

**Town and Country Planning (Development) Order, 1991**

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**Town and Country Planning (Development) Order, 1991**

In exercise of the powers conferred on me by sections 10 (1) and 11 (5) of the Town and Country Planning Act, 1980, I,

Mphosi Matete

Minister of the Interior and Chieftainship Affairs make the following Order;

**Part I — Preliminary**

**Citation and commencement**

1. This Order may be cited as the Town and Country Planning (Development) Order and shall come into operation on a date to be appointed by the Minister by notice in the Gazette.

## **Application of order**

2. This order shall apply to all land which is affected by the Town and Country Planning Act 1980.

## **Interpretation**

3. In this order,

“aerodrome” means any area of land designed, equipped, set apart or commonly used for affording facilities for the landing or departure of aircraft;

“agricultural unit” means a piece or parcel of land which is used for modern farming operations and does not include any land used for subsistence agricultural purpose;

“apartment” means a self-contained dwelling being part of a building of one or more storeys sharing a common access with other such dwellings in the same building;

“building” includes any structure or erection and any part thereof, whether temporary or permanent including any fixture thereto; but does not include plant or machinery attached to or comprised in a building;

“council” means any council to which functions of the Planning Authority have been delegated under section 11 (4) of the Act;

“dwelling house” means a self-contained dwelling unit and does not include a building containing one or more apartments or flats or an apartment or flat within such building;

“flat” means a dwelling unit which is not self-contained normally sharing land and toilet facilities with other flats usually contiguous within the same piece or parcel of land;

“industrial use” includes any process for or incidental to any of the following purposes,

- (a) the making of any article or part thereof;
- (b) the altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning or adapting for sale, breaking up or demolition of any article, or
- (c) without prejudice to the foregoing paragraphs, the winining, dressing or treatment of any minerals, being a process carried on in the cause of trade or business;

“industrial undertaker” means an undertaker by whom an industrial process is carried on;

“landscaping” means the treatment of land for the purpose of enhancing or protecting the amenities thereof and the area in which it is situated and includes screening by fences, walls or other means, planting of trees hedges, shrubs or grass, formation of banks, terraces or other earthworks, layout of gardens or courts and other amenity features;

“local materials” means materials of clay, mud brick, sand, stone, grass, reed,



wood, galvanized iron sheeting used as a roofing material found or worked in Lesotho and used by the Basotho for the construction of buildings;

## **A 24 of 1969**

“main road” means a road declared under section 4 of the Roads Act 1969 and includes any other road used by motor vehicles directly linking the main population centres in Lesotho;

“original building” means either a building as it existed on the appointed date when the Act came into operation or if built subsequently, as erected in accordance with any planning permission given under the Act;

“outline planning permission” means a planning permission for the erection of a building which is granted subject to a condition (in addition to any other conditions which may be imposed) requiring subsequent approval to be obtained from the Planning Authority or council with respect to one or more reserved matters;

“painting” includes any application of colour;

“planning permission” means either statutory permission provided under a development order or written permission from the Planning Authority to develop land;

“post office” does not include any building used primarily for the purpose of post office administration;

“premises” means any building to which services are normally connected;

“reserved matters” in relation to an outline planning permission, or an application for such permission, means any of the following matters relating to the building to which the planning permission or the application relates which are relevant to the proposal and in respect of which details have not been given in the application, namely, siting, design, external appearance, means of access and the landscaping of the site;

“traditional” means according to the custom practised by the majority of the Basotho in Lesotho.

## **Part II — Planning Permission and Permitted Development**

### **Planning Permission**

4. (1) Subject to this part and to section 9 of the Act, all development requires planning permission before that development is commenced.

(2) Subject to the requirements of section 17 of the Act, any failure to obtain permission or approval before developing land shall constitute an offence.

(3) Any planning permission granted shall run with the land.

### **Permitted development**

5. (1) Subject to section 6, planning permission is hereby granted for any class of development specified in Part I of the First Schedule and that development may be undertaken without the written permission of the Planning Authority.

### **First Schedule**

(2) The permission granted by this order shall be subject to the standard conditions contained in Part II of the First Schedule.

(3) Nothing in this section or in the First Schedule shall operate so as to permit any development contrary to a condition imposed in any permission granted under the Act.

## **First Schedule**

(4) The Minister may, by notice in the Gazette, vary, amend, add to or cancel the standard conditions and all or any of the classes of development prescribed in the First Schedule.

### **Directions restricting permitted development**

6. (1) If the Minister requires that any development permitted under section 5 shall not be carried out in an area unless planning permission is granted by the Planning Authority on an application in that behalf, the Minister shall direct with respect to that area of land that the permission granted by section 5 shall not apply to,

- (a) all or any development of all or any of those classes as may be specified in the direction; or
- (b) any particular development falling within those classes as may be specified in the direction.

(2) Notice of any direction given under subsection (1) (a) shall be published in the Gazette and in a newspaper circulating in Lesotho and that notice shall contain a concise statement of the effect of the direction and name a place where a copy thereof and of a map defining that area of land to which it relates may be inspected and that direction shall come into operation on the date on which notice thereof is published in the Gazette.

(3) Notice of any direction given under subsection (1) (b) shall be served on the owner and the occupier of the land affected by the direction and any such direction shall come into force on the date on which notice thereof is served under the Act;

Provided that where it is impracticable because of the number of owners or occupiers of the land, or the difficulty of identifying or locating such owners or occupiers, notice of any direction given under subsection (1) (b) shall instead be published pursuant to subsection (2).

## **First Schedule**

(4) No direction given or having effect under this section shall prohibit development of any class prescribed in the First Schedule in the case of any emergency (unless such direction specifically so provided) of any of the following operations,

- (a) maintenance of bridges, building and railway stations;
- (b) alteration and maintenance of railway track and the provision and maintenance of track, equipment and works required in connection with the movement of traffic by rail;
- (c) maintenance of buildings, runways, taxi-ways or aprons at an aerodrome;
- (d) provision, alteration and maintenance of equipment,



apparatus and works at an aerodrome required in connection with the movement of traffic by air;

- (e) any development required in connection with the maintenance, repair or improvement of water courses, canals, furrows or drainage works

### **Part III — Applications**

#### **Application for planning permission**

7. (1) An application for planning permission shall be made to the Planning Authority in the first instance and if that authority has delegated to any council his functions relating to the grant or refusal of planning permission, he shall forward the application to that council.

#### **Form T P 1 Second Schedule**

(2) An application shall be made in Form TP1 in the Second Schedule with such amendments variations or additional information as the Planning Authority may require, and shall be accompanied by,

- (a) a plan sufficient to identify the land to which it relates;
- (b) such other plans, drawings and documents as are necessary to describe the development proposed; and
- (c) such other requirements as may be specified in the application form, together with such copies of the application form, accompanied by such numbers of the supporting plans documents as may be specified in the application form.

(3) An application may be made for outline planning permission for the erection of a building and, where such permission is granted, the subsequent approval of the Planning Authority or council shall be required for such matters as may be required by condition.

(4) The application referred to in subsection (3) shall be made on a form describing the development to which it relates and shall be accompanied by a plan sufficient to identify the land to which it relates together with such additional copies as may be specified on the form and may contain such other information as the Planning Authority or council may require;

Provided that where the Planning Authority or Council is of the opinion that in the circumstances of the case the application ought not to be considered separately from the siting or the design or the external appearance of the building, or the means of access thereto or the landscaping of the site, the Planning Authority or Council shall,

- (a) within a period of 4 weeks from the receipt of the application, notify the applicant that it is unable to entertain the application unless further specified details are submitted for the purpose of arriving at a decision in respect of the proposed development; and
- (b) the applicant may either furnish the information so required or appeal to the Minister within the period specified in section 8 (3) as if his application had been refused by the Planning Authority or Council.

(5) The Planning Authority may, within a period of 14 days from receipt of the application by a direction in writing addressed to the applicant, specify further information required to be given to enable the application to be satisfactory determined.

(6) An application to the Planning Authority or Council for approval of reserved matters shall be in writing and shall be made within 6 months of the grant of the outline planning permission and shall,

- (a) include particulars sufficient to identify the outline planning permission in respect of which it is made;
- (b) be accompanied by such plans and drawings as are necessary to deal with the matters reserved in the outline planning permission and such additional copies of the application and such plans and drawings as may be specified on the application form.

### **General provisions relating to applications**

8. (1) On receipt of an application made under any section of this order, the Planning Authority shall send to the applicant an acknowledgement thereof notifying.

- (a) the date on which it was received;
- (b) whether the Planning Authority will deal with the application or refer it for decision to a council;
- (c) the period in which a decision shall be given if the matter is dealt with by the Planning Authority;
- (d) the rights of the applicant in the event of no decision being given within the specified period or any extended period as provided in subsection (3); and
- (e) the particulars under which a right of appeal to the Minister may be lodged by the applicant.

(2) When an application is referred by the Planning Authority to a council, that council on receipt of the application shall send to the applicant and the Planning Authority an acknowledgement thereof notifying,

- (a) the date of receipt of the application;
- (b) the period in which a decision shall be given;
- (c) the rights of the applicant in the event of no decision being given within the specified period; and
- (d) the particulars under which a right of appeal to the Minister may be lodged by the applicant,

(3) Subject to subsection (4) the period within which the Planning Authority or a council shall give notice to the applicant in terms of subsections (1) and (2) shall be not more than 42 days from the date on which the application was received by the Planning Authority or by the council if such application is referred to the council for decision.

(4) The period referred to in subsection (3) may be extended at any time for a specified period by either the Planning Authority or council and the applicant.

(5) If no decision is given by the Planning Authority or by a Council,

- (a) within the period of 6 months from the date on which the application was received by the Planning Authority or by the Council, if such application is referred to the Council for decision; or
- (b) at the expiration of any extended period pursuant to subsection (3),



The applicant shall be entitled within 3 months thereafter, by notice in writing to request the Planning Authority or Council to determine such application pursuant to subsection (6); and in the event of the application not being so determined within 24 days of receipt by the Planning Authority or the Council of such notice, the application shall be treated as refused and the right to claim compensation under section 13 of the Act shall apply.

(6) The Planning Authority or council, in dealing with the application, shall have regard to,

(a) the development plan; or

(b) any outline plans, part plans, schemes, reports and policy statements approved by the Minister pursuant to section 6 of the Act,

so far as material to the application and to any other considerations.

(7) The following decisions shall be in writing,

(a) the grant of planning permission or the approval of reserved matters in both cases with or without conditions stating the reasons for the conditions;

(b) the refusal of planning permission stating the reason for such refusal; and

(c) the grant of planning permission for an alternative form of development other than that applied for with or without conditions stating the reasons for the conditions.

## **Part IV — Directions to councils and Appeals**

### **Directions to a Council**

9. (1) A council shall furnish the Planning Authority with such information as may be prescribed by directions in writing given by the Planning Authority with respect to applications made under section 7 including information as to the manner in which those applications have been processed by the council.

(2) The Planning Authority may give a direction to a council to consult with the person, body or other council named in the direction and before determining the application that council shall enter into consultation accordingly.

(3) Where a council is required to consult in accordance with subsection (2), it shall give not less than 14 days notice to the person, body or council named in the direction that the application is to be considered on a specific date and it shall not determine the application until it has taken into account any representations received from that person, body or council on or before that date.

### **Appeals**

10 (1) An applicant who desires to appeal against,

(a) any decision in refusing planning permission or in granting planning permission with conditions; or

(b) the failure of the Planning Authority to give a decision on the application within the specified period or any extended period,

### **Forms TP2 and TP3 Second Schedule**

shall give notice in Form TP2 or Form TP3 in the Second Schedule stating the grounds on which the appeal is made.

(2) Notice of any appeal shall be forwarded to the Minister and a copy thereof shall be sent to the Planning Authority of council concerned.

(3) No appeal shall lie to the Minister in respect of any of the matters stated in subsection (1) if made later than 6 months,

(a) after the date of the decision;

(b) after the date following the period specified in section 8 (1) (c) or (2) (b) or any extended period; or

(c) after the expiry of an extension of the period as specified in section 8 (3).

(4) Within 1 month after receipt of a copy of a notice of appeal, the Planning Authority or a council shall furnish to the Minister a written statement containing its observations on the appeal and copies of the following,

(a) the application;

(b) all relevant plans, drawings, particulars and documents submitted to it either with the application or at a later date;

(c) All other relevant correspondence with the applicant and any person, body or council;

(d) the notice of decision, if any;

(e) if the appeal relates to an application for approval of reserved matters, the application for outline planning permission, the plans submitted with that application and the outline planning permission granted.

## **Part V — Administration**

### **Register of applications**

11. (1) A register of applications received and not finally disposed of shall be kept by the Planning Authority or a council with delegated planning powers and such register shall comprise 2 parts as set out hereunder.

(2) Part I shall contain a copy of every application for planning permission and of any application for approval of reserved matters submitted to the Planning Authority or council and this part of the register shall also contain one copy of each plan, drawing or document submitted in support of the application.

(3) Part II shall contain the following information,

(a) particulars of the application including its location, legal description of the land, if any, the full name and address of the applicant, the date of the application, the date the application was sent to or received by a council, as the case may be, the date before which a decision shall be made, and brief particulars of the development proposed forming the subject of the application;

(b) the decision of the Planning Authority or council, as the case may be,

(c) the date and effect of any decision by the Minister in respect of the application and on appeal;

(d) the details of any enforcement notice issued pursuant to section 12 of the Act.

(4) Where, following an appeal to the Court under section 17 of the Act, the applicant is deemed to have received planning permission for any development



to which the appeal relates the Planning Authority or council, as the case may be, shall, on receipt of notification of the decision of the court, enter in Part II of the register particulars of the development concerned and the date and effect of the decision.

(5) A register of applications shall include an index which shall be in the form of a map of the area covered by the register and the index map and every application shall be cross reference where appropriate.

(6) An entry in a register, including the placing in Part I thereof of the copies of the application, plans drawings and documents requires by subsection (2) shall be made within 7 days of receipt of the application or the giving or making of any direction, decision or approval, as the case may be.

(7) For the purpose of subsection (1), an application shall not be treated as finally disposed of unless,

- (a) it has been decided;
- (b) no decision is taken either by the Planning Authority or council within the period specified in section 8(3) and the period of 6 months specified in section 10(3) has expired without any appeal having been made to the Minister; or
- (c) it has been withdrawn by the applicant before being decided by the Planning Authority or Council or before any decision on appeal has been made.

### **Searches**

12. (1) Public inspection of Part I of the register is permitted during normal office hours until the application to which the register relates is finally determined.

(2) Public inspection of Part II of the register is permitted during normal office hours.

### **Register of directions to councils**

13. The Planning Authority shall maintain a register of directions given to councils in terms of section 9.

## **FIRST SCHEDULE (Section 5)**

### **Permitted Development**

#### **Part I**

#### **Class 1 — The Traditional Use of Land**

All development in the form of —

- (a) traditional style dwelling houses constructed in local materials;
- (b) walls, fences and other means of enclosing animals of any kind, provided the height of the enclosure does not exceed 2 metres;
- (c) traditional style buildings constructed in local materials used for traditional purposes;

- (d) other buildings associated with the traditional use of land provided that the cost of any such building in labour and materials does not exceed M500 or any other amount prescribed by the Minister and notified by notice in the Gazette and a newspaper circulating in Lesotho; or
- (e) land use related solely to subsistence agriculture and other traditional land use practices.

### **Class II — Residential Development**

- (1) The enlargement, improvement or other alteration of a dwelling house so long as —
  - (a) the cubic content of the original dwelling house measured externally is not exceeded by all cubic metres or one tenth of the cubic content whichever is the greater, subject to a limit of 100 cubic metres;
  - (b) the height of the dwelling house as so enlarged does not exceed the height of the original building;
  - (c) no part of the dwelling house as so enlarged projects beyond the forward most part of any wall of the original building which fronts on a road.
- (2) The erection of other detached buildings being a garage, stable or residential quarters for bona fide members of the family resident in the dwelling house or of family servants and required for any purpose incidental to the enjoyment of the dwelling house as such shall be treated as the enlargement of the original building for the purposes of this planning permission.

The erection, construction or placing and the maintenance improvement or other alteration, within the boundaries of the land in which the dwelling house is situated, of any building or enclosure (other than a dwelling house, garage, stable or servants residential quarters) required for a purpose incidental to the enjoyment of the dwelling house as such, including the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwelling house, so long as —

- (a) the height does not exceed 4 metres in the case of a building with a ridged roof for 3 metres in any other case;
- (b) such building or enclosure shall not be permitted before the main dwelling house has been constructed;
- (c) no part of such building or enclosure projects beyond the forwardmost part of any wall of the original dwelling house which fronts on a road; and
- (d) the livestock are kept only for the domestic needs of the occupiers of the dwelling house.

Development carried out within the curtilage of a dwelling house being the provision, re-arrangement or replacement of sewers, pipes, cables, electricity or telephone lines or other apparatus including wireless and television aerials.

### **Class III — Development for Industrial Purposes**

Development of the following description carried out within the boundaries of land



held by an industrial undertaker for industrial use, being —

- (a) the provision, re-arrangement or replacement of a road (not being a public road or a public right of way);
- (b) the provision, re-arrangement or replacement of sewers, mains, pipes, cables, lines or other apparatus;
- (c) the installation or erection by way of additional or replacement of plant and machinery or of structures or erections of the nature of plant or machinery not exceeding 15 metres in height or the height of the plant or machinery, structure or erection so replaced, whichever is the greater;
- (d) the extension or alteration of buildings so long as the height of the original building is not exceeded and the cubic content of the original building measured externally is not exceeded by more than one tenth nor the original floor space by more than 500 square metres.

#### **Class IV — Agriculture Buildings, Works and Uses**

The carrying out on agricultural land lawfully occupied and having an area or more than one hectare, comprised in an agricultural unit, of building or engineering operations requisite for the use of that land for the purpose of agriculture or for the housing of persons solely engaged in agriculture on that land only.

#### **Class V — Temporary Building and land Uses**

1. The erection or construction of buildings, works, plant or machinery needed temporarily in connection with operations to develop land for which planning permission has been granted or deemed to be granted under the Act or its deemed to be granted under section 5 of this order — for the period of the operations only.
2. The use of land for any other purpose on not more than 28 days in total in any calendar year.

#### **Class VI — Sundry Minor Operations**

1. The erection, construction or maintenance of gates, fences walls or other means of enclosure not exceeding one metre in height in front of the forwardmost part of the building or 1.25 metres in height in any other case.
2. The painting of the exterior of any building or work other than for purposes of advertisement.

#### **Class VII — Repairs to Roads**

The carrying out of works required for the maintenance or improvement of a road.

#### **Class VIII — Repairs to Service**

The carrying out of works for the purpose of inspecting, repairing or renewing any sewer main, electricity main (high tension line or otherwise), pipes, cables or other apparatus including the breaking open of land for that purpose and restoring the land to its former condition.

#### **Class IX — Development by Government and Councils**

The erection or construction and the maintenance, improvement or other alteration

by a Government Ministry, Government Department, Government agency (not being a body corporate) and any council of —

- (a) such small ancillary buildings, works, plant and machinery as are required on land maintained by any such body;
- (b) lamp standard, information kiosks, passenger or public shelters and seats, telephone boxes, fire alarms, public drinking fountains, horse troughs, refuse bins or baskets, barriers for the control of persons and such similar structures or works as may be required in connection with the operation of any public service administered by any such body;
- (c) the carrying out of any works required in connection with the improvement or maintenance of water courses or land drainage works or with the connection of water, sewerage or drainage services from the main networks to individual premises;
- (d) the carrying out of any works in connection with the security of the State.

#### **Class X — Development by the Post Office of Telecommunications Corporation**

Development for the purpose of the undertaking of the following —

- (a) the installation of public telephone call boxes or kiosks, posting boxes or self-service postal machines;
- (b) the placing of any telegraphic or telephone lines alongside roads or within road reserves;
- (c) the use of any land in the case of emergency for a period not exceeding 12 months for the stationing and operation of movable apparatus required for the replacement of telephone exchanges, telephone repeater stations, radio transmitting or receiver stations and electricity generators which have become unserviceable provided that at the expiration of the period of use, all such movable apparatus shall be removed unless planning permission was first sought and obtained.

#### **Class XI — Development by the Lesotho Electricity Corporation or other Parastatal Organisation concerned with the generation and Supply of Electricity**

Development for the purpose of the undertaking of the following —

- (a) the laying underground of pipes, cables or other apparatus under any land held by the Corporation or under any other land over which the Corporation or organisation possesses right to use the land for such purpose;
- (b) the installation in an existing electric line or feeder pillars, transformers or switching stations or chambers not exceeding (except when constructed underground elsewhere than under a road) 30 cubic metres in capacity; provided the Corporation or organisation has rights to use the land for those purposes;
- (c) the installation, repair or replacement or service electric lines from the main network to individual premises or consumers;
- (d) other development carried out in, on or under the operational land held



by the Corporation or organisation the generation and supply of electricity except —

- (i) residential development of any kind;
  - (ii) the erection or reconstruction so as materially to affect the design or external appearance of any building; or
  - (iii) the installation or erection by way of addition or replacement of any plant or machinery, or structures or erections of the nature of plant, machinery or pylons 15 metres in height or the height of the plant, machinery structure or erection so replaced, whichever is the greater;
- (e) the use of any land in the case of emergency for the stationing and operation of movable apparatus required for the replacement of electricity generators, transformer or switching stations, feeder pillars and any other apparatus, which have become unserviceable for a period not exceeding 12 months, provided that at the expiration of the period of use, all such movable apparatus shall be removed unless planning permission was first had and obtained.

### **Class XII — Development by the Civil Aviation or any Aerodrome (Airport Authority)**

Development required in connection with the provisions by the Authority of services and facilities necessary or desirable for the operation of an aerodrome being development in, on, over or under land set aside for such aerodromes except the construction or erection of any residential development including any airport hotel or passenger terminal building or the reconstruction or alteration so as materially to affect the design or external appearance of any original building used as airport hotel or passenger terminal.

### **Class XIII — Development by any Railway Undertaking or Authority**

Development other than building within operational land set aside for such an undertaking.

### **Class XIV — Development by other Transport Undertaking or Authorities**

Development required for the purpose of the undertaking of any of the following descriptions —

- (a) the installation of telephone cable and other communication apparatus, huts, stop posts and signs connected with the operation of motor vehicles or boats authorised to carry passengers and freight;
- (b) the erection, construction, maintenance, improvement or alteration of passenger shelters and barriers for the control of passengers or animals waiting to enter authorised motor vehicles or boats.

## **PART II**

### **Standard Conditions Applicable to all Classes**

1. this planning permission does not authorise development which involves the making or widening of any means of access from land to the main road abutting or traversing that land.
2. No development shall be carried out which creates an obstruction to the view of persons using any road used by vehicular traffic at or near any bend, corner, junction or intersection so as to be likely to cause danger to such persons.