** Green Paper on Planning Law Reform Attached

RESOLUTION NO.

PARLIAMENT

WHEREAS the Government of Barbados has determined that there should be a modernized strategic approach to physical development planning in Barbados, with a view to making the planning process more transparent and efficient, through the development of a Green Paper on Planning Law Reform.

AND WHEREAS it is recognized that a modern, fit-for-purpose Town Planning system and the requisite land use policy are vital cogs in any system established to transform the socio-economic landscape of Barbados.

AND WHEREAS it is accepted that land use planning is an integral part of the process of national growth and development and that economic decisions to focus on tourism, manufacturing industry or agricultural development as the basis for Barbados' economic development must be translated into land-use terms.

AND WHEREAS the strategic approach informs the thrust of the Government as it seeks to develop new planning legislation which epitomizes good governance, efficiency, transparency and consistency; and which supports high quality, sustainable development for current and future generations.

AND WHEREAS this new approach calls for the orderly and progressive development of lands, taking cognizance of the need for: effective regulation of land development; planning obligations; enforcement of decisions and the right of appeal.

AND WHEREAS the strategic approach has at its core, the improvement in the quality and speed of the delivery of services in Barbados, in particular Town and Country Planning permissions, to promote doing business with ease.

AND WHEREAS the Green Paper on Planning Law Reform in Barbados has as its five (5) goals: transparency and accountability, openness and inclusiveness, efficiency and effectiveness, sustainable development and fit for purpose.

AND WHEREAS this Green Paper on Planning Law Reform in Barbados, with its clear articulation of policy direction prescribes the role of the Minister, the Chief Town Planner, the applicants, Private Sector and the general public in the holistic and all-embracing development of a modernized legislative frame work and planning system.

AND WHEREAS the Cabinet on September 18th, 2018 approved the Green Paper on Planning Law Reform in Barbados and agreed that it should be laid in Parliament.

BE IT RESOLVED that Parliament take note of the Green Paper on Planning Law Reform in Barbados.

Approved by the House of Assembly this day of 2018.

SPEAKER

Approved by the Senate this day of 2018.

PRESIDENT

GREEN PAPER

ON

PLANNING LAW REFORM

GREEN PAPER ON PLANNING LAW REFORM

Executive Summary

BACKGROUND

The current Town and Country Planning Act was enacted in 1965 and largely based on earlier UK legislation. The system was devised for a different era and has its roots in a different place. Nearly 52 years after Independence, it is right that we revisit this issue and come up with legislation that is relevant to a 21st Century Barbados. Our current system is neither efficient in its approach nor transparent in its application. It is seen as a barrier to investment and at the same time lacks the teeth to protect our fragile environment and cultural heritage.

In its 2018 Manifesto, "Building The Best Barbados Together", the Government committed itself to improving the quality and speed of delivery of services, including Town and Country Planning permissions, to promote doing business with ease. The reform of this outdated legislation was, therefore, identified as "mission critical".

In order to engage the people of Barbados in the development of new legislation, two stakeholder consultations on the reform of the planning system were held on 16th and 25th July 2018 and social media has also been used to encourage participation. Comments made by the public have been taken into account in the formulation of this policy paper.

This paper examines the issues, considers options and makes recommendations for fundamental reform of the town planning legislation in Barbados. This reform is essential to provide a fit for purpose planning system which regains the trust and confidence of the Barbadian people. However, it is recognised at the outset that legislative reform on its own is not enough. It must be accompanied by fundamental reform of our management processes and practices if it is to be fully successful.

To guide the review process, the following policy goals and principles were established:

1. Goal 1 - Transparency and accountability
2. Goal 2 - Openness and inclusiveness
3. Goal 3 - Efficiency and effectiveness
4. Goal 4 - Sustainable Development
5. Goal 5 - Fit for purpose

In delivering these goals the principles of good governance, e-government, consultation and participation and pro-active management should also be applied. The report considers governance issues, a range of strategic policy considerations, together with cross cutting and implementation issues. This executive summary highlights the higher order issues and main changes proposed which will require decision.

GOVERNANCE

There are three basic models of governance found in planning legislation in the Commonwealth Caribbean.

a) The Ministerial Model

This is the model currently in operation in Barbados. Under this arrangement, the responsibility for administering the legislation is vested in the Minister, but there is considerable delegation to the Chief Town Planner. The Minister has the power to determine certain classes of application and to decide appeals. The way the system operates is very opaque, it is susceptible to politicization, and there is scope for personal corruption. It is also narrowly technically based with limited coordination with other regulatory agencies. There is, however, political accountability and the costs of administration are relatively low.

b) The Statutory Corporation Model

In this arrangement, the powers are vested in a statutory corporation with a Board appointed by the Minister. This model has limited direct accountability and costs are high as Statutory Corporations are responsible for their own finances, fixed assets and personnel. Although theoretically more independent, they are often liable to political interference.

c) The Hybrid Model

This model vests a statutory Board with the responsibility for decision-making. The Board is multi-disciplinary and includes representatives from regulatory authorities and the private sector and is serviced by the TCPDO. Collective decision-making increases transparency, providing conflicts of interest are clarified. As part of this model, a Tribunal would hear Appeals. The Minister would retain the power to determine certain classes of development. The costs associated with this option are modest.

Proposed Changes

The Hybrid model is recommended but will require clear regulations to govern its operation.

STRATEGIC POLICY INTERVENTIONS

Physical Development Planning

The Physical Development Plan provides the policy framework to guide development. The current Physical Development Plan amended (2003) is in the process of being reviewed with the revised plan awaiting formal consultation and approval.

The PDPs have served Barbados well but there are issues around the legal status of the plan itself, its content, any lower tier local plans, the provision for public participation and the frequency of its review.

Proposed changes

It is recommended that:

- **The status of the development plan be made more explicit with a presumption in favour of the development plan that decisions must be made in accordance with the plan unless material considerations indicate otherwise.**
- **The second schedule be amended to clarify the status of different types of plans and make provision for national park planning, conservation area planning and other types of plans including non- spatial plans and supplementary planning documents.**
- **Guidelines for public participation are put in place for the plan preparation and adoption process**
- **Consideration be given to appointing a Development Plan Tribunal to consider representations**
- **The period for the review of the plan be increased from 5 years to 10 years**
- **Greater emphasis is placed on aspects of implementation other than just development control**

Regulation of Land Development

The purpose of planning legislation is to provide for the orderly and progressive "development of land". Development is defined as -

- The carrying out of building, engineering, mining or other operations in, on or under any land
- The making of any material changes in the use of any buildings or land
- The subdivision of land

The definition of land includes the seabed underlying the Territorial Waters of Barbados.

The definition of development is broadly satisfactory although there is a need to consider the inclusion of demolition (particularly in relation to listed buildings) and to ensure that sand mining is also covered. The subdivision provisions have also created some problems in relation to servicing and maintenance of vacant lots. Consideration could be given to creating a new class of subdivision or severance for small scale division of lots in already serviced areas

There are two classes of application – outline and full. Some suggestions have been made that it might be possible to also distinguish between simple and complex applications and this could also be reflected in the time limits for processing applications.

Some types of development are deemed to be permitted and are set out in the Town and Country Planning Development Order. This order is in need of revision and updating.

There are certain categories of application that are determined by the Minister and provisions exist for having a hearing. This element of the system is prone to long delays and the existing arrangements have been discredited because of lack of transparency and the capabilities of the persons conducting hearings.

Barbados has entered into international commitments to undertake Environmental Impact Assessments (EIAs) on proposed activities which are likely to have an adverse effect on the environment but to date there is no comprehensive legal framework covering this. An EIA Regulation should be prepared as a matter of urgency to clarify when an EIA is required, how it should be conducted and how the mitigation measures proposed will be monitored.

There is similarly a need to clarify the ways in which the Coastal Zone Management Act and the Town and Country Planning Act interact and the role of the CZMU in decision-making on planning applications

There is also a need to strengthen the provisions relating to the conservation of the built heritage (buildings and areas) and the protection of trees.

Proposed changes

- **To consider changes to the definition of development to include the demolition or the making of material alterations to a listed building.**
- **To consider if it is appropriate to introduce a definition of simple and complex applications**
- **To consider introducing a new category of certified development**
- **To impose requirements on subdivisions for maintenance of the infrastructure and open spaces**
- **To create a new category of severance for small subdivisions in areas already serviced**
- **To review the schedule of Permitted Development (and associated conditions) and the Use Classes Order to reflect changing circumstances**
- **Decisions on applications should be made by a new Sustainable Development Board. This Board should comprise ex-officio public officials and private sector representatives and the CTP should serve as the CEO/Secretary of the Board**
- **Applications referred to the Minister for decision should be significant departures from the PDP and/or matters of strategic economic or environmental importance. A qualified inspector should hold a hearing and report to the Minister on these applications. Rules for the conduct of hearings and site visits should be clarified and any report or decision should be made publicly available. Strict timetables should be adhered to**
- **Published statements of planning policy related to site development standards should be formally adopted by the Minister**
- **EIA Regulations should be prepared to clarify the process and put it on a legal footing**
- **The role of the CZMU in planning applications in the coastal zone and in future on the seabed outside the coastal zone should be clarified**
- **Provision for making and updating the register of listed buildings should be strengthened and made more transparent and the declaration of conservation areas put on a legal footing and the use of Heritage Impact Assessments clarified**

- **Consideration should be given to having a sub-committee to advise the Board on design and conservation matters**
- **Consideration be given to developing and implementing an Empty Property Strategy**
- **Provisions are made for the use of compulsory powers to support this strategy**
- **The Tree (Preservation) Act should be repealed and its provisions incorporated into the new Town and Country Planning Act including a new definition of "tree". The powers currently assigned to the Minister under these provisions should be transferred to the Sustainable Development Board**

Planning Obligations

The concept of planning obligations was first introduced to Barbados by the ***Town and Country Planning (Amendment) Act 2007***. In that amendment it was limited to provision of affordable housing. However, in other jurisdictions it is used to fund a range of physical, social and environmental requirements.

Proposed changes

- **To introduce new broader provisions for planning obligations**

Limitation Periods

It is important to set strict timetables for processing applications with some form of recourse if they are not met

Proposed Changes

- **A tiered system of timescales should be introduced with 8 weeks for simple applications,13 weeks for complex application and 16 weeks for applications requiring an EIA**
- **Strict time lines should be adhered from the date of receipt of required information from the applicant**
- **Consultations with referral agencies should be in accordance with existing strict time lines and consultations should be carried out electronically**
- **There should be recourse to appeal to the Board if timelines are not met.**

Enforcement

The CTP has a great deal of discretion to take action against anyone who is in breach of the planning legislation. The process lacks transparency and the penalties available do not act as a deterrent.

Proposed changes

- **The relevant authority should have to succeed in a prosecution based on an Enforcement Notice before exercising the power of demolition**
- **The grounds on which an Enforcement Notice can be appealed to a Judge in Chambers should not be limited**
- **Provision should be made for appeal against Stop Notices, to avoid the necessity, costs and delays associated with Judicial Review proceedings**
- **Enforcement and Stop Notices should be prepared and served by persons with adequate training in legal requirements and procedures**
- **The CTP should keep a publicly accessible register of Enforcement Action which should be available on-line**
- **The CTP should report to the Sustainable Development Board on complaints of breaches and enforcement action taken**

Administrative Fees and Penalties

The fees charged for planning applications were first introduced in 1970 and have only been reviewed once, in 2009. Similarly, penalties for breaches in planning regulations have never been increased and are now so low that they fail to act as a deterrent.

Proposed changes

- **A new schedule of fees should be prepared and reviewed annually**
- **Penalties and fines should be reviewed to bring them in line with similar offences**
- **Fines should be reviewed regularly by the Sustainable Development Board to take into account inflation and changing attitudes to the offence**

Appeals

S19 of the current legislation provides for an applicant, who is aggrieved by a decision to refuse planning permission or conditions applied to a permission, to appeal to the Minister to have the decision reviewed. It is recommended that the duties currently

undertaken by the Minister on recommendation from a person appointed by the Minister be transferred to a Planning Appeals Tribunal. The Tribunal should be comprised of qualified people with relevant planning experience.

Proposed changes

- **To transfer the responsibility for hearing and deciding on appeals to a Planning Appeals Tribunal**
- **Rules for the conduct of hearings and site visits should be clarified and any report or decision should be made publicly available. Strict timetables should be adhered to**

CROSS CUTTING ISSUES

Public Participation and Access to Information

The principles of public participation in decision-making were enshrined in Principle 10 of the 1992 Rio Declaration. Involvement of the public is important in the decision-making process, but many existing planning processes are opaque and allow for no public engagement. This lack of openness leads to a mistrust of the system. Opening the system up to public scrutiny and involvement is critical to restore confidence. While the recent review of the PDP has illustrated a progressive approach to public engagement, the rest of the system has limited participation.

A common complaint of the existing system is the difficulty of accessing information. Information is important to inform effective public participation and to allow individuals to track the progress of planning applications. Even the current statutory register is inadequate, providing very little useful information.

Proposed changes

- **The publication of a meaningful weekly list of applications received and decisions made. This list to be sent to the press and published on-line**
- **Explore the possibility of a comprehensive planning portal that can be accessed by the public to find information on applications, decisions and appeals**
- **Applicants to be required to post a notice on site before the submission of a planning application**

- **Third party objections should be taken into account when determining an application**
- **The applicant and third parties should be able to submit evidence and speak briefly at the Sustainable Development Board**

Inter-Agency Consultation

The performance of statutory consultees is one of the main reasons for delays and inefficiency in the current system and needs to be addressed.

Proposed changes

- **Electronic means of communication should be the norm for these consultations**
- **Consideration be given to arranging meetings of all consultees to advise applicants for large development of what is required and plan a coordinated response**

IMPLEMENTATION

Once the legislation is in place there will be a need to prepare the more detailed orders and regulations and to establish the new governance arrangements. What is proposed is a significant change from existing practices. For the changes to be successful, there will be a need for strong leadership to deliver a change in culture. Managing this change will be critical. New processes will need to be put in place and training provided to develop new skills.

Proposed changes

- **Introduce change management and training programmes for staff and Board members**
- **Put in place new procedures and processes**
- **Manage pro-actively with performance targets**
- **Deliver quick wins (changes that can be introduced easily without legislation or major funding implications) which will increase transparency and efficiency and reinforce the new ways that the service is to be delivered in future**

CONCLUSION

This Green Paper highlights a number of possible improvements to the existing town planning system which are aimed at delivering the broad goals of transparency and accountability, openness and inclusiveness, efficiency and effectiveness, and achieving sustainable development and a system which is tailored to Barbadian society and fit for purpose.

Table of Contents

1. INTRODUCTION

Regulatory controls governing the development of land – inclusive of its land use, building design and waste disposal aspects - have been in force in Barbados for more than half a century. The existing law regarding land use planning and development control, the ***Town and Country Planning Act***, CAP.240 (the Act), was enacted in 1965 and came into force on July 8th, 1968, fifty years ago. This legislation was based largely on the eponymous British legislation of 1947; however, in the absence of a system of local government in Barbados, the powers vested in the Local Authorities in Britain were conferred on a government official, the Chief Town Planner (CTP), in Barbados. Hence, from the inception, the regulatory system in Barbados has lacked key elements of transparency and accountability that are inherent in the British system.

Substantial amendments have been made to the Act over the years, namely in 1968, 1981, 1983, 1998 and 2007. For the most part, these amendments were designed to import into the Act changes in planning law in Britain, with the exception of the amendments made in 1998 which were consequential on the enactment of the ***Coastal Zone Management Act***, CAP.394. The original legislation envisaged an efficient regulatory process, with a limitation period of 2 months for determining applications for planning permission, inclusive of 14 to 21 days for interdepartmental consultations. Embedded amongst the 1981 amendments was a provision which removed the obligation of the CTP to seek the applicant's agreement for extensions of the 2-month statutory deadline. It is arguable that - in addition to the growing complexity of information requirements in support of applications - this amendment has been the major cause of the inordinate delays in decision-making which now characterize the system.

In its 2018 report, "Doing Business", the World Bank ranked Barbados 132nd out of the 190 countries studied with respect to the overall ease of doing business. This represents a slippage of 15 places below its previous position. A major factor explaining this low ranking is the fact that Barbados is 155th with respect to dealing with construction permits, which take an average of 442 days (14.5 months) to be approved, in comparison with the average time of 192 days (6.3 months) for all countries in the Latin America and Caribbean region. Notably, this average delay in permitting exceeds the 2-month limitation period for the determination of applications for planning permission set by the Act by more than a year.

In its 2018 Manifesto, "Building The Best Barbados Together", the Government committed itself to improving the quality and speed of delivery of services, including Town and Country Planning permissions, to promote doing business with ease in Barbados. Further, it undertook to modernize our approach to Physical Development Planning by making the development control process transparent and accountable by providing, amongst other things, for public comment on development proposals, public participation in decision making, and the publication of decisions and the reasons for approval or refusal of applications.

The existing Act and the subsidiary legislation made under it – the ***Town and Country Planning (Fees) Regulations, 1970***, S.I. 1970 No.181; the ***Town and Country Planning Development Order, 1972***, S.I. 1972 No.75, and ***the Town and Country Planning Regulations, 1972***, S.I. 1972 No.76 - are all obsolete and not consistent with these principles. The review, repeal and replacement of the existing legislation are urgently needed as the introduction of transparent and efficient development control processes was designated in the Manifesto as "Mission Critical".

In order to engage the people of Barbados in the development of new legislation, the Prime Minister's Office in partnership with the Barbados Town Planning Society organised two stakeholder consultations on the reform of the planning system. These were held on 16th and 25th July 2018 and live-streamed for interactive public participation on the GIS website. A separate e-mail address for submitting comments townplanningreform@barbados.gov.bb was also established to allow wider engagement by the public in suggesting changes. The issues raised and recommendations made by participants in these stakeholder events and comments made by the public have been taken into account in the formulation of this policy paper.

2. POLICY GOALS AND PRINCIPLES

As mentioned previously the ***Town and Country Planning Act***, enacted in 1965, was largely based on earlier UK legislation. The system was devised for a different era and has its roots in a different place. Nearly 52 years after Independence, it is right that we revisit this issue and come up with legislation that is relevant to a 21st Century Barbados. Our current system is neither efficient in its approach nor transparent in its application.

It is seen as a barrier to investment and at the same time lacks the teeth to protect our fragile environment and cultural heritage.

The Government has established a governance model for approaching reform which has been used as a starting point for identifying the policy goals and principles that should guide this reform. The questions posed are as follows:

1. What is the public interest that the Government must seek to protect?
2. What is the public mischief against which the government must guard?
3. How might the use of technology help the government achieve national goals?
4. What are the social justice issues which the government needs to take into account?
5. What structures and processes can government put in place to obtain the views of Barbadians and include them in decision making?

Goals

The following goals will guide the review process and proposed changes should be measured against them.

1. GOAL 1: Transparency and accountability
   All decisions in the town planning system should be made in a way that it is clear about who or what body has made the decision and why the decision has been made.

2. GOAL 2: Openness and inclusiveness
   Members of the public should be able to input into the decision making process. Where possible decisions should be made in public and individuals should have a right to have their views heard. Public registers should be accessible in hard copy and on line.

3. GOAL 3: Efficiency and effectiveness
   Decisions should be made in a timely manner, and prescribed timescales should be adhered to by all parties.

4. GOAL 4: Sustainable development
   Decisions should be guided by the principles of sustainable development ensuring long term environmental, economic and community health and wellbeing.

5. GOAL5: Fit for purpose
   All legislation, regulations, policies and procedures should be fit for purpose. They should reflect the specific needs of Barbados as a small island state in the 21st century.

Principles

1. PRINCIPLE 1: Good Governance
   Good governance is critical to ensure trust and confidence in the system. In a small and interconnected society like Barbados it is important to guard against the influence exercised by proximity and the potential for corruption. Governance arrangements should be put in place that reduce the potential for undue influence or corruption and require high standards of integrity including declarations of interest.

2. PRINCIPLE 2: E-Government (digital by default)
   In the 21st Century the maximum use should be made of e-government. The Town Planning system should be computerised in a way that allows easy access by the public to information, more efficient consultations and reduces bureaucratic delays. Improved platforms for data sharing and providing management information should be used to improve plan making, provide evidence based policy decisions, improved management information, as well as improvements to the user experience.

3. PRINCIPLE 3: Consultation and participation.
   Both the plan making process and the regulation of development should encourage public participation. An ability to influence decisions will help improve the public understanding of the planning system and make it a more valued and trusted part of government activity.

4. PRINCIPLE 4: Proactive Management
   A new culture of proactive management which encourages interaction with the public and is focused on enabling and facilitating high quality sustainable development not just controlling and regulating development, will require a culture change. It will also need to proactively monitor and manage performance to achieve the necessary improvements.

3. GOVERNANCE

Major changes to the existing administrative provisions for governance of the physical development planning and development control processes that are provided for by the existing planning legislation are necessary in order to conform to the policy goals and principles enunciated above.

There are three basic types of administrative arrangements to be found in planning legislation in the Commonwealth Caribbean. Each has advantages and disadvantages. These can be summarized as follows.

a) The Ministerial Model

In countries where this structure is in place, including Barbados, responsibility for the administration of the legislation is vested in a Minister and it is administered in practice by a department within the Ministry. In some countries where this structure is in place, the legislation does not even mention the relevant department. Barbados is the exception in that the existing legislation expressly states that the CTP is responsible for the preparation of development plans and, except in specified cases, for determining applications for planning permission. The Minister has the power to determine specific types of applications and to decide appeals against decisions of the CTP. There is provision for the appointment by the Minister of a Town and Country Planning Advisory Committee, but the role of this body is purely advisory and limited in remit to matters on which the Minister seeks its advice.

The advantages of this arrangement are that the Minister has ultimate authority over the processes of development planning and development control for which he/she is responsible to Parliament. Additionally, the overhead costs of administration are relatively low because there are shared with the Ministry and, to some extent, the public service as a whole. The disadvantages of this arrangement are that decision-making is susceptible to politicization; inputs from other regulatory agencies are not a priority for those bodies; and decisions tend to be made on a narrow technical basis. The organizational culture tends to be bureaucratic and decision-making opaque. Hence, there is scope for influence peddling and personal corruption and a pervading suspicion that corruption exists. This undermines the credibility of the system.

b) The Statutory Corporation Model

In countries where this structure is in place, responsibility for the administration of the legislation is vested in a statutory corporation with a Board of Directors appointed by the Minister, which includes members of civil society. The Board is responsible for administering the law in accordance with policy directions received from the Minister, but the law is administered in practice by the staff of the statutory corporation under the general supervision of the Board. Appeals from decisions of the staff of the statutory corporation are usually to a court of law.

The theoretical advantages of this arrangement are that the body corporate enjoys greater autonomy than a department of government; the oversight of technical decision-makers by a Board inclusive of members of civil society broadens the perspectives of the agency; the ability of the corporation to hire staff on better terms than are available in the public service permits it to compete with the private sector for human resources; and it should have a business-like corporate rather than bureaucratic organizational culture. The disadvantages of this arrangement are that the Minister has only indirect control over matters for which he/she is responsible to Parliament; and the overhead costs of the institution are relatively high, as a statutory corporation is responsible for the management of its own finances, fixed assets, and personnel.

Experience in the Commonwealth Caribbean has shown that most of the theoretical advantages of statutory corporations are illusory. Appointments to the Boards are often made on the basis of political allegiance, rather than professional competence, and the powers of the Minister to give directions to the Board are used to micro-manage the supposedly semi-autonomous agencies. Further, most of these agencies are staffed by former public servants or public servants seconded from various departments; hence, the culture remains bureaucratic.

c) The Hybrid Model

In the countries where this structure is in place, namely all the OECS countries, responsibility for the administration of the legislation is vested in a statutory Board with executive powers that is comprised of *ex officio* members from relevant government departments and persons from the private sector appointed by the Minister. The day to day discharge of the development control functions provided for by the legislation, including the receipt and processing of applications for planning permission, is carried

out by a department of the Ministry and the head of that department is designated as the Executive Secretary of the Board and/or its Chief Executive Officer. Appeals against decisions of the Board are heard by an Appeals Tribunal appointed under the Act. The Minister/Cabinet retains the power to determine specific applications or classes of applications.

The principal advantage of this hybrid arrangement is that most decisions are made by a multi-disciplinary body which includes representatives of other regulatory agencies and of civil society. This improves inter-agency coordination, allows for a sharing of expertise that reduces the duplication of functions within the public service and promotes pragmatism in decision-making. Moreover, the collective decision-making process promotes transparency and discourages personal corruption. Additionally, the overhead costs are low because the statutory Board does not have staff of its own but is supported by the Ministry. The principal disadvantage of this arrangement is that in small societies Board members are susceptible to conflicts of interests; so this needs to be adequately guarded against in the legislation. A particular weakness of this model as it operates in the OCES countries is that development control is divorced from development planning and is undertaken in the absence of a land use plan and/or published policy documents. Hence, decision-making is necessarily *ad hoc*; however, this will not be the case in Barbados where both a statutory plan and published policy documents exist.

Recommendations -

On the basis of decades of experience with the operation of these three types of systems in SIDS in the Commonwealth Caribbean, it is strongly recommended that the governance structure for the new planning legislation in Barbados should be based on the hybrid model. Further details of the proposed governance arrangements will be discussed in the following sections of this paper; however, the main features of the proposed arrangements are that -

- The Minister will retain the power to determine specific classes of applications and have the power to appoint the private sector members of the Sustainable Development Board and the Appeals Tribunal.
- Additionally, the Minister will have oversight of the department of his/her Ministry (the TCPDO) responsible for carrying out the day to day work of physical development planning and development control;

- Decisions on routine applications for planning permission will be made by a multi-disciplinary statutory Board (the Sustainable Development Board), inclusive of the representatives of the agencies which are routinely consulted about applications and stakeholders from the private sector. This will introduce transparency into the decision-making process and eliminate opportunities for personal corruption;
- Delays caused by the referral of applications to other regulatory agencies for statutory consultations will be minimized by the inclusion of representatives of the key agencies on the Board as *ex officio* members;
- The appointment of private sector members to the Board, nominated by professional bodies and organizations representing business interests, will provide for stakeholder involvement in decision-making and for pragmatic considerations to be taken into account in regulatory decision-making;
- It is recommended that the formal title of the Board should be the Sustainable Development Board to reflect a positive approach to high quality development and commitment to achieving environmental standards;
- Appeals against decisions of the Board will be heard and decided by a capable Appeals Tribunal with due process guarantees;
- The jurisdiction of this Tribunal could extend to the hearing of appeals against administrative decisions made under other regulatory laws governing land use, development and the environment;
- Meetings of the Board and the Tribunal should be conducted in public;
- Administrative costs will be minimized and adequate provision made for cost recovery.

4. STRATEGIES

A. Physical Development Planning

A development plan is commonly recognized as a policy framework representing a Government's vision for land use and development. This framework is then used to guide and facilitate the development of individual land parcels within a specific jurisdiction.

1) Type/Hierarchy of Plans

Subsections 5(1) and (2) of the existing Act make provision for the preparation of a development plan for the whole island. Section 2 refers to a development plan consisting

of a report of an island survey together with a plan proposing how land may be used and the stages for the carrying out of any proposed development.

Section 6(1) indicates that the national development plan may allocate sites and areas of land for roads, public and other buildings and works, air-fields, parks, pleasure grounds, nature reserves, open spaces, agriculture, residential, industrial, commercial or other purposes. The national development plan would also designate land subject to compulsory acquisition by the Crown

The Act further makes provision in s.6(2) for the preparation of development plans for parts of the island at a more in-depth level through the defining of areas for a comprehensive development plan. This second tier of development planning may be defined by the CTP under the current administrative arrangements. A comprehensive development plan may be prepared for an area to be developed or redeveloped. The Act does not specify the level or type of development planning within the notion of a comprehensive development plan leaving this up to the professional judgement of the CTP.

Under s.6(2) of the Act, a comprehensive development plan for an area that should be developed or redeveloped may address: bad lay-out or obsolete development; the relocation of population or industry or the replacement of open space in the course of the development or re-development of any other area; or any other purpose specified in the plan.

The Second Schedule of the Act makes specific provision for those matters that may be included in a development plan. Part 1- Roads; Part II – Buildings and Other Structures; Part III – Community Planning; Part IV – Amenities (including allocation of lands for burial grounds and crematoria, communal parks, birds and sanctuaries, protection of marine life, preservation of buildings, caves, sites and objects of artistic, architectural, archaeological or historic interest, preservation or protection of forests, woods, trees shrub, plants and flowers); Part V – Public Services, Part VI - Transport and Communication, Part VII – Miscellaneous.

In the ***Barbados Physical Development Plan 1988***, under the "Plan Implementation" section, there is mention of the introduction of a three-tier planning system - national, intermediate and local area levels. In the ***Barbados Physical Development Plan 2003***,

reference is made to the national plan as a framework for detailed "structure plans" and "local area plans". Also, in the PDP 2003, there is the inclusion a National Park Plan which is a subject area plan and five (5) community plans that represent the detailed planning goals and objectives for the specified communities. There was no updating of any legislative measures to reflect these changes and none was necessary given the flexibility that resides in the current Act for a second tier of development planning. On this basis, development plans may be prepared for any area of the island as the society experiences changes in socio-economic conditions and may find itself having to deal with new and emerging issues over time.

Through a review of other Caribbean jurisdictions such as the Cayman Islands and Bermuda, the identification of a hierarchy of plans seems often to correspond with the presence of a decentralised system of governance. For example, in Bermuda the legislation specifically makes provision for the preparation of a development plan for the City of Hamilton, the capital, and one of two municipal sub-national entities. Similarly, in the United Kingdom, there is a National Planning Policy Framework and guidance to which Council's Local Plans must conform and there is also provision for supplementary planning documents which when approved form part of the Local Plan. In addition it is possible for local communities to trigger neighbourhood plans which can also be approved and become part of the statutory local plan.

It is recommended that consideration be given to the inclusion of a development plan for the City of Bridgetown and that consideration be given to awarding this capital area the status of a municipality under the relevant legislation. It is recommended also that the relationship between the national plan and other comprehensive development plans (local, community, regional, conservation, heritage, park, and so forth) be clearly stated. The hierarchical planning system in Southern Australia, for example, explicitly states that plans for the lower level tiers must reflect policies outlined in the planning strategies outlined in the tier above and as such must be reviewed to remain consistent. In this vein, all comprehensive development plans must adhere to the strategies as set out in the national plan.

As stated earlier, the Second Schedule of the Act offers a list of matters for which provision may be made in the development plans. Specifically, community planning is mentioned in Part III but no other type of comprehensive development plan. A wide range of area plans have been prepared by the Town and Country Development Planning

Office (TCPDO) over the years, including the ***Greater Bridgetown Development Plan*** of 1988. It is recommended that the Second Schedule may be amended to remove "Community Planning" and replace this with a list of essential components for all types of comprehensive development plans. Alternatively, a broader list of possible comprehensive development plans should be added for the purposes of the second tier of development planning. Provision may be made for national park planning, conservation area planning, heritage area planning, among others.

There are also a number of policy issues which are non-spatial in nature. Such policies which are important to guide development also need to be put on a statutory footing. Provision should be made for preparing and adopting such supplementary planning documents as part of the Physical, Development Plan. These could include for example a policy on urban design and a high buildings policy.

2) Status of Plans

The current Act does not speak specifically to the status of a Development Plan as a decision making tool. The Act is approved by Parliament as recorded in s.10(2) and for the purposes of decision making the Act states in s.16(1) that the development plan could be one of a number of items considered to be a material consideration in the decision making process as follows: "Subject to this section and sections 17 and 18, where application is made to the Chief Town Planner for planning permission, that officer, in dealing with the applications, shall have regard to the provisions of the development plan, so far as material to the application and to any other material considerations."

In contrast to the approach taken in CAP 240, there is a presumption in English law in favour of the Development Plan. This is stated in s.38(6) of the ***Planning and Compulsory Purchase Act 2004*** as, "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise". The English case law on this presumption follows the wording of the Act, but leaves it to the decision maker to determine the weight that should be given to material considerations.

Given the manner in which the status of the PDP is represented in the Barbados Act, there have been conflicting rulings in the Courts on its role in decision making for development activity.

An early comment on the lack of clarity on the role of the development plan is included in the 1986 ***Report of the Commission of Enquiry into the Physical Development Plan 1988*** by Justice C. Roachford. Justice Roachford had to make a ruling on the status of the development plan prior to assessing public representations of the provisions of the Plan. He ruled that the Physical Development Plan was a broad policy document intended to guide settlement and development patterns for a given period. The development plan was not to be followed slavishly but was to be considered along with other material considerations such as ministerial policies, existing development rights, the availability of alternative sites, retention of existing use, fear of setting a precedent. This perspective was shared by Sir D. Williams CJ when he passed a judgement in the Oldbury case, ***R v. Minister of Housing & Lands ex p. Knitwear Ltd***, HCA No.1555/1989. In that case, the former Chief Justice declared that the Physical Development Plan is a broad policy document which is to be seen as only one of the considerations informing decisions on applications. The view that the plan was not binding was also taken by the Court of Appeal in the subsequent case of ***Scotland District Association Inc. v. Attorney General, Minister of Town & Country Planning & Minister of Health***, CA No.17/1996.

In contrast there is the more recent judgment in the recent case of ***St. Hill v Chief Town Planner and Attorney General***, No.1617 of 2011 (the Six Men's case), in which Justice Cornelieus opined - regarding the status of the development plan - that it "has the effect of current law" (p.45). She continues that, "The Act states that the Physical Development Plan is to be seen as a Development Order as provided for under Part 3 of the Act" (p.45, paragraph 84). In this same judgment she concluded that, "a declaration that the Development Plan inclusive of amendments under the Town and Country Planning Act Cap 240 is a statutory instrument is refused".

The foregoing is intended to underscore the need for the status of the development plan to be made explicit. In those jurisdictions reviewed, Cayman. Bermuda, Singapore, the national development plan (or master plan in the case of Singapore) are all statutory instruments. This approach is recommended along with a presumption in favour of the development plan in the new Act, together with supporting appropriate governance mechanisms as deemed necessary.

3) Plan Preparation Procedure

Section 8 of the Act states that, "the Chief Town Planner may, during the preparation of a development plan relating to any land or during the preparation of any proposals for alterations or additions to any such plan, consult such persons or bodies as he thinks fit". Hence, the methodology for the development plan preparation process is left to the discretion of the CTP under current legislation.

The preparation of a development plan is a technical process, starting from the defining of goals through to implementation and monitoring. The stages and steps followed by a particular authority or regulatory body might differ. Also the complexity of the jurisdiction and the organisation itself has a direct impact on the process adopted. In reviewing the development plan-making process in selected jurisdictions, it was noted that the importance of having explicit procedures in place for plan-making is a common practice for many modern development planning systems. The Cayman Islands, Bermuda and Singapore use schedules or equivalent to elaborate on the plan preparation process while in England plan making procedures are detailed in the main sections of the relevant Act.

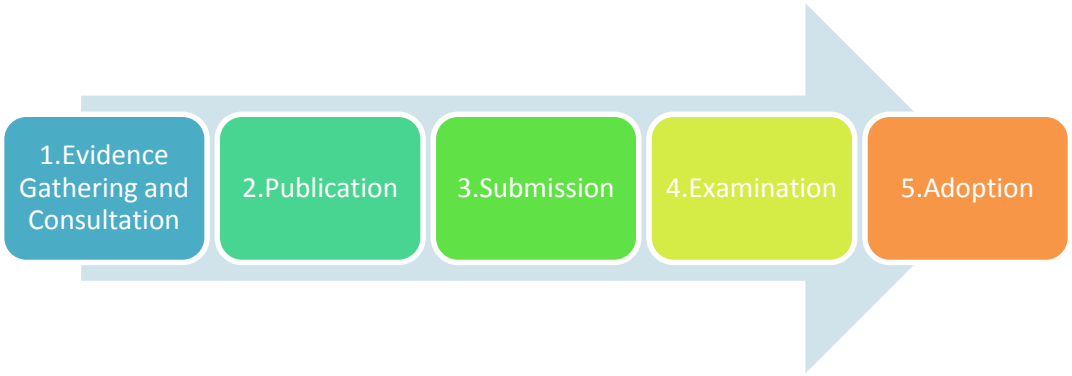

Figure 1: Stages of developing a Local Development Plan (adapted from Ministry of Housing Communities & Local Government 2018)

On the basis of the foregoing it is recommended that plan making procedures be adopted for Barbados as deemed appropriate. These might be elaborated in an appropriate Schedule to attend the Act. Alternatively, the publication of detailed guidance /advice document may be used to direct the procedures.

4) Public Comment Procedure

Section 9(4) of the current Act states that before approving any development plan or proposals for the amendment of any such plan, the Minister shall cause to be published in three issues of the *Official Gazette* and of at least one newspaper published in the Island a notice: *(a)* stating that a development plan, or proposals for the amendment of such a plan, have been prepared by the CTP; (b) naming the place or places where copies of the plan or proposals may be inspected and purchased by the public; and (c) stating the time (being not less than twenty-eight days from the last publication of such notice in the *Official Gazette)* within which objections or representations may be made to the Minister with respect to the plan or proposals.

Currently, procedures for public participation in the development plan process relate to inspection of the draft development plan before it is adopted by the Government. However, it is widely acknowledged that involving the community in development plan preparation is one of the most important components in plan making as the community members know best their local issues and possible solutions. The whole aim of having a development plan is to guide and facilitate development for the residents of the place and business operators. It therefore becomes essential to take their views, objections and suggestions into account during the plan preparation process.

Although there are currently no statutory requirements for early consultation, there was extensive public participation in the preparation of the 2017 draft PDP amendment in line with good practice.

The legal position is clearer elsewhere. For example, in England, local councils must facilitate discussions and consultation with local communities and other stakeholders in the initial stage of preparing a Local Development Plan. This form of consultation may be done at public events, panel discussions, leaflets, press articles or council magazines. Provision might also be made for the use of social media to engage stakeholders. Following the evidence gathering stage, the local council is required to publish the Local Plan for consultation, which must take place for a minimum of six weeks.

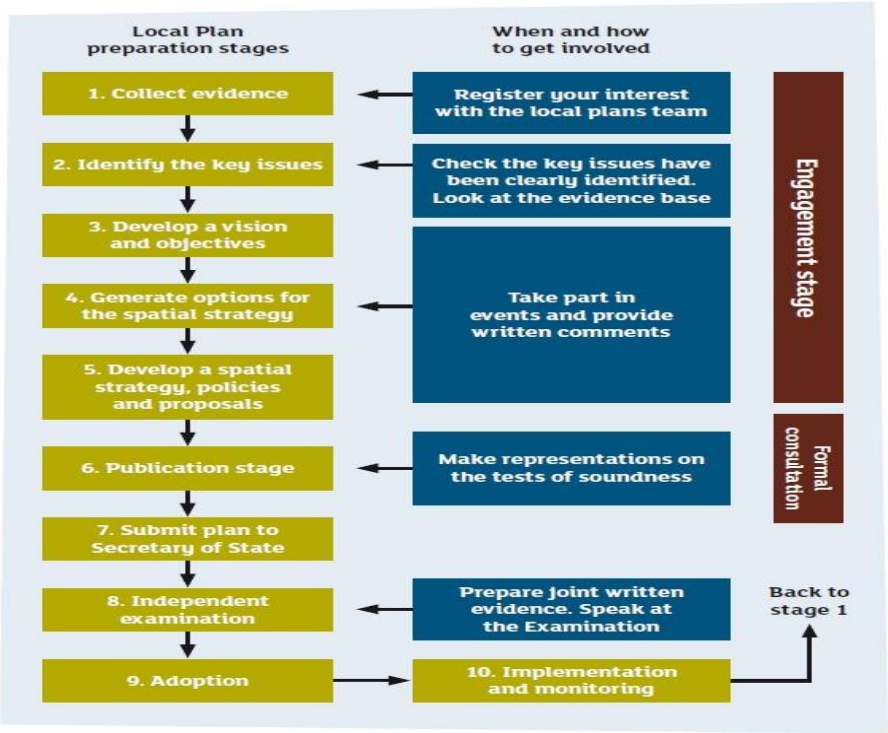

Figure 2: Opportunities for public comment in the preparation of Local Development Plans (sourced from Campaign to Protect Rural England 2018)

It is recognized that managing numerous stakeholders can be challenging. Therefore it is recommended, for Barbados, that guidelines for public participation procedures be put in place for plan preparation and adoption processes. The guidelines for public participation may be included in appropriate schedules to the Act or through the use of guidance/ advice notes.

5) Adoption of Plans

A procedure for the adoption of development plans is outlined in Sections 9 and 10 of the current Act. Before approval of a development plan or proposals for the amendment of any such plan, the Minister responsible for planning has to place an official notice in the public domain indicating that the Plan has been prepared, name the place or places where the Plan may be inspected by the public and state the time period (usually 28 days from last public notice) within which objections or representations may be made to the Minister. A Commissioner is appointed to consider objections and representations from the public using established regulatory proceedings for public enquiry.

Section 10 states: (1) Notice shall be published in three issues of the Official *Gazette* and of at least one newspaper published in the Island of the approval by the Minister of a development plan or of proposals for amendment of such a plan, and copies of any such plan or proposals as approved by the Minister shall be available for inspection and purchase by the public. (2) Every development plan or amendment of a development plan shall, after approval by the Minister, be submitted for the approval of both Houses and if approved by resolution of both Houses shall come into operation on such date after its approval by Parliament as the Minister may appoint by notice published in the *Official Gazette*.

In other jurisdictions in the region, there is a similar procedure for the adoption of development plans, giving opportunities for interested parties to object or make representation with respect to plan proposals. In the case of Bermuda and Cayman Islands, a tribunal is established to consider objections and representations in relation to the physical development plan. Specifically, the ***Development and Planning Act 2017*** in the Cayman Islands has provision for a Development Plan Tribunal to consider objections and representations on development plan amendments.

The use of a tribunal to consider development plan amendments would facilitate the movement of the Barbados planning system to being a more transparent and participatory process. Also, the modernization of the process should give consideration to the inclusion of digital (online) technology to deliver official notices to the public and receive objections and representations from the public.

6) Frequency of Review

According to Section 11(1) of the Act: At least once in every five years after the date on which a development plan for the whole of the Island comes into operation, the CTP shall carry out a fresh survey of the Island and submit to the Minister a report of the survey together with proposals for any alterations or additions to the plan that appear to him to be required. (2) Notwithstanding subsection (1) the CTP may at any time submit to the Minister proposals for such alterations or additions to any development plan as appear to him to be expedient.

The first physical development plan for Barbados was prepared in 1971 and came into operation on 1976. Subsequent to that, Barbados has had the benefit of an updated

physical development plan in 1986 (adopted in 1991), another update in 2003 (adopted in 2013) and a more recent revision drafted in 2017 (awaiting further directions for an official process of public participation as defined in the Act).

The target of a five–year review has never been attained though Barbados is well ahead of its CARICOM neighbours, some of whom are yet to approve their first national spatial or physical development plan. The Barbados system though outdated in its legislation is apparently still working to produce essential policy directions for development and investment activity. Across the region the five-year review period is reflected in many of the laws governing physical development planning. However, the availability of resources to update a national physical plan every five years has been questioned by a number of stakeholders as revealed in recent consultations on the reform of the planning system. It is noted that in Singapore the national level strategic framework referred to as their concept plan is reviewed every 10 years according to their current legislation. On the other hand, the master plan in Singapore which gives more detailed policy guidance for site developments is reviewed every 5 years.

Consideration should be given for Barbados to review its national physical development plan every 10 years bringing the process more in line with the resource availability. The review of comprehensive development plans (all second tier development plans) on a five-year cycle should also be considered given the openness of this small economy and vulnerability to global economic changes.

7) Plan Implementation

The public perception of town planning is one that is dominated by development control. This is understandable given that most members of the public come into contact with the system mainly through the development control process. However, development control can be regarded as one element of development plan implementation. The main elements of development plan implementation can be listed as development control, compulsory purchase, direct action by public bodies, fiscal measures and facilitation:

i. Development control – The process of deciding planning applications is a crucial element of implementing the vision for development set out in the Physical Development Plan. It has been recommended above that the status of the development plan should be strengthened by introducing a presumption that its policies will be followed unless material considerations persuade otherwise. This

will contribute clarity and more certainty to the development control process with explanations necessary for any departure from policies set out in the PDP.

ii. Compulsory Purchase – This can assist in delivering PDP policies. The purchase of land may be needed to provide a site for some public facility, eg a school, hospital, sports ground, etc or to provide infrastructure such as a road widening scheme. Alternatively, compulsory purchase can be used to facilitate some private sector development that meets the PDP objectives. For instance, land could be acquired as part of a site assembly exercise that would enable a private sector project of key economic importance to proceed. Government could either retain ownership as an investment in the project or sell on immediately and recover its costs.

iii. Direct action by public bodies – It may be the statutory function of a Ministry or statutory corporation to carry out capital investment to deliver specific projects in the PDP. Government could also consider making space available in empty Government-owned buildings at low or nominal rates on condition that those buildings are improved and brought back into use.

iv. Fiscal measures – PDP policies may be delivered by a range of fiscal incentives or penalties. For instance, a higher rate of tax on vacant lots or empty buildings could encourage owners to either develop that property themselves or sell to someone who will develop it. There could be similar penalties attached to unused agricultural land. Conversely, incentives could be used to encourage people to carry out development in line with the PDP. Such incentives could include tax relief for investment in listed buildings or for various energy conservation or renewable energy measures. The use of these measures can be targeted in an area-based fashion, eg in special development areas, conservation areas, the National Park or the UNESCO World Heritage Site.

v. Through its contact with developers and investors as part of the development control process, the TCDPO is in a position to encourage and promote development that fits with the PDP objectives. This activity may be difficult to measure but can be very effective. TCDPO staff are not just in a position to negotiate improvements to planning applications that are submitted but can also guide applicants to other potential projects.

While recognizing that the TCDPO is always going to be working under pressure to process the workload of planning applications, it is recommended that there should be

an increased emphasis on other work that supports or promotes achievement of the PDP objectives.

B. Regulation of Land Development

1) Extent of Regulatory Jurisdiction

The purpose of planning legislation, as stated succinctly in the long title to the existing law, is to provide for the orderly and progressive development of land. Hence, the extent of the jurisdiction of relevant authority depends upon the meaning of the terms "development" and "land" as defined by the legislation.

The approach taken in the existing law, as well as in planning legislation throughout the Commonwealth Caribbean and in Britain, is to define development in broad terms and then to cut down the broad definition by specifying matters which do not constitute development. The broad definition has three limbs: (1) the carrying out of building, engineering, mining or other operations in, on, over or under any land; (2) the making of any material change is the use of any buildings or other land; and (3) the subdivision of land. The matters which would fall within these broad categories but by definition do not constitute development are three types of operations and three types of land uses. With the exception of the subdivision of land, which is not included in the definition of development in Britain, there is a great deal of existing jurisprudence on this definition of development, including the exclusions to the definition, and it is not recommended that it be changed, except as outlined below.

As regards "land", the definition in the existing law includes the seabed underlying the Territorial Waters of Barbados, as well as the foreshore and all land above the Low Water Mark, which is the limit of planning control in Britain. This innovation, made by the amendments to the Act in 1968, has since been adopted in other Caribbean SIDS which have enacted modern planning legislation. This aspect of the regulatory jurisdiction is expected to become more important in future as Barbados seeks to develop the "blue economy".

2) Building, Engineering, Mining and Other Operations

The term "operations" in the Act does not have its ordinary dictionary meaning, which would include many active processes having no impact on the condition of land; but is limited to works of the specified kinds which change the physical characteristics of

buildings or other land. Two areas of concern are that it has been held that the category "other operations" does not include demolition operations, for which planning permission is not currently required in Barbados. This raised the risk that buildings of cultural heritage significance can be demolished before they are expressly protected. Additionally, it is essential that mining operations expressly include sand mining. These issues need to be addressed in the new legislation.

As regards building operations, the CTP currently refers building plans to the department of the Ministry responsible for public works that is referred to as the Barbados Building Authority (although the draft legislation to establish such a statutory authority has not been enacted). This department vets the plans for conformity to the (draft) Barbados Building Code, to be made under the ***Standards Act***, CAP.326A, and advises the CTP accordingly. There is notable dissatisfaction amongst registered professional architects and engineers concerning the manner in which this process is functioning and the institutional arrangements with respect to the Building Code are in need of review.

Additionally, building plans must be approved by the Minister of Health pursuant to the ***Building Regulations 1969*** made under the ***Health Services Act***, CAP.44. The minimum requirements with respect to buildings, including requirements with respect to sanitary conveniences, are set out in the Regulations. Regulation 4 provides that applications must be processed within 42 days after receipt and may be refused or granted conditionally; however reason must be given for refusal or the imposition of conditions. Such applications are currently been processed by the Environmental Protection Department (EPD), although this Department is no longer within the Ministry of Health, which raises an issue concerning the validity of approvals granted by the EPD on behalf of the Minister.

Hence, there is at present some redundancy of regulatory controls with respect to building operations between the TCPDO and EPD, to which has been added the referral of building plans to the building "Authority" within the Ministry of Works. The desirability of consolidating these functions into one department which would function as a "one-stop-shop" for the approval of building plans was discussed in the stakeholder consultations. Given the current climate of inefficiency in the TCPDO, practitioners were

reluctant to agree to the allocation of additional functions with respect to the approval of detailed building plans to that department.

3) Material Change of Use

This expression is not defined in the existing legislation. The expression "change of use" has been defined in legislation elsewhere in the region, but the key word "material" (meaning significant from a land use planning perspective) has not; however, there is an abundance of case law on the subject of what constitutes a material change of use of a building or other land. The concept is dynamic and would not benefit from the inclusion of a restrictive definition in the new Act.

However, there are some inconsistencies in the existing legislation with respects to this category of development, which need to be corrected in the new legislation. The land uses which are excluded from the definition of development by s.13(2)(d), (e) and (f) are included in the Second Schedule to the Development Order as forms of Permitted Development. This is incongruous; if these matters do not constitute development they do not require permission either on an application for planning permission or by means of permission granted via a Development Order. It is also recognized that the existing Use Classes Order is antiquated and in need of rationalization.

4) Subdivision of Land

There is a very broad definition of the term "subdivision" in the existing law; however, there is little jurisprudence of this subject as subdivision is not a form of development subject to planning control in Britain or in some Commonwealth Caribbean countries with very dated planning legislation (e.g. Guyana and Jamaica). For this reason, subdivision control was never properly integrated into the existing planning legislation. However, subdivision is subject to regulatory control in Canada and there is some relevant case law from that jurisdiction. Express provisions regarding subdivision have been included in the modern planning legislation adopted in several Commonwealth Caribbean countries (e.g. Bermuda, The Bahamas and Nevis).

It is recommended that adequate provisions with respect to the subdivision of land and the provision, and future ownership and maintenance, of infrastructure and open spaces in subdivisions, be made the new legislation. This could also distinguish between the

subdivision of raw land requiring new infrastructure and the simple division or severance of parcels into two or more lots which are already serviced.

5) Classes of Applications

Under the existing legislation, there are two classes of applications for planning permission, outline applications and full or final applications. Outline applications are provided for by Paragraph 6 of the Development Order. This provides for the grant of permission, which may be conditional, for all aspects of the proposed development except the matters which are expressly reserved for subsequent approval. The existing practice with respect to outline approval is not ideal, as there is a failure to distinguish clearly between the general conditions subject to which approval is granted and the reserved matters. It should be noted that, since outline approval constitutes full and final approval of the development other than as respects reserved matters, under the present law the revocation or modification of outline approval can attract liability for the payment of compensation by the Minister.

Additionally, at present the power to grant outline approval is limited to applications for building operations. It is self-evident that developers proposing to undertake other forms of development by way of operations and/or subdivision may wish to seek approval in principle for such developments, before incurring the costs of detailed engineering and/or architectural designs and environmental impact assessment studies. This should be rectified in the new legislation. It would also be advisable to limit the liability of the Crown with respect to the modification or revocation of such approval in principle.

Another dimension has been introduced with respect to classes of applications in some recent legislation in the region, which distinguish between "simple" and "complex" applications for the purposes of regulatory requirements for their processing. The idea of introducing this distinction in the new planning legislation in Barbados found favor with participants in the stakeholder consultations held in July 2018. These categories will have to be carefully defined and the requirements with respect to each category of applications clearly set out in the new legislation.

It is recommended that –

- There should be a differentiation between the systems for processing simple and complex plans

- The current provisions for the grant of outline approval for building operations should be replaced by a system of approval in principle for any/all types of development
- Approval in principle should not constitute full and final approval and should be conditional and revocable on prescribed grounds, without liability for the payment of compensation
- In cases where EIA is required, approval in principle could be granted on submission of an initial environmental evaluation, subject to full EIA studies being carried out when detailed plans are submitted

6) Permitted Development

Section 15 of the Act allows the Minister to make a Development Order to provide for the grant of planning permission. The Development Order may cover the whole of Barbados or any part of it and may either grant permission for a development or a class of development specified in the order or provide for the grant of permission by the CTP on application made to him. Permission can be granted unconditionally or subject to conditions or limitations specified in the order.

The categories of Permitted Development are set out in the ***Town and Country Planning Development Order 1972***. This order has had minor amendments over the years with the last amendment being in 1997. The provisions of the Development Order concerning Permitted Development are set out in paragraph 3 of the Order and the Second Schedule to the Order. This Schedule contains several Parts. Part I contains a listing of the Classes of development for which permission is granted by the Order and the conditions subject to which such permission is granted. These conditions include reference to Standard Conditions which are set out in Part 2 of the Schedule and cross reference is made in the Standard Conditions to the Road Classification in Part III of the Schedule. Additionally Part IV of the Schedule (mistakenly) defines the Use Classes to which the exception in section 13(2)(f) of the Act applies, which ought not to form part of the Schedule on Permitted Development.

In reviewing the system, consideration has been given to the current UK system from which it was originally derived, other Caribbean countries and Bermuda. Many of the Caribbean countries are working on similar outdated legislation although Trinidad and Tobago updated its order in 2015 and the UK equivalent was also revised in 2015.

It is clear that the current order is in need of review. There are many activities which are not effectively covered such as renewable energy and areas which need to be expanded and other areas which could be removed. The standard conditions applied to permitted development are equally out of date and need an overhaul. The road classifications used in the order have not been updated to reflect current conditions and the water protection zones are similarly outdated. Provisions for water use and storage are currently under review and would also need amendment. The requirement of standard condition 4 for the CTP to be notified of commencement of work to allow inspection could also be reconsidered.

Similarly, the existing Use Class Order would benefit from refinement. For example, the current classification, includes restaurants with shops whereas the UK legislation has separate classes for both restaurants and cafes and fast food takeaways. It might also be sensible to separate offices into different categories to reflect the nature of their uses and compatibility with other uses. Warehouses that store hazardous materials might benefit from being classified separately from other warehouses. There is currently no separate class for residential. Rather than including the Use Class Order as a schedule to the Development Order it would be preferable for this to be a separate Order.

A proposal raised during the consultation process is that in order to reduce the workload of the Planning Department a new category of Certified Development could be introduced. This would involve approved private sector professional consultants certifying that development of a single dwelling in a previously approved subdivision met all the required standards. This would reduce the need for site inspection and speed up the approval process for residential applications and at the same time free up staff to devote time to more complex cases and to enforcement work. Before drafting of the new orders it would be sensible to consult officers in TCDPO and the BTPS for their recommendations.

Producing a new Development Order provides an opportunity to bring up to date our existing regulations, reflecting changes that have occurred and current demands. It is important to use this opportunity not only to improve our existing system and correct current failings but to consider future requirements of the system which are impacted on by climate change and developing technologies.

Recommendations -

- To consult with the TCDPO and the BTPS on revisions to the schedule of permitted development to ensure that the current list is fit for purpose now and where possible is future-proofed
- To review the existing Use Class Order and produce a new order that reflects current and future uses
- To update standard conditions in consultation with the Barbados Water Authority, the Ministry of Transportation and Works, the Coastal Zone Management Unit, the Environmental Protection Department and any other relevant department or agency
- To consider if permitted development rights should apply across the island or whether certain areas eg the Scotland District, the UNESCO World Heritage Site or Conservation Areas should be excluded.
- Consider introducing a new category of Certified Development

7) Routine Decisions on Planning Applications

Under the existing Act, the CTP has the power to determine applications for planning permission, except in cases where particular applications or classes of applications are to be referred to the Minister for determination, pursuant to directions published in the *Official Gazette.*

In dealing with such applications, the CTP has the power to prescribe the form on which applications are to be made, and the drawings and other particulars which must be submitted. By virtue of an amendment made to the Act in 1998, these particulars may include an assessment of the impact that the development may have on the environment of Barbados (an EIA). Additionally, the CTP has the power to require the applicant to submit "such further information as he thinks fit". Pursuant to the Development Order, the CTP is mandated, before granting planning permission, to consult with various statutory boards or persons, and the Minister has the discretion to require the CTP to consult additional bodies or persons. The CTP may also be required to consult with specific persons by virtue of the provisions of other legislation, (e.g. The Director of the Coastal Zone Management Unit by virtue of s.33(3) of the ***Coastal Zone Management Act***).

When the application requirements have been complied with, the CTP is empowered to grant planning permission, unconditionally or subject to conditions, or to refuse

permission, having regard to the provisions of the development plan, so far as material to the application, and to any other material considerations, giving reasons for that decision. This is a very wide discretionary power, which is amplified by the absence of prescribed development standards and the power of the CTP to relax such standards as are contained in published policy documents, including the development plan.

This system is far from satisfactory. It can be criticized as being opaque and lending itself to influence peddling and personal corruption; but it is also highly inefficient. Besides the EIA process (referred to below), the principal identifiable sources of delay are the statutory process of inter-agency consultation with referral agencies (also discussed below) and the exercise of the power to ask for additional information. In practice the time allowed for the receipt of comments from the referral agencies bears no relationship to the 14 to 21 days allowed by law for the receipt of such advice. Further, requests for additional information can be and are made sequentially rather than up-front, which leads to interminable postponements of decisions on complex applications.

It is recommended that -

- The TCPDO should retain the responsibility for processing all applications for planning permission;
- Strict time lines should be in place for the processing of applications, which may vary according to the type of applications;
- The power to ask for additional information should be exercised upon submission of applications and the running of time for the processing of applications should not commence until such information has been provided;
- Any consultations with referral agencies must be carried out expeditiously in accordance with fixed time limits;
- Where applicable, public consultations must be carried out expeditiously in accordance with fixed time limits;
- The power to approve applications, conditionally or unconditionally, of refuse permission for development should be vested in a multidisciplinary statutory Board – a Sustainable Development Board - comprised of ex officio members and private sector members appointed by the Minister
- The CTP should serve as the CEO of the Sustainable Development Board

8) Ministerial Decisions

The current arrangements for dealing with planning applications which are "called-in" or referred to the Minister for determination are much criticised for contributing to delay in matters which are often of significant economic importance. The current arrangements are also lacking in openness and transparency with little regard for rules of natural justice. The process is not adequately managed - staff in the PMO and TCDPO perform in a reactive rather than pro-active manner and there are no performance targets or deadlines.

Section 18 is the provision of the current Act which provides for the referral of specific applications or classes of applications to the Minister for decision, instead of being dealt with by the CTP. At present these are all applications in respect of beachfront properties and all applications for the sub-division or material change of use of agricultural land of over 2 acres. These categories were set 32 years ago by a Direction (SI 1986/103) and have not been revised since. Although s.18(1) of the Act allows for the Minister to give the CTP directions to refer "any application" to the Minister for determination, all such directions must be published in the *Official Gazette* pursuant to s.2(4) and there is no record of this having been done.

Applications in the two specified categories may include important developments from a strategic economic or environmental viewpoint. However, as currently defined, they may also include trivial matters which do not necessarily require the Minister's attention. Also, developments of strategic economic or environmental importance, which should probably attract the attention of the Minister, are not limited to the two categories specified.

The administration of the s.18 process has been made more difficult by aspects of the judgment of the High Court in the case of ***St. Hill v Chief Town Planner and Attorney General***, No.1617 of 2011, Judgment of Cornelius J. 25th November 2016, with regard to change of use and development of agricultural land at Six Men's Plantation, St Peter. Problematic aspects of this judgment were never appealed and separate administrative arrangements were put in place, in accordance with the judgment, to process applications referred to the Minister within the PMO. The time limit for appealing the judgment having expired, legislation is now needed to clarify that the Minister can expect the

TCPDO to process such applications (including conducting statutory consultations) and also give a professional opinion on the planning issues.

As is the case with appeals against decisions of the CTP which are referred to the Minister for review (see section 4.G infra), s.18(3) provides that, if either the applicant or the CTP so desire, the Minister must give them an opportunity of appearing before and being heard by a person appointed for that purpose. Hence, most applications referred under s.18 are considered in a hearing chaired by a "panellist" appointed by the Minister to report on the matter. The hearings are not open to the public, there are no published rules of procedure, there is no regular way for third parties to intervene, there is no two-way disclosure of documents in advance, the panellist's report is not made available to either the applicant or the CTP and under s.18 the Minister is under no obligation to give reasons for his/her decision. Section 18(4) provides that the Minister's decision is final; however, such a decision may be challenged in the High Court on the grounds that it is not within the powers of the Act, pursuant to s.72.

There has been criticism of the abilities, knowledge and understanding of persons appointed to conduct hearings. The appointment process is opaque. There is no stated requirement for qualifications or for a track record of relevant experience or knowledge in planning, architecture, engineering, surveying, law or other related land use or relevant profession. Panellists are often lay people who have received little or no training in planning, fair hearing procedures or the nature of their role. It is not known what weight is given to their reports by the Minister.

The objective of the referral process should be to provide a system which is both efficient and at the same time fair, impartial, transparent and independent with no party being at a disadvantage and with the rules of natural justice complied with. In deciding on a framework for the future it is necessary to consider two main elements – governance and management. Governance arrangements will be established by the new Act while the management issues will be addressed partly by Regulations and partly by improved management practices and training.

In relation to governance it is necessary to consider the extent and nature of Minister's direct involvement in decision-making on planning applications. In most jurisdictions there is a point at which the political leadership will want to have direct influence over

some planning matters by making a decision at the political level. If this is done in an open and transparent way with publication of the decision and its justification this is clearly better than decision-making behind closed doors or the application of covert influence.

The question then becomes one of which decisions should be determined at the political level. The current s18 categories are unsatisfactory. It is suggested that the categories for referral should be broadly defined in the new Act as "significant departures from the Physical Development Plan and/or proposed developments of a strategic economic or environmental importance". If it is decided to proceed with the establishment of a Sustainable Development Board, then that body should determine whether an application should be referred to the Minister for decision. The Board should make its determination taking account of the advice of the CTP and in consultation with the Minister as necessary.

As the Minister will be making the decision on this class of applications, it is appropriate that the Minister should receive a full written report on the case with a recommendation from the person who conducts the hearing (or in a case being decided on written representations has reviewed all relevant information). For this reason, it is recommended that a suitably qualified Inspector is appointed to deal with each case. This means a person with relevant qualifications and experience in planning, architecture, engineering, surveying, law or other related land use or relevant profession. If it is decided to have a Planning Appeals Tribunal (as recommended in 4. G, below), then the same panel of qualified persons can be used for the appointment of Inspectors for referrals. All appointments to consider a particular case must follow a strict protocol on conflicts of interest.

In the interests of efficiency as well as openness and transparency, there is a need for improvements to the way the referral process is managed. Much of this was covered by a consultants' report in 2013 but the detailed recommendations will need to be adjusted to match the provisions of the new Act. Some, but not all, of these management changes can be introduced by Regulations. There is, however, a need for change in the overall management approach which is a matter of culture and depends ultimately on leadership from senior management in the TCDPO and the PMO.

The major requirements are:

- A more pro-active management approach
- Adherence to strict time-tabling by all parties
- Holding Hearings in public
- Clarity and consistency in how Hearings or the Written Representations process are conducted
- Clarity and consistency in how site visits are conducted
- Early disclosure by all interested parties
- A focus on the issues in dispute, eg by establishing common ground
- Issuing any report prepared for the Minister to all parties involved
- Publication of all decisions with justification
- Training for all involved in the process.

9) Development Standards

Given the Minister's overriding responsibility to secure consistency and continuity in the framing and execution of a comprehensive policy for the use and development of land, it is customary for site development standards – with respect to building line set-backs, coverage, density, building heights, parking requirements, etc - to be set out either in statutory instruments or in official policy documents. At present, various fixed standards are prescribed by the ***Development Order*** as conditions governing permitted development. These mandatory standards do not apply to developments in respect of which applications for planning permission are to be determined having regard to the development plan and other material considerations.

In the UK the practice used to be that Planning Guidance Notes (subsequently called Planning Policy Statements) were issued by the Minister for the guidance of the Local Planning Authorities determining applications. It is well established in the jurisprudence on planning legislation that such published policies (in contrast to unpublished "desk-drawer" policies) are "material considerations" to be taken into account in the determination of applications. This does not mean that they are binding and the decision-maker has the discretion to vary or waive compliance with such standards where this appears to be merited.

In some other jurisdictions, for example under the Tasmanian ***Land Use Planning and Approvals Act 1993***, a more rigorous approach of issuing Planning Directives has been adopted. Before their adoption, such Planning Directives must be published in draft for

public comment – which may include a public hearing – and notice of the issuance of any such Directive by the Minister must be published in the *Official Gazette*. Upon adoption, such Planning Directives become binding on planning authorities.

In Barbados, there are some existing development standards set out in documents such as ***The Applicant's Handbook and Guide to Town Planning***, published by the TCPDO, and ***The Applicant's Handbook and Guide to Coastal Planning in Barbados***, published by the CZMU. These would be legally analogous to the published Planning Guidance Notes/Planning Policy Statements in the UK.

It is recommended that -

- The present practice of issuing policy documents which set out basic development standards be retained
- However, such policy documents should be kept up to date and emanate from the office of the Minister, who is responsible for consistency and continuity in the formulation of policies for the use and development of land.
- Such policies should be published in draft for public comment before their adoption by the Minister
- Notice should be given of the adoption of any such policy in the Official Gazette

10) Environmental Impact Assessments

Principle 17 of the 1992 Rio Declaration on the Environment and Development declares that environmental impact assessments (EIAs) must be undertaken for proposed activities which are likely to have an adverse effect on the environment and are subject to a decision of a competent national authority. This global undertaking was echoed in the Declaration of Barbados and Programme of Action for Small Island Developing States (SIDS) entered into at the 1994 Global Conference on the Sustainable Development of SIDS. In keeping with these international commitments, the ***Town and Country Planning Act*** was amended in 1998 to make provision at s.17(1) for EIAs to be required by the CTP in support of applications for planning permission for development which is "likely to have an effect on the environment of Barbados".

Hence, it has become the practice of the CTP to require EIAs to be submitted by applicants in some instances. Some guidance with respect to the cases in which EIAs are required by the CTP, the Terms of Reference (TOR) for EIA studies and the EIA process, including public participation requirements, are contained in the ***Physical Development Plan***

(Amended) 2003, approved by Parliament, and the ***Applicant's Handbook and Guide to Town Planning***, published by the TCPDO (which is out of print and not available electronically). However, these publications are both policy documents and to date a firm legal framework for the EIA process is lacking. In this respect, as documented in a recent study of the legislative framework for EIA in the Caribbean carried out by the Caribbean Law Institute under the Impact Justice Project, Barbados is lagging behind other Commonwealth Caribbean countries.

EIAs are costly and time consuming and it is essential that there is transparency with respect to the cases in which EIAs are required and the EIA process, including the process by which EIA reports are reviewed.

It is recommended that EIA Regulations should be made as a matter of urgency under the new legislation. Such Regulations should provide clearly for –

- The cases in which EIAs are or can be required;
- The stage of the approval process at which EIAs (or different levels of EIA studies) are required
- The preparation of the TORs for EIAs
- The carrying out of EIAs, including the qualifications of EIA preparers
- Public participation requirements
- The essential elements of EIA reports
- The mechanism for the review of EIA reports
- The incorporation of terms and conditions with respect to mitigation and monitoring measures into planning permission

11) Coastal and Seabed Developments

Given the definition of "land" in the existing law (which it is not suggested should be amended) planning control in Barbados extends beyond the shoreline to the seabed within the Territorial Waters of Barbados. This area of planning control is cross-cut by the coastal zone as defined by the ***Coastal Zone Management Act***, CAP.394, which provides *inter alia*, for the preparation of a Coastal Zone Management Plan (CZMP) defining the Coastal Zone Management Area. Part II of the Act sets out the statutory process for the preparation and approval of the CZMP, inclusive of the holding of a public enquiry on the draft CZMP, approval of the plan by the Minister and the establishment of the CZMP by Order published in the *Official Gazette*.

Several consequential amendments were made to the ***Town and Country Planning Act***, CAP.240, upon enactment of the ***Coastal Zone Management Act*** in 1998. For example, s.15(1A) limits the power of the Minister to grant planning permission via a Development Order for any development within the Coastal Zone Management Area which is prohibited by the CZMP. Likewise s.17(1A) provides that the CTP must request an EIA where proposed development is in a Coastal Zone Management Area. None of these provisions have come into effect to date because the draft CZMP, which has been in existence for many years, has never been through the required process of public enquiry, Ministerial approval and publication of an Order in the *Official Gazette*.

Nevertheless, the CZMU now plays a pivotal role in the processing of applications for planning permission for coastal development, whether such applications fall to be decided by the CTP or the Minister. Their policies are set out in a publication, ***The Applicant's Handbook and Guide to Coastal Planning in Barbados***, an electronic copy of which is available on their website. This document includes reference to the CZMP, which is not available in either electronic or print form, without acknowledgment of the fact that the plan is not an approved plan. In the Handbook the CZMU acknowledges that regulatory jurisdiction over coastal development is in the hands of the planning authorities; however, in practice the CTP's decisions and advice to the Minister with respect to coastal applications follow the CZMU's advice, even with respect to matters outside of their area of technical competence.

It is recommended that –

- The CZMU should be called upon to subject the draft CZMP – including the delimitation of the coastal zone - to the statutory processes for public consultation and approval provided for by the CZM Act;
- The role of the CZMU in decision-making on applications for planning permission within the coastal zone should be clarified;
- Consideration should be given in this context to the role that the CZMU should play with respect to applications for proposed developments on the seabed outside of the coastal zone.

12) Conservation of Built Heritage

Barbados has a wealth of heritage assets which provides a very valuable heritage tourism product. However, much of the built heritage is in poor condition and at risk of loss. The

existing legislation is weak and very limited and the penalties for non-compliance are so low that they provide no deterrent. The designation of the UNESCO World Heritage status for Bridgetown and its Historic Garrison recognises the importance of this key asset, but does not provide the protection or tools to maximise its potential.

Sections 28, 29 and 30 of the Act contain the existing provisions for making Building Preservation Orders (s.28), compiling a list of buildings of special architectural or historic interest (s.29) and requires the owner of a listed building to give the CTP at least 2 months notice of any proposal to carry out works to demolish or alter/extend a listed building (s.30).

Although the provisions of the Building Preservation Order are stronger - in that they require consent for work to a historic building - they involve the service of individual notices, which is time consuming and the provisions are rarely used. The Listed Buildings list is not comprehensive and needs updating and there are no provisions within the legislation for designation of heritage conservation areas.

In many other jurisdictions the demolition, alteration or extension to a listed building is considered to be development and requires either planning consent or specific listed building consent. The Barbados National Trust has expressed a strong preference for the status for Listed Buildings to be strengthened and for control of demolition to be included in the definition of development. If this is done, the existing provisions for the Building Preservation Order are no longer required. An applicant would have to apply for consent for planning permission for demolition or alteration of a listed building and would have the same rights of appeal as any other applicant if they were not satisfied with the decision or conditions attached.

There is clearly a need to update and review the list. The existing Act makes provision for this to be done by either the Minister or the Barbados National Trust or other persons or bodies. The review of the list should be an open and consultative process and notices should be served on the owners of properties. The CTP has expressed the view that it should also be possible to list part of a building or features of special architectural or historic interest and not only the entire building.

There is also no provision in the Barbados legislation to deal with the protection of the character of historic areas and to designate heritage conservation areas. The revised PDP

identifies a number of historic areas, but there are no specific powers in the legislation to deal with formal designation of such areas or provisions to protect their character.

Section 2.2.5 of the PDP - Cultural Heritage is very comprehensive. It identifies how the Public Register of Historic Places will be prepared, updated with provisions for public participation. It also specifically identifies 6 designated Cultural Heritage Conservation Areas:

1. Historic Bridgetown and its Garrison
2. Strathclyde
3. Belleville
4. Hastings Pavilion/Ocean View
5. Speightstown
6. Rock Hall

The PDP recommends strict controls of development (including trees and advertisements) not only within the World Heritage site and Heritage Conservation Areas but adjacent to them. There is also a requirement for a Heritage Impact Assessment. However, as under the existing legislation the Plan is merely a material consideration it is unclear what legal status these provisions have. There is also a recommendation of a fine of up to $50,000 for unauthorised interventions and demolitions.

Given the importance of our heritage asset it is important that it is afforded greater protection within the new legislation.

It is recommended that -

- The definition of development be extended to include demolition works
- Provisions for making, updating and making public the register of listed buildings be strengthened and be made more transparent
- Provisions are made for the formal designation of heritage conservation areas including the World Heritage Site
- Provisions are also made for control of development within and adjoining conservation areas and the requirement for a Heritage Impact Assessment is clarified
- The penalties for altering or demolishing a listed building are included as part of the more comprehensive schedule of penalties.

- Consideration be given to having a sub-committee of the Sustainable Development Board to advise the Board on design and conservation of the built heritage.

13) Urban Design

Increasingly the issue of urban design is seen as an important consideration in the planning process and in place making. Good urban design is about more than individual buildings, it is about the relationship between buildings and the spaces between them. The current planning system in Barbados has little emphasis on design at the national physical planning level which is more of a strategic approach to the overall development of the island. At this scale, there are blanket policy guidelines for density and in some areas heights, as well as road reserves and building lines and set backs. The current five storey limit for beach front development has led to a monotonous uniformity and provided little scope for innovative design.

This approach has been taken in the context of a very discretionary legislative framework which allows the TCDPO to use professional judgements to impose site-specific guidance. This discretionary approach has not always had sustainable design outcomes. In the recently revised Barbados Physical Development Plan, at the more detailed physical plan levels such as community planning, there are policies which set out an approach to design which considers issues such as vernacular style, sustainable building design and height and massing of new buildings. There is increasing pressure for high buildings and in the community plans the Barbados Physical Development Plan Draft 2017, there is direction on where it would be appropriate to have them based on current conditions. Integrating high buildings into sensitive historic environments is a challenge faced by many cities. Those who have been successful at integrating modern development into the historic fabric have usually had clear policies on how this should be done.

In Barbados it is important that we continue to understand the development and economic pressures which drive modern development and the needs to balance this against the need to preserve our heritage and the character that makes Barbados unique. There is no blanket height policy that will fit every section of a development precinct as the overall purpose, functionality, aesthetics and amenity of the area must be considered.

It is recommended that the extensive urban design policies developed as part of the work of the Barbados Physical Development Plan Draft 2017 and presented within the context of nine community plans, be revisited as required, and extended to include other critical development zones in order to develop further guidance/standards appropriate to Barbados. These could take the form of Supplementary Planning Documents as part of the Development Planning Process and/or through planning directives. The new act should make provision for this by allowing such Supplementary Planning Documents to be adopted as part of the Physical Development Plan.

14) Derelict and Vacant Buildings and Land

In planning for the orderly use of land it is important to ensure that land is used for its intended purpose. Barbados has a limited supply of land but there are large numbers of buildings which are vacant and derelict and subdivisions where lots remain vacant for decades. This is a very inefficient use of resources. Vacant lots need to be serviced and the infrastructure and utilities maintained. Long term vacancies lead to dereliction, damage the amenity of the neighbourhood and can also be a health hazard. The presence of derelict buildings (both residential and commercial) has a negative impact on the appearance of the island. Vacant lots that are not maintained become overrun by bush, cow-itch and vermin and have a detrimental effect on residential subdivisions.

What is required is a strategy to bring these wasted resources back into use. In other jurisdictions the development and use of proactive Empty Property Strategies have had real success. These work on the basis of actively encouraging owners to bring the properties back to use but as a last resort can use compulsory powers to acquire or force the sale of the property. Tools need to be put in place to facilitate this work although the threat of compulsory action is often sufficient to bring about change.

It is recommended that

- Consideration is given to developing and implementing an Empty Property Strategy
- Provision is made for the use of compulsory powers where necessary to support this strategy.

15) Tree Preservation

Section 27 of the Act contains provisions for the making of Tree Preservation Orders to protect trees, groups of trees and woodlands in the interests of amenity or of soil conservation. The section sets out the particulars to be included in and the procedure for making of such orders, inclusive of publication of a notice of intention to make any such order and the consideration of objections and representations, before the Order can be made. No such Orders have ever been made, but in 1981 separate legislation, the ***Trees (Preservation) Act***, CAP. 397, was adopted without any amendment having been made to the provisions of section 27.

Under this legislation a person who wished to kill a tree the circumference of which exceeds one metre at a point half a metre from the ground, except a tree that poses an imminent danger or is required to be removed under other legislation, must apply to the CTP for permission. The CTP is allowed 28 days to approve such applications. The effect of these provisions was to reverse the obligation imposed on the Minister by s.27 of the Act to take proactive measures for tree preservation and impose an obligation to seek approval upon persons wishing to fell trees to which the Act applies. It offers no protection to important species such as palms and mangroves, which do not attain a metre in girth. However, the Act also contains an important provision which vests the CTP with additional powers to require the owners of land to plant trees on vacant land, or land abutting a public road, or land on which a new road is to be built (e.g. within subdivisions). This is backed up by a provision whereby the CTP may require a developer to deposit a sum of money in the Treasury as security for implementing landscaping conditions of planning permission.

Tree preservation orders are potentially useful in preserving the amenity of conservation areas and other sensitive areas, but the provisions of these two Acts need to be reconciled.

It is recommended that -

a) The tree preservation order provisions be retained in the new Act
b) The ***Trees (Preservation) Act*** be repealed and its provisions incorporated in the new ***Town and Country Planning Act***
c) A more appropriate definition of "tree" be used in the new legislation

d) All powers and duties assigned to the Minister under these provisions be transferred to the Sustainable Development Board if one is established.

C. Planning Obligations

The concept of planning obligations (sometimes referred to as contributions or planning gain) was introduced into Barbados planning law by the ***Town and Country Planning (Amendment) Act***, Act No. 51 of 2007, which inserted a new part, Part IVA, into the existing law. As drafted, s.32F, which provides for agreements between applicants for planning permission and the Crown with respect to planning obligations, relates specifically to the provision of affordable housing. In other countries planning obligations can extend to other elements of physical and social infrastructure and to environmental enhancements. Even in its limited form, s.32F has not been used because Regulations with respect to planning obligations have not yet been made pursuant to s.32H.

Planning obligations are usually connected to the grant of planning permission and it may be a condition of planning permission that a developer enters into a planning obligations agreement. Planning obligations resemble planning conditions but can achieve planning objects that cannot be achieved by planning conditions. For instance, planning obligations can fund off-site infrastructure. Developers may agree to carry out specified works themselves or pay a commuted sum equivalent to the agreed cost of the works. In the UK there is also a Community Infrastructure Levy which is a tariff-based approach to collecting the contribution.

The criticism often levelled at planning obligations is that they can equate to the buying and selling of planning permissions. Policy in Britain addresses this by requiring planning obligations to assist in mitigating the impact of unacceptable development and make it acceptable in planning terms. Planning obligations may only constitute a reason for granting permission if they meet the tests that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind. This policy is incorporated in Regulations and is based on case law. Local planning authorities are expected to include their planning obligations policies in development plans and keep details of all planning obligations agreements and their discharge in the planning register.

Planning obligations could be used in Barbados to fund a range of physical, social and environmental requirements, including for instance:

- Affordable housing – either on-site as part of a large development or elsewhere following a contribution on a tariff basis
- Junction and other highways improvements linked to traffic generation by a new development
- New or enhanced public beach access and facilities related to beachfront development
- Boardwalk extensions related to beachfront development
- Additional class rooms or school facilities related to new residential development
- Environmental mitigation measures during construction and after completion of a development.

It is recommended that the new planning legislation contains broader measures for planning obligations.

D. Limitation Periods

The existing law specifies certain deadlines by which various steps should be taken by the CTP and others with respect to the administration and enforcement of the Act. As regards the processing of applications, the law provides that the CTP must make a decision on an application within 2 calendar months of submission. Within this period the CTP may allow agencies with which statutory consultations must be carried out 14 to 21 days to comment on the application. These deadlines are never met. Due to an amendment made to the Act in 1981, the CTP no longer has to ask the applicant to agree to an extension of the time limit for determination of the application. The only recourse that the applicant has is to appeal to the Minister pursuant to section 20 of the Act, on the grounds that the application is deemed to have been refused after the elapse of 2 months. This is never done as there are no deadlines for the processing of appeals to the Minister, which may take even longer to be determined.

This is an area where we can learn from experience elsewhere. In the UK poor performance by Local Planning Authorities led to a major review in the 1990s and targets were set and monitored with the results published in a league table. Penalties and rewards were applied to influence performance. This resulted in an improvement in

performance. The current English standards included in the 2015 General Development Order are 8 weeks for a simple application, 13 weeks for major developments and 16 weeks where an application is subject to an EIA. There is also a non-statutory "planning guarantee" reflecting Government policy that no application should spend more than a year with decision-makers, including any appeal.

It is absolutely essential to efficiency of the regulatory process that the relevant authority has deadlines for processing applications, that such deadlines be realistic and that the applicant has meaningful recourse if they are not met. It is clear that large applications are much more complex now than they were in the 1960s when the original 2 months time limit was set and this should be reflected in the proposed deadlines. The introduction of the new Sustainable Development Board will also require that applications are processed in line with its meeting cycles.

It is recommended that –

- The deadlines of 2 months for the determination of applications should be replaced by a tiered system of 8 weeks for simple developments, 13 weeks for major developments and 16 weeks if an EIA is required.
- The running of time for this limitation period should start from the time when the applicant has submitted a completed application, inclusive of an EIA and any other additional information (when required)
- The deadline of 14 to 21 days for the receipt of comments from referral agencies should be retained
- The relevant authority should have to get the applicant's agreement to any extension of this deadline for decision-making
- Either the application should be deemed approved at the expiry of the limitation period or the applicant should have meaningful recourse against the delay. Such recourse could take the form of an appeal to the Appeal Tribunal
- Where it is clear at the outset that an extended period would be necessary to process an application, the CTP and the applicant should consider entering into a planning performance agreement before the application is submitted.

E. Enforcement

Under the existing legislation there is a suite of measures that can be taken by the CTP to enforce compliance with planning control. However, the CTP must initiate enforcement proceedings within 4 years of the unauthorized development having been carried out.

Where development is carried out without planning permission or in breach of the conditions subject to which such permission was granted, the CTP may serve the owner and occupier of the land with an Enforcement Notice setting out the breach of planning control committed and the steps the developer must take to remedy the breach. Where the development consists of or includes the carrying out of building or other operations, the CTP may also serve a Stop Notice requiring works for the development cited in the Enforcement Notice to cease immediately. If the developer fails to comply with the Enforcement Notice within the specified time, the CTP may enter upon the land and take the steps required by the Notice and recover the cost of doing so from the owner of the land. The person served may also be prosecuted and fined for non-compliance with an Enforcement Notice or a Stop Notice. Enforcement notices are subject to the strict interpretation standards applicable in the criminal law because they may lead to such convictions and penalties.

The options open to a person served with an Enforcement Notice are to comply with the notice; to appeal to a Judge in Chambers against the notice on any of several grounds specified in the Act; to challenge the validity of the notice by way of a defence to summary proceedings in the Magistrate's Court for breach of the notice; or by way of Judicial Review proceedings in the High Court on grounds other than those which could have been raised on an appeal to a Judge in Chambers. There is no means of challenging a Stop Notice short of Judicial Review proceedings in the High Court. In the event that a Stop Notice or the Enforcement Notice on which it is based is held to be invalid, the Crown is liable for the losses incurred by the developer arising from the stoppage of works.

The major issues arising with respect to these provisions of the existing law are that the CTP has the discretion as to whether to take enforcement action in any instance and the courts will not enquire into how this discretion has been exercised. This is a source of concern as to whether it is being exercised fairly. Secondly, the CTP is in the practice of initiating demolition action after the expiry of the time limit for compliance with Enforcement Notices without having vindicated such notices by prosecution of the developer in the Magistrate's Court. This is inadvisable as, if the Notice is proved to be

invalid in Judicial Review proceedings the Crown would be liable to pay the developer compensation, which may be appreciable particularly if a Stop Notice has also been served. Thirdly, the existing fines for breaches of Enforcement and Stop Notices are trivial.

Participants in the stakeholder consultations supported the retention of the 4 year limitation period for the initiation of enforcement proceedings in Barbados; however, they opined that there should be transparency with respect to how the CTP exercises the discretion to take such proceedings, so that complainants can find out what is being done and, if no enforcement action is taken, the reasons why. It was also agreed that enforcement powers need to be exercised with greater care, having regard to the liability for the Crown which may result where it is proved that Enforcement Notices are flawed or have not been served in the correct manner. The lack of a public register of enforcement actions was also identified as a problem, which gives rise to the present practice of requesting certificates of compliance as part of conveyancing practice.

It is recommended that –

- The 4 year limitation period should be retained
- The relevant authority should have to succeed in a prosecution based on an Enforcement Notice before exercising the power of demolition
- The grounds on which an Enforcement Notice can be appealed to a Judge in Chambers should not be limited
- Provision should be made for appeal against Stop Notices, to avoid the necessity, costs and delays associated with Judicial Review proceedings
- Enforcement and Stop Notices should be prepared and served by persons with adequate training in legal requirements and procedures
- The CTP should keep a publicly accessible register of Enforcement Action which should be available on-line
- The CTP should report to the Sustainable Development Board on complaints of breaches and enforcement action taken.

F. Administrative Fees & Penalties

a) Administrative Fees

The ***Town and Country Planning (Fees) Regulations 1970*** (S.I. 1970 No 181) introduced the concept of charging of fees for planning applications and set fee levels. The scale of fees remained in place for 23 years until amended by the ***Town and Country Planning (Fees) (Amendment) Regulations 2009***. That fee scale has been unchanged for the last 9 years.

The concept of charging fees to cover the administrative cost of processing applications is well established. The scale of fees charged should reflect the cost of delivering the function but also should be proportionate to the scale and nature of the development. The existing structure seeks to do this by making some charges related to the square footage of the development. The charge for a chattel house has remained for some time at the nominal $10 limit. However, a residential property of 2,000 sq. ft. would pay the same fees as a 30,000 sq. ft. luxury villa. There might be a need to make adjustments to thresholds and categories to respond to changing circumstances.

The fees for retrospective applications are double that of an application made in advance of development. At present there are no fees applied to hearings for appeals and referrals to the Minister to cover the additional cost of the hearing.

Increasingly developers are requiring pre-application discussions on large and complex projects. This is an important aspect of the facilitation role that the planning department is expected to play. It can be non-productive if such work is speculative and does not result in an application. It would be possible to charge for this activity in advance of an application and deduct the cost from the final fee.

It is important that fee structures should be kept up to date and reviewed. This would enable inflation in costs to be accommodated, but would also allow for consideration to be given to changes in circumstances which will occur from time to time. For example, the 2009 revision introduced a new class for marinas to reflect the expensive nature of the technical assessments required for that type development.

It is recommended that a new schedule of fees should be prepared and once approved should be reviewed annually by the Sustainable Development Board and changes (if necessary) recommended to the Minister for approval.

b) Penalties and Fines

Similarly out of date are the penalties and fines for breaches in planning regulations. These have not been updated since the original legislation and are so low that they do not have any deterrent value. For example, the fine for demolishing a Listed Building is a mere $500 while non-compliance with Enforcement Orders only results in fines of $1,000 plus daily charges.

A review should be made of all existing penalties, including fines, to bring them in line with other similar offences and where fines are the penalty they should regularly be updated to take into account inflation and changing attitudes to the offence. This review could also be undertaken by the Sustainable Development Board and recommendations for change made as appropriate. In addition, some form of inflation measure could be automatically applied annually to the fine component of penalties. While this would not deal with the deterrent value of the penalty, it would ensure that once set they do not become obsolete over time, as has happened with the current system.

G. Appeals

As with planning applications referred to the Minister for decision (discussed in section 4.B.8 above), current arrangements for dealing with appeals against decisions taken by the CTP are much criticised for contributing to delay. The current arrangements are also lacking in openness and transparency with little regard for rules of natural justice and the process is not well managed. Staff in the TCPDO and PMO perform in a reactive rather than pro-active manner and there are no performance targets or deadlines.

Section 19 of the Act provides for an applicant who is aggrieved by the decision made by the CTP, either to refuse planning permission or against conditions subject to which planning permission is granted, to request the CTP to refer the decision for review by the Minister. Additionally, s.20 extends the right to appeal to the Minister under s.19 to cases in which the CTP has failed to determine an application within the two-month limitation period set by s.20(1) and Regulation 7. However, as the appeal route is no faster than waiting for a decision from the CTP, it is almost unknown for applicants to invoke their right to appeal under s.20.

The provisions of the existing legislation regarding the procedure to be followed with respect to appeals to the Minister are vague, inadequate and have allowed for the lack of a time-bound, fair and transparent appellate procedure to be followed.

Regulation 9(1) provides that the applicant must make the request in writing with 28 days receipt of the decision, stating the grounds of appeal; however, as regards the deadlines for action by the CTP, s.19(3) of the Act provides only that, when such a request is received, the CTP must refer it to the Minister with "all reasonable dispatch" and Regulation 9(3) provides that the CTP must furnish the Minister with copies of the relevant documents, including a statement of his/her observations on the request, "as soon as practicable". Section 19(6) provides that, if either the applicant or the CTP so desire, the Minister permit them to having a hearing before a person appointed by the Minister for that purpose. There are no provisions in the Act or Regulations governing the qualifications for the appointment of persons to conduct hearings or the procedures for the conduct of such hearings, reporting by the person conducting the hearing or decision-making by the Minister. Further, under s.19(9), the Minister is only bound to give a statement of reasons for his/her decision if expressly requested by the applicant.

Hence, the existing law and practice does not conform to basic rules of natural justice. There is no urgency on the part of the CTP with regard to the referral of appeals to the Minister, the delay being attributed to the necessity to prepare the CTP's memorandum with respect to the application, for which there is no deadline. Section 19 hearings are not open to the public, there are no settled rules of procedure; there is no regular way for third parties to intervene; there is no two-way disclosure of documents in advance; and the report of the person conducting the hearing is not made available to either the appellant or the CTP. As with applications referred to the Minister under s.18, there have been criticisms of the selection and performance of persons appointed to conduct appeal hearings.

The current Act is unclear as to whether it provides for appeals by written representations. S.19(6) says that the Minister will appoint someone to conduct a hearing if either the appellant or CTP wishes. However, it gives no guidance on how the Minister should proceed if neither of them expresses that desire. It is presumed that the Minister would proceed using the information mentioned in the 1972 Regulations: Para 9(2) requires that any request for review of a decision by the CTP "shall be in writing and

shall state the precise grounds on which the request is based" and Para 9(3) asks the CTP to provide the file and a statement containing his/her observations on the request. The Minister would effectively determine the appeal on the basis of written representations.

This position is unsatisfactory and probably explains to a large extent why few or no appeals are decided by written representations. There may also be a feeling on the part of applicants and appellants that with a planning system which is closed and opaque, the Hearing is the one opportunity to have their say. In England and Wales there are significant time savings with written representations and a large proportion of appeals follow this route. In Bermuda, where applicants can attend and speak at the Development Applications Board when their applications are first considered, the vast majority of appeals are by written representations. It is possible that in future there will be more interest in using written representations in Barbados if it is quicker, less costly, and if applicants have more confidence in the planning system generally. It is recommended that the new Act includes provision for appeals by written representations and that the Regulations are drafted accordingly.

These flaws in the existing appellate process expose the Minister to potential litigation. Although s.19(8) of the Act provides that the decision of the Minister on appeals is final, such decisions are susceptible to review by the High Count pursuant to s.72 of the Act, on the limited grounds that they are not within the powers of the Act, and on all the grounds applicable to administrative decisions generally pursuant to the ***Administrative Justice Act***, CAP.109B, s.16(1)(b).

The objective of the appeal process should be to provide a system which is both efficient and at the same time fair, impartial, transparent and independent with no party being at a disadvantage and with the rules of natural justice complied with. In deciding on a framework for the future it is necessary to consider two main elements – governance and management. Governance arrangements will be established by the new Act while the management issues will be addressed partly by Regulations and partly by improved management practices and training.

In relation to appeals it is necessary to consider whether the Minister should be involved in making the final decision. It is arguable that all matters of strategic national importance – and which should therefore be considered by the Minister – will have been

submitted for determination by the Minister through the referral process (see section 4.B.8 above). Another factor to consider must be the extent to which the Minister's valuable time would be well spent considering minor appeals and where the Minister's involvement could contribute to further delay for the appellant.

Practice varies in other jurisdictions. In Bermuda and Jamaica, like Barbados, the final decision on all appeals (including written representations cases) is actually made by the Minister. In Britain, there is a right of appeal to the Minister but the vast majority of appeal decisions are made by the professional Planning Inspectorate, although there is a provision for the Minister to "recover" an appeal and make the decision. In The Bahamas and other Commonwealth Caribbean jurisdictions, including the British Overseas Territories as well as the OECS member countries, appeals are decided by an Appeals Tribunal. Under the recent legislation in Trinidad & Tobago, appeals against planning decisions lie to the same special court, the Environmental Commission, established to hear appeals under the environmental legislation.

Hence, as alternatives to the current arrangement, two governance options are suggested:

1. **Professional Inspectorate**
   This is the approach adopted for instance in the UK and in the much smaller territory of Bermuda. In the UK the Planning Inspectorate is an executive agency of Government with professional inspectors deciding the bulk of appeals themselves and making recommendations to the Secretary of State on major projects. In Bermuda, an independent Inspector (currently one from Canada and one from Barbados) visits the island periodically to conduct site visits and hearings before making recommendations to the Minister. This arrangement achieves the objective of independence in a territory where the population is one quarter that of Barbados.

2. **Planning Appeals Tribunal**
   This is the approach which has been adopted in the majority of Commonwealth Caribbean countries. The law provides for the Minister to appoint suitably qualified persons to be members of the Appeals Tribunal. In some cases, provision is made for a larger number of persons to be appointed to a panel from which Appeals Tribunals are appointed on a case by case basis, to avoid potential

conflicts of interest and/or the Appeals Tribunal becoming overloaded or a centre of undue influence. The persons on the panel should all be qualified and have relevant experience in planning, architecture, engineering, surveying, law or other related land use or relevant profession. Nominations could be put forward by the relevant professional bodies for approval by the Minister. After hearing a case or considering written representations the Appeals Tribunal would issue its decision. The Tribunal could also heard appeals from administrative decisions made under legislation other than the planning law, that are related to land development.

In deciding between these options the issue of costs is relevant. There is not the work volume to justify a full-time Inspectorate but it would be possible to purchase time from qualified consultants. The Bermuda model of using Inspectors from overseas brings the additional costs of travel and accommodation. Tribunal members would also need remuneration and, whatever model is adopted, there will be servicing costs. Whether a professional Inspector or a Planning Tribunal is adopted, there must be strict provisions with regard to conflicts of interest.

The recommended approach is that of an Appeals Tribunal. Having three persons make a decision reduces both the possibility of corruption and the suspicion of corruption, especially if the three persons are selected at random from amongst a large panel of qualified persons. The Tribunal's decisions would be final on the planning merits of the case and the only challenge through the courts would be on points of law.

5. Cross-cutting Issues

A. Public Participation

As acknowledged by the global community in Principle 10 of the 1992 Rio Declaration on Environment and Development, environmental issues are best handled with citizens' participation, including the opportunity to participate in decision-making processes. This was echoed, with specific reference to human settlements and shelter development, in the 1996 Istanbul Declaration and Habitat Agenda, Chapter III.C and IV.D.3. Barbados subscribed to both international instruments; however the existing planning legislation does not reflect these principles.

The 2017 draft revision of the Physical Development Plan marked a major step forward in public participation in the planning process in Barbados. By introducing a stage of participation on the draft plan before its formal submission the Minister, the CTP and the consultancy team actually went further than is required by the existing law. Early in the plan preparation process there was a stakeholder event organized in conjunction with the Barbados Town Planning Society, the draft document was made available for comment on-line, and there were a number of town hall meetings at different locations.

Unfortunately, this level of involvement does not apply to the development control process. In practice, the only requirement is to hold town hall meetings on completion of an EIA. Following the decision of the High Court in the case of ***Archer & Others v Chief Town Planner & Attorney General***, No.1367 of 2008, Judgment of Cornelius J., 18th November 2014, it is now custom and practice to consult neighbours when there is an application for a change of use in a residential neighbourhood. In the absence of readily available information on planning applications submitted, there is little opportunity for third parties to comment on proposals that affect them individually or have an impact on the public at large. This situation is unsatisfactory.

It is recommended that the following improvements should be introduced and incorporated in the new Act:

i. The good practice shown in preparation of the 2017 draft revision of the PDP should be reaffirmed;
ii. Applicants should be required to post a notice on site prior to the submission of a planning application and certify that they have done so;
iii. The CTP should publish on-line and by email to the press meaningful information on all applications received;
iv. Third party comments should be regarded as being capable of being material considerations in the evaluation of planning applications;
v. Third party persons who have submitted comments or objections should have the opportunity to submit evidence and speak briefly at Sustainable Development Board meetings;
vi. Third party persons who have previously submitted comments or objections to the SDB should also have the opportunity to appear at the Planning Appeals Tribunal;

vii. Third party persons who have submitted comments or objections should similarly be able to appear at a Hearing convened to consider an application referred to the Minister.

B. Access to Information

Access to information is a vital element of building confidence in the town planning system and is a common thread which has run through a number of the sections above. As recognized in Principle 10 of the Rio Declaration, there are direct links to the cross-cutting issue of public participation - without information participation becomes difficult and frustrating. The public today expects access to information and modern technology provides the means to achieve it.

In the Physical Development Planning process progress has been made with the draft revised PDP available on-line ahead of the consultation meetings last year. In keeping with this, evidence that forms the basis for future review of the PDP and monitoring reports should be made available on-line also. In this context, it is recognized that a large element of the data that forms the PDP evidence base actually comes from other Government departments and agencies. Sometimes there is an unwillingness to share this data between (or even within) departments. It is recognized that the TCDPO has been moving in the right direction on this issue and there is a need for other departments and agencies to do likewise.

Turning to development control and other regulatory aspects of the system, the current Act requires the CTP to keep a Register which takes the form of a paper document. This is available for consultation by members of the public who visit the TCDPO; however, there is no deadline for making entries in the Register so the available information is often incomplete and unreliable. Further, as recognized by the High Court and Court of Appeal of the Eastern Caribbean Supreme Court in the recent case of ***Anne Hendricks Bass v Director of Physical Planning***, access to the brief notes in the planning register without access to the documents and plans submitted cannot provide adequate information concerning planning applications. In the context of 2018 and the Information Age this does not constitute an acceptable level of access.

While recognizing that there are funding constraints on how much progress we can make in the short term, it is worth looking at what can be done to give the public access to

information elsewhere. In England and Wales the Planning Portal is a joint venture established in 2002 between central government, local government and a private sector service provider. It is the route for submission of almost all planning and building control applications and follows every application through the decision-making process. It also covers appeals, including enforcement appeals and applications for listed building consent. The information available to the public is extensive. Full details of every application including drawings and supporting data such as design statements, traffic studies and EIAs can be accessed. Responses to statutory consultations, third party comments and planning officers' reports are available along with copies of all decisions with reasons. For appeals, all witness statements, proofs of evidence and inspectors' reports are available. The Planning Portal complies with UK freedom of information and data protection legislation. In normal circumstances the only information that is not freely accessible is commercially confidential material and this is strictly defined. In the UK Council planning meetings are open to the public and minutes of these meetings are published on-line. Some Councils regularly stream their committee meetings.

While recognizing the cost of the UK approach and the fact that it would take a long time to develop something similar, it is possible to introduce some changes at relatively little or no cost. For instance, the CTP should publish on-line and via email to the press a meaningful weekly list of applications received and decisions made. As a minimum, this list should show the date received, the application number, the applicant, the location of the site and the nature of the development proposed. For decisions it should also show the date of the decision and whether permission was granted or refused. The list should also include decisions on applications referred to the Minister and appeals. This step forward does not require new legislation and could be implemented in the short term without prejudicing the full package of reform.

C. Inter-Agency Consultations

Statutory consultations on planning applications are a major contribution to inefficiency in the system. The CTP complains that agencies do not meet their deadlines and this causes delay in determining applications or submitting his case on matters that are referred to the Minister for decision. The referral agencies complain that they have insufficient resources in terms of personnel or technology to handle these consultations efficiently.

Section 17(2)(b) of the current Act says the Minister may require the CTP to consult with the Town and Country Planning Advisory Committee and other authorities by way of an order or directions. Para 8 of the 1972 Development Order addresses this with detailed requirements to consult the relevant Minister (or such person as the Minister may appoint) on transport, traffic and drainage, on agricultural implications of development, and the Water Board (now impliedly the Barbados Water Authority). Para 8(3) gives the Minister power to extend that direction to other statutory boards and persons. Para (4) directs the CTP to allow a period of not less than 14 days and not more than 21 days for referral agancies to respond before he can make a decision. Para (5) allows the CTP to consult other boards, persons or bodies as appropriate including the Chief Medical Officer, statutory undertakers, the Port Manager, the Harbour Master and the Director of Civil Aviation. The detail in the Development Order is outdated and needs revision. There is also an anomaly in that it does not refer to the Director of the CZMU although s.17(1C) of the Act is a 1998 amendment requiring the Minister to consult the Director of Coastal Zone Management before granting or refusing planning permission under s.15 which relates to Development Orders.

Defects in the statutory consultations process are one of the major concerns of stakeholders. It is considered that the process of transporting files from office to office is outmoded. Stakeholders think electronic communications (including simple e-mail methods) should be used. There is also criticism that some departments do not have the technological capacity to receive plans and respond by electronic means. Also, it is recognized that responding to planning consultations is not a high priority in some operational departments. There is a feeling amongst stakeholders that deadlines need to be met but an understanding that personnel and skills shortages can prevent this. This is an area where there could be stakeholder support for "spend to save" measures that would provide necessary technology and fill skills gaps.

It is recommended that -

- The Development Order should be updated as it relates to statutory consultations.
- There should be a specific requirement to consult the Director of the CZMU and there should be a clearer expectation of consultation with relevant non-governmental bodies on applications which relate to their areas of interest and expertise.

- Electronic means of communication should become the norm for these consultations.
- The TCPDO should have service level agreements with the major referral agencies. Such agreements would make it clear at what point the TCPDO would proceed without a particular body's input.

It is noted that there could be an improvement in the efficiency and effectiveness of statutory consultations as a by-product of the proposed governance arrangements. Referral agencies will be represented on the Sustainable Development Board and this may itself give a higher priority to responding. Also, people on the Board will be able to give a "back-stop" response for their department or agency if an application comes to the Board before a formal response has been received.

Another suggestion that came out of the stakeholder consultations was that there should be meetings early in the consideration of an application (possibly before submission) involving the planners, relevant referral agencies and the applicant as a more regular part of the process. This would give everyone the opportunity to make their requirements clear early on. This idea relates to the broader question of how complex applications are managed. Simple time limits can be inappropriate to these applications and it is better to adopt a project management approach involving the applicant and agree the tasks that need to be completed and set a time line for achieving them.

This leads to consideration of the issue of having a "one stop shop" for planning applications and related permits. Stakeholder feeling was ambivalent:

i. There was an enthusiasm for the idea of making all applications to one point (preferably by electronic means)
ii. There was an enthusiasm for the idea of co-locating staff
iii. There was a resistance to conflating all applications in one submission – basically this reflects a design process where the principles are established (and planning consent often obtained) before expensive detailed design work is undertaken)
iv. There was criticism that some agencies were using the development control system to introduce requirements that did not have planning relevance simply because other regulatory systems were inadequate.

It is suggested that points i. and ii. are taken forward as the opportunity arises and that points iii. and iv. are borne in mind.

It is necessary to make specific reference to building standards and building control. While these issues do not strictly relate to inter-agency consultation on planning applications, there was considerable discussion relating to them at the stakeholder events. Nobody suggested that an island like Barbados in the Caribbean hurricane belt does not need an appropriate set of building standards. There was considerable debate about the way these should be delivered. There was criticism of the currently un-proclaimed legislation as representing an expensive public sector model that the country could not afford. There was strong support from the private sector professionals in the stakeholder events for a system of self-certification of plans by qualified and registered professionals (backed by insurance) and inspection by independent professionals. While not within the remit of this paper, it is noted that new legislation will be needed on building standards to achieve an effective and affordable solution.

D. Certification of Compliance

Section 21 of the Act indicates that where a person who proposes to carry out any operation on land or make any changes in the use of land wishes to have it determined whether the proposal constitutes development and, if it does, whether a planning application is required, he may apply to the CTP for a determination. Any person dissatisfied in point of law may appeal to a judge. It is reported that financial institutions in Barbados require borrowers to produce certification that works constitute permitted development prior to granting loans for such works. Presumably this is being done under this section.

There are no provisions in the Act relative to issuing certificates of compliance *per se*; however, certificates issued by the CTP are required under other statutes (e.g: under ***Public Entertainment Act***, CAP.85A, s.4(1)(a); and the ***Special Development Areas Act***, CAP.237A s.5). Moreover, it has become an established practice in Barbados for legal practitioners to apply to the CTP for certificates of compliance as part of the search process to verify that the title to property to be conveyed to purchasers is good. This is necessitated in part because the TCPDO does not maintain a register of enforcement proceedings.

The England and Wales legislation (***Town and Country Planning Act 1990****: Section 191 as amended by section 10 of the* ***Planning and Compensation Act 1991*** and the ***Town and Country Planning (General Development Procedure) Order (England) 2015****)* has similar provisions for the issuing of a Lawful Development Certificate. A Lawful Development Certificate is a legal document stating the lawfulness of past, present or future building use, operations, or other matters. If granted by the local planning authority, the certificate means that enforcement action cannot be carried out with respect to the development referred to in the certificate.

The certificate is not a planning permission. The planning merits of the use, operation or activity in the application are not relevant. The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. The responsibility is on the applicant to provide evidence to support the application.

An application for a Lawful Development Certificate form should be used to establish whether:

- an existing use of land, or some operational development, or some activity in breach of a planning condition, is lawful
- a proposed use of buildings or other land, or some operations proposed to be carried out in, on, over, or under land, would be lawful

Examples when an application for a Lawful Development Certificate should be made include:

- when planning enforcement action is taken by the local planning authority and the owner believes it is immune from action because the time limit for taking enforcement action has passed
- when an owner discovers, in the course of a sale of the land, that planning permission has never been granted, and needs to show a prospective purchaser that no enforcement action can be taken by the local planning authority

A certificate granted for a proposed, or an existing use, operation or activity will specify (by reference to a plan or drawing) the area of land included in the certificate and describe the precise nature of the use, operation or activity which is lawful. The certificate will

give the reason for determining the use or operation to be lawful and specify the date of the application for the certificate.

In UK legislation it is an offence to provide false or misleading information or to withhold material information with intent to deceive. The council to can revoke, at any time, a certificate they may have issued as a result of such false or misleading information.

Recommendation -

- That the existing legislation and procedures relating to Certificates of Compliance be reviewed and brought up to date.

E. Use of Technology

The increased use of technology in the planning system could significantly advance inter-agency consultations, decision making time-frames, transparency and modernization of planning practice in Barbados. Recent stakeholder consultations and other representations by professional bodies have pointed to a number of concerns that centre on out-dated management systems in planning practice. Those challenges and concerns include the manual circulation of files for consultation within the TCDPO and between the TCDPO and other consulting agencies, the limited or incomplete land registration system as a basis for forward planning to facilitate development and investment, poor public access to information on proposed developments, limited on-line information on the number and types of development applications being received by the TCDPO and the limited use of google earth images to manage unauthorised developments, among others matters.

It is expected that a shift to a more digital system of planning would facilitate a more transparent planning system through greater public involvement and participation. Additionally, greater incorporation of technology into the planning process, specifically development control and enforcement, can lead to a more efficient planning system. Incorporation of technology can facilitate timelier completion of tasks (e.g. review of applications) while reducing the need for repetitive tasks which may lead to more manageable workloads for planning officials and increase productivity.

In particular, stakeholders have emphasised the need for a dynamic process for the monitoring of changes to the development plan facilitated by an updated digital

information sharing platform. This might involve an easily accessible digital forum where the public can not only view proposed changes to development plans but share their views and comments on such amendments on a digital platform. Recently, the Draft PDP 2017 was uploaded to a website and the public was able to offer feedback and comments of the proposed revisions to the PDP. It has been proposed that this process be taken further and once the development plan is approved by the Government the pattern of development decisions could be viewed by the public on an on-going basis.

There has also been also a suggestion for the use of digital evidence in legal cases concerning planning enforcement. An example used was Google Earth, which provides satellite imagery at a relatively high spatial resolution. As such it could employed to delineate for example breaches into areas where development is not permitted (e.g. coastal setbacks, ecologically sensitive areas, and heritage sites). Conversely it could prove useful in the settling of disputes concerning land encroachment. The main benefit is that evidence of this form can be provided in-situ during a court session and could be referred to in an attempt to settle relevant disputes.

There have been strong calls from stakeholders for a shift to an electronic / web-based system for the submission and review of development applications. Specifically, stakeholders stated that an electronic planning application process would be more efficient and would ultimately facilitate a more timely decision. Additional components of such a system include: a) a publicly accessible GIS database of areas where development is not permitted, b) electronic submission of planning applications, c) digitization of planning applications and fully digital process for circulation of applications to agencies involved in approval of planning applications (e.g. applications database / emails), d) an online system for public tracking progress of applications, e) posting notices of applications on-line

A number of countries have incorporated some of the changes requested by stakeholders into their planning systems. One such country is Singapore, which has made fully accessible to the public the present main development plan (Master Plan), as well as past versions of that particular plan. The plan is in the format of an interactive map which shows the various land uses within the nation.

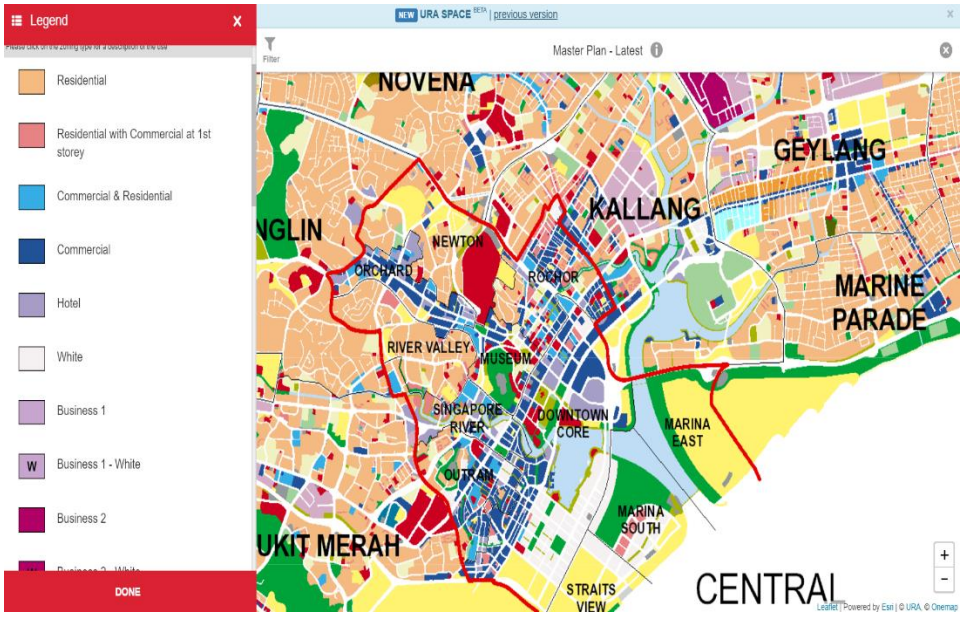

Figure 3: Singapore's Master Plan (sourced from Urban Redevelopment Authority 2018)

Any member of the public is able to view the permitted land uses and zones in any part of the country and toggle off or on various layers (e.g. footpaths, cycling paths, overhead passes etc). Secondly, Singapore has an online database of proposed amendments to their Master Plan as well as approved amendments. Amendments in their case mainly refers to proposed changes of land uses from their permitted use as outlined in the Master Plan. The details of such amendments are also available for public inspection. This facilitates the public consultation process required in Singapore, before any amendment to the Master Plan is made.

Development plans for local areas and some neighbourhoods in England are easily accessible online. There exists a database, accessible to the public, of all local plans submitted in the country, their status (how far they have progressed in the approval process). This information is provided in spreadsheet format which facilitates data analysis. Additionally, all planning applications (updated weekly) and their status (approved, denied, etc) is accessible on the internet through the Planning Portal for all local areas within England. The public is also able to comment on or object to proposed developments digitally, using the same portal. Detail information on the progress of planning appeals is also available.

There is the potential institutional capacity for the incorporation of digital information into each aspect of Barbados' planning system. The Lands and Survey Department has a wealth of geospatial data and is a repository of all certified survey plans. This department

has the largest group of trained geomatic engineers in the Government Service. Additionally, the Town and Country Planning Department has invested heavily in GIS (Geographical Information Systems), training and equipment over the years, and understands the significance of GIS in the analysis of planning options and scenarios. Perhaps a jointly operated national geospatial agency or repository of geospatial data (between the aforementioned and other relevant agencies) can be established so as to assist in the preparation of development plans which can be easily and continually monitored for changes and updated as necessary and are easily accessible to the public.

Public participation and transparency can be facilitated in Barbados' planning system through the provision of digital information on planning applications and planning trends. Also, provisions should be made to strongly encourage or mandate the use of digital information and electronic devices in the circulation of planning documentation between relevant agencies. This would most likely greatly improve the timeliness of the development planning application process and lead to a more efficient system.

6. Implementation

Introducing the legislation

The reforms to the town planning system recommended in this paper will require major changes to both primary and subordinate legislation. It is proposed that Barbados will have a new ***Town and Country Planning Act***. This will be drafted by October and should pass through both Houses of Parliament by 30 November. The Act can then receive the Royal Assent but should not be proclaimed until all the subordinate legislation and administrative changes are in place.

After the Act has been drafted work can start on the subordinate legislation. This will include the new ***General Development Order***, a ***Use Classes Order***, and ***Regulations*** covering amongst other things the operations of the Sustainable Development Board and the Planning Appeals Tribunal. By its nature this subordinate legislation is technical and detailed. It is suggested that its preparation would be assisted by targeted consultation on specific aspects with appropriate professionals in the public and private sectors as well as with staff in the TCDPO and the Ministry. It is also suggested that the target date for completion of drafting the subordinate legislation should be the end of March 2019.

Organisational Change

This paper recommends significant changes to governance with the establishment of a Sustainable Development Board and a Planning Appeals Tribunal. This change involves new roles and responsibilities for the people involved in each body. It also involves changed roles and working practices for staff in both the TCDPO and the Minister's Office. To facilitate all these changes it is recommended that early provisional appointments are made to the Sustainable Development Board and to the Planning Appeals Tribunal. This should be done in March 2019 and both bodies should effectively function in "shadow" form to undergo training before the Act is proclaimed and the new system goes live.

Taking into account the legislative processes and the need to put the organisational changes in place, it is proposed that the new Act should be proclaimed and become effective in June 2019 and the Sustainable Development Board and Planning Appeals Tribunal should take on their duties at that point.

Managing the change process

At a number of points in this Green Paper it is stated that changes are needed in management culture and leadership. It is also important that processes introduced or amended by the new Act are managed in a pro-active rather than reactive manner. While introducing new legislation is fundamentally important, we will not be fully successful in achieving our goals for reform without making these management changes.

Making any change in a bureaucratic system requires clear and committed leadership from the senior people involved. New skills will be needed in managing the processing of planning applications, referrals to the Minister and appeals. This will include setting and meeting targets and progress chasing. This is a totally different approach from the current "file-driven" methods. Staff will need training in new skills.

Similarly, the existence of a Sustainable Development Board and the use of a Planning Appeals Tribunal will require different skills in servicing meetings and actioning decisions. As mentioned above, the members of the Sustainable Development Board and the Planning Appeals Tribunal will need training in their roles, responsibilities and in the nature of the processes that they are involved in.

All this needs to be in place, along with all the subsidiary legislation, before the new system can go live. It is recommended that a project management approach is adopted to managing this programme of change.

Items for early implementation

Not all the changes recommended in this Green Paper require legislation, organisational change or significant expenditure. There are actions that could be implemented immediately at relatively or no cost and which would not prejudice implementation of wider reform and the new legislation.

The following items are put forward for consideration:

i. The Chief Town Planner should publish on-line and via email to the press a meaningful weekly list of applications received and decisions made (including decisions by the Minister).
ii. Hearings on appeals and matters referred to the Minister should be held in public.
iii. Voluntary disclosure of evidence in advance should be requested from all parties taking part in S18 and S19 Hearings.
iv. Panellists should be advised to adopt a consistent approach to Hearings and site visits.
v. Panellists' reports should be copied to the applicant or appellant and to the Chief Town Planner.
vi. In all cases the Minister's decision should be published with a justification.

TOWN PLANNING DEPARTMENT
Block C, Garrison, St Michael
Tel: 246 535-3000