumstances to do so.

(4) The Agency shall comply with the directions of the Planning Tribunal under subsection (3).

## **PART XII MISCELLANEOUS**

**100. Act to bind public authorities** - This Act is binding on all public authorities but otherwise does not bind the Government.

**101. Register of applications**-(1) The Agency shall keep a register in the prescribed form of -

- (a) All applications for development consent;
- (b) All decisions and determinations relating to development consent;
- (c) All applications for certificates under Part XI and this Part; and
- (d) All decisions and determinations relating to those certificates.

(2) The register and a copy of every development consent issued by the Agency are to be available for public inspection at the office of the Agency during ordinary office hours.

**102. Planning Certificate-**(1) Any person may apply to the Agency for a planning certificate in respect of land.

(2) The application shall be in a prescribed form and accompanied by the prescribed fee.

(3) Where the Agency receives a completed application in accordance with subsections (1) and (2) the Agency shall give or send the applicant without delay a planning certificate which—

(a) Sets out an accurate description of the land and the prescribed information about the effect of the relevant sustainable management plan on the land, if any, at the date of the certificate, and any other prescribed information; and

(b) Is in the prescribed form; and

(c) Indicates that it is produced by authority of an authorised officer of the Agency.

(4) A planning certificate which appears to be produced by authority of an officer of the Agency is, in the absence of evidence to the contrary, proof that at the date specified in the certificate the facts set out in it were true and correct.

**103. Government not liable** - The Government is not liable for any damage or loss resulting from any act, omission or default by the Minister or the Chief Executive Officer or the Board or the Agency or any member or any employee or agent of the Board or Agency, in their exercise of any function or power under this Act.

**104. Chief Executive Officer etc. not civilly liable** - Neither the Chief Executive Officer, nor any officer or employee of the Agency, nor any member of the Board is personally liable in any civil proceedings for any damage or loss resulting from any act, omission or default by the Chief Executive Officer, officer or employee or agent of the Agency, or member of the Board in their exercise of any function or power under this Act, unless that act, omission or default arose from the wilful misconduct of the person who is sought to be made liable.

**105. Regulations-**(1) The Head of State, acting by and with the advice of Cabinet, may from time to time make all such regulations as may be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the generality of subsection (1), regulations may prescribe or provide for:

- (a) Any matter that is necessary or convenient to be done before making a development application;
- (b) The persons who may make development applications;
- (c) The making, consideration and determination of development applications that are made by or on behalf of public authorities and persons prescribed by the regulations;
- (d) The form of development applications;
- (e) The documents and information required to accompany development applications, including documents that will assist the Agency in assessing the environmental effects of development;
- (f) The fees for development applications;
- (g) The notification and advertising of development applications and any proposed development;
- (h) The form and contents of notices of development applications, the manner of giving notices and the persons to whom notices are to be given;
- (i) The requirement for consultation with, or obtaining the concurrence of, the Agency, public authorities and other persons concerning proposed development;
- (j) The form of statements of environmental effects and environmental impact assessments;
- (k) The documents and information required to accompany statements of environmental effects and environmental impact assessments;

- (l) The making of submissions, by way of objection or otherwise, with respect to proposed development and the consideration of submissions;
- (m) The holding of inquiries into proposed development;
- (n) The modification of development consents, including the fees for applications for modification;
- (o) The periods within which specified aspects of the planning process must be completed and the variation of those periods;
- (p) The effect of a failure to comply with any requirement of the regulations;
- (q) The notification of applicants and persons making submissions (including by way of objection) of the determination of development applications, reasons for the determinations and any rights of appeal;
- (r) The factors to be taken into account when consideration is being given to the likely impact of a development on the environment;
- (s) The preparation, contents, form and submission of environmental impact assessments;
- (t) The making of environmental impact assessments available for public comment;
- (u) The methods of examination of environmental impact assessments and representations made with respect to activities to which any such statements relate;
- (v) Any function conferred by this Act on any person;
- (w) The form, time, manner and mode of giving notices under this Act;
- (x) The making of submissions in respect of draft sustainable management plans and the consideration of submissions;
- (y) The requirement for consultation with stakeholders in respect of draft sustainable management plans;
- (z) The notification and advertising of the intention to prepare draft sustainable management plans;

- (aa) The notification and advertising of draft sustainable management plans;
- (bb) The form and contents of notices of draft sustainable management plans or notices of the intention to prepare draft sustainable management plans, the manner of giving notices and the persons to whom notices are to be given;
- (cc) The form, structure and contents of sustainable management plans;
- (dd) The form and contents of a certificate of compliance;
- (ee) The fee for a certificate of compliance and a planning certificate;
- (ff) The charges and fees for any service, permission, or information supplied, given or furnished under this Act.

**106. Amendments etc to other Acts**—(1) The Lands, Surveys and Environment Act 1989 is amended as follows –

- (a) Section 28 is amended by inserting subsection (4) as follows –

“(4) Any classification of land made under this section shall be consistent with any approved plan under the Planning and Urban Management Act 2004.”.

- (b) Section 29 is amended by inserting the following proviso –

**“PROVIDED THAT** when disposing of any Government land under this Act, the Board shall ensure that regard is had to the provisions of any relevant plan approved under the Planning and Urban Management Act 2004 applying to the land, and that such requirements are reflected in the terms of the sale or lease of the land.”

- (c) Section 49(2) is amended by inserting the following proviso –

“**PROVIDED THAT** all covenants and conditions applying to leases issued or renewed under this section shall be in accordance with any relevant plan approved under the Planning and Urban Management Act 2004 applying to the leased land.”

(d) Section 104 is amended by inserting the following after paragraph (k) -

“(l) Establish frameworks for planning the use, development, management and protection of land in Samoa.”

(e) Section 116 is amended by inserting subsection (1A) as follows –

“(1A) When preparing a plan under this section the Chief Executive Officer shall consult with the Planning and Urban Management Agency, and action shall be taken to ensure that no conflict arises between any plan or proposed plan applying to the area.”

(2) The Ministry of Works Act 2002 is amended by deleting section 53 and substituting the following –

“**53. Planning and Urban Management Schemes-**(1) The Head of State, acting on the advice of Cabinet, may make Regulations providing for the Ministry to support and assist any Government Ministry or Agency responsible for planning and urban management.

(2) Without limiting the generality of the power conferred by subsection (1), the Regulations may provide for the integration of the Building Code and Regulations with any planning or urban management scheme.”.

(3) The Survey Ordinance 1961 is amended -

(a) By deleting section 5(1) and substituting the following:

**“5. Responsibility for this Part and submission of scheme plans of subdivisions–(1)** Notwithstanding any provision of this Ordinance and any other Act, the Planning and Urban Management Agency shall be responsible for the consideration of plans submitted under this Part and for making recommendations to the Minister in relation to the approval of such plans.

(1A) Where this Ordinance and the Planning and Urban Management Act 2004 make no or insufficient provision to give effect to subsection (1), the Minister, the Chief Executive Officer of the Ministry of Natural Resources and Environment (formerly the Director of the Department of Lands, Surveys and Environment), the Ministry of Natural Resources and Environment (formerly the Department of Lands, Surveys and Environment) and the Planning and Urban Management Agency may make such adaptations and modifications to the provisions of this Ordinance and take such action as they consider necessary to ensure that subsection (1) has full force and effect.

(1B) Where any land is subdivided into allotments for the purposes of any disposition of land, a scheme plan showing the proposed subdivision shall conform to the requirements of section 41 of the Planning and Urban Management Act 2004 and shall be submitted to the Minister for the Minister’s approval:

**PROVIDED THAT** nothing in this subsection shall apply to any alienation of customary land by way of lease under the provisions of section 12 of the Samoan Lands and Titles Protection Ordinance 1934.”

(4) The Building Alignment Ordinance 1932 is amended by deleting section 3 and substituting the following:

**“3. Application and administration of Ordinance–(1)** Notwithstanding the provisions of this Ordinance and any other Act, the Planning and Urban Management Agency shall be responsible for the administration and enforcement of this Ordinance.

(2) Where this Ordinance and the Planning and Urban Management Act 2004 make no or insufficient provision to give effect to subsection (1), the Minister of Natural Resources and Environment (formerly the Minister of Lands, Surveys and Environment), the Chief Executive Officer of the Ministry of Natural Resources and Environment (formerly the Director of Lands, Surveys and Environment), the Ministry of Natural Resources and Environment (formerly the Department of Lands, Surveys and Environment), the Chief Surveyor and the Planning and Urban Management Agency may make such adaptations and modifications to the provisions of this Ordinance and take such action as they consider necessary to ensure that subsection (1) has full force and effect.

(3) Any reference to the Chief Surveyor in this Ordinance shall be read as a reference to the Assistant Chief Executive Officer of the Planning and Urban Management Agency (appointed under section 6 of the Planning and Urban Management Act 2004), unless the context requires otherwise.

(4) This Ordinance shall apply to all land within 100 feet of any street or part of a street within the Town Area of Apia or of the main Coast Road between the Town Area of Apia in the East and Cape Fatuosofia in the West.”

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**The Planning and Urban Management Act 2004 is administered  
in the Ministry of Natural Resources and Environment.**