



BERMUDA

DEVELOPMENT AND PLANNING ACT 1974

1974 : 51

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SECOND SCHEDULE

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[preamble and words of enactment omitted]

PART I

INTERPRETATION AND APPLICATION

Interpretation

1 In this Act, unless the context otherwise requires—

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock, the use of land as grazing land, meadow land, market gardens and nursery grounds;

“the Board” means the Development Applications Board established under section 3 and, in relation to any function lawfully delegated by them to any other person or body, including a committee of the Board, means the person or body to whom such function has been delegated;

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

“building operations” includes rebuilding operations, structural alterations of or additions to buildings, and other operations normally undertaken by a person carrying on business as a builder;

“building or work” includes waste materials, refuse and other matters deposited on land, and references to the erection or construction of buildings or works shall be construed accordingly;

“designated area” has the meaning given in section 28;

“development” has the meaning given in section 14 and “develop” has a corresponding meaning;

“development order” has the meaning given in section 15;

“development plan” shall be construed in accordance with section 6 and includes—

- (i) a local plan prepared under section 7;
- (ii) any draft development plan or draft local plan having effect under section 10;
- (iii) any amendment or addition to a development plan, including such a plan as is mentioned in paragraphs (i) and (ii) of this definition;

“Director” means the Director of Planning;

“dwelling” includes any part of a building where that part is separately occupied as a dwelling;

“enforcement notice”*[repealed by 2018 : 31 s. 2]*

“engineering operations” includes the formation or laying out of means of access to highways;

“erection” in relation to buildings includes extension, alteration and re-erection;

“highway authority” means an authority responsible for the maintenance of a road;

“historic area” has the meaning given in section 31;

“land” means any corporeal hereditaments, including a building, and includes land covered by water;

“listed building” means a building which is for the time being included in a list compiled or approved by the Minister under section 30 and includes any object or structure fixed to such a building, or forming part of the land comprised within the curtilage of such a building;

“local plan” includes a draft local plan having effect under section 10;

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“Minister” means the Minister responsible for planning;

“owner”, in relation to land, means a person other than the mortgagee not in possession who, whether in his own right or as trustee or agent for any other person, is entitled to receive the rack rent of the land or, where the land is not let at a rack rent, would be so entitled if it were so let;

“planning permission” means permission to develop land or to subdivide land, as the case may be, and, in construing references to planning permission to develop land or to applications for such permission, regard shall be had to section 20(2);

“planning permission granted for a limited period” has the meaning given in section 18;

“protected conservation area” means an area of privately owned land designated as a protected conservation area under section 25A;

“registered plan of subdivision” means a plan of subdivision registered by the Minister under section 35D(1);

“road” means any road whether public or private and includes any street, square, court, alley, lane, bridge, footway, track, path, passage, or other highway, whether a thoroughfare or not;

“rules” means rules prescribed under section 78;

“statutory undertakers” means persons authorized by any Act to carry on any dock, harbour or pier undertakings, or any undertaking for the supply of electricity, water, oil, telephonic, telegraphic or sewerage services, and “statutory undertaking” has a corresponding meaning;

“subdivision” has the meaning given by section 35A;

“tree preservation order” has the meaning given in section 27;

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

“zoning order” means a zoning order having effect under section 75.

[Section 1 amended by 1997:3 effective 1 April 1997; definition “enforcement notice” repealed by 2018 : 31 s. 2 effective 1 September 2018; Section 1 definition “protected conservation area” inserted by 2021 : 33 s. 2 effective 1 July 2022]

Application of Act

2 This Act binds the Crown.

[Section 2 amended by 1996:11 effective 20 June 1996; and repealed and substituted by 2002:6 s.4 & Sch 3 effective 18 June 2002]

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PART II ADMINISTRATION

Development Applications Board

3 (1) There shall continue to be established a body of persons to be called the Development Applications Board who shall have such functions as may be imposed upon them by or under this Act or any other statutory provision.

(2) The Board shall be appointed by the Minister and shall consist of—

(a) a Chairman and Deputy Chairman;

(b) not less than seven and not more than ten other members.

(3) At least one of the persons appointed to the Board shall be so appointed after consultation as to his appointment with the Corporation of Hamilton and at least one of the remaining persons so appointed shall be appointed after consultation as to his appointment with the Corporation of St. George's.

(3A) The Chief Fire Officer shall be a member ex officio of the Board.

(4) The First Schedule shall have effect with respect to the Board.

[Section 3 subsection (3A) inserted by 2014 : 33 s. 52 effective 1 January 2018]

Advisory Architectural Panel

4 (1) There shall be established an Advisory Architectural Panel consisting of a Chairman and not less than two or more than eight other members appointed by the Minister, any two of whom together with the chairman shall constitute a quorum.

(2) The Advisory Architectural Panel shall, with a view to the proper carrying out of the provisions and objects of this Act, advise the Board on any matter within their knowledge or on which the Board (either of their own volition or at the instance of an aggrieved party) may seek their advice.

Delegation to municipal authorities

5 (1) The Board may, with the approval of the Minister, by instrument in writing published in the Gazette and subject to such conditions, directions, reservations and restrictions as they think fit, delegate to a Municipality their power to grant or refuse planning permission.

(2) The Board may give written directions to any Municipality to whom functions have been delegated under subsection (1) requiring that any application made to that Municipality for planning permission, or all such applications of any class specified in the directions, shall be referred to the Board instead of being dealt with by the Municipality, and any such application shall be so referred accordingly.

(3) Where an application for planning permission is referred to the Board under subsection (2) the Board shall have the same powers in respect of such application as they would have had in the absence of an instrument of delegation under subsection (1).

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(4) Where a Municipality grants, modifies or revokes any planning permission they shall notify the Board within fourteen days thereof and such notification shall contain such particulars of the decision to which it relates as the Board may require.

(5) An instrument under this section is not subject to section 6 of the Statutory Instruments Act 1977 (parliamentary scrutiny of statutory instruments).

[Section 5 subsections (1), (2) and (4) amended and subsection (5) inserted by 2014 : 24 s. 2 effective 29 July 2014]

Delegation to Director

5A (1) The Board may, with the approval of the Minister, by instrument in writing published in the Gazette and subject to such conditions, directions, reservations and restrictions as they think fit, delegate to the Director their power to grant or refuse planning permission.

(2) The Board may give written directions to the Director, in respect of the functions that have been delegated to him under subsection (1), requiring that any application made to the Director for planning permission, or all such applications of any class specified in the directions, shall be referred to the Board instead of being dealt with by the Director, and any such application shall be so referred accordingly.

(3) Where an application for planning permission is referred to the Board under subsection (2) the Board shall have the same powers in respect of such application as they would have had in the absence of an instrument of delegation under subsection (1).

(4) Where the Director grants, modifies or revokes any planning permission he shall notify the Board within fourteen days thereof and such notification shall contain such particulars of the decision to which it relates as the Board may require.

(5) An instrument under this section is not subject to section 6 of the Statutory Instruments Act 1977 (parliamentary scrutiny of statutory instruments).

[Section 5A inserted by 2014 : 24 s. 3 effective 29 July 2014]

PART III

DEVELOPMENT PLANS

Survey and development plan

6 (1) It shall be the duty of the Minister to carry out a survey of Bermuda, in so far as he has not already done so, examining the matters which may be expected to affect the development of Bermuda or the planning of its development.

(2) The Minister shall at the same time as, or subsequently to, carrying out a survey under subsection (1) prepare a development plan for Bermuda on the basis of surveys and studies of land use, population growth, the economic base of the planning area, its transportation and communication needs, public services, social services and such other factors as are relevant to the preparation of a development plan.

(3) A development plan shall consist of—

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- (a) a written statement—
 - (i) formulating policy and proposals in respect of development and other use of land in Bermuda (including measures for the improvement of the physical environment and the management of traffic);
 - (ii) making provision for any of the matters specified in the Second Schedule;
 - (iii) containing such other matters ancillary thereto as the Minister may direct;
 - (b) such maps, diagrams, illustrations and descriptive matter as may be necessary to illustrate the proposals aforesaid with such degree of particularity as may be appropriate to different parts of Bermuda.
- (4) A development plan may designate any part of Bermuda which has been selected by the Minister for treatment in accordance with a local plan prepared for that part of Bermuda—
- (a) as an environmental conservation area, being an area in which the preservation of the natural environment shall take precedence over other planning considerations;
 - (b) as a special study area, being an area where the local circumstances are in the opinion of the Minister such as to require further study being made of the planning requirements for the area, with a view to all or any of the matters specified in the Third Schedule being provided for in a local plan.
- (5) A report of the survey under subsection (1) shall accompany the development plan when this is submitted to the Legislature for approval under section 11.

Local plans

- 7 (1) The Minister may prepare, in amplification of a development plan, a local plan for any part of Bermuda.
- (2) A local plan shall consist of a map and a written statement and shall—
 - (a) formulate in such detail as the Minister thinks appropriate the Minister's proposals for the development and other use of land in that part of Bermuda or for any description of development or other use of such land;
 - (b) contain such other matters as the Minister may think fit.
 - (3) Different local plans may be prepared for different purposes for the same part of Bermuda.
 - (4) A local plan for any part of Bermuda shall contain, or be accompanied by, such diagrams, illustrations and descriptive matter as the Minister thinks appropriate for the purpose of illustrating the proposals in the plan; and any such diagrams, illustrations and descriptive matter shall be part of the plan.

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(5) A local plan shall conform generally to the development plan as it stands for the time being and shall have regard to any other considerations which appear to the Minister to be relevant.

(6) A local plan may, subject to this section, make provision for any of the matters mentioned in the Second Schedule.

Designation of land for acquisition

8 (1) A development plan may designate, as land subject to acquisition by the Government—

- (a) any land allocated by the plan for Government purposes or for the purposes of a Municipality or of a statutory undertaker or of a highway authority;
- (b) any land comprised in an area designated in the plan as an environmental conservation area or a special study area;
- (c) any other land that, in the opinion of the Minister, ought to be subject to acquisition by the Government for the purpose of securing its use in the manner proposed by the plan.

(2) A development plan shall not designate any land as land subject to acquisition by the Government if it appears to the Minister that the acquisition is not likely to take place within five years from the date on which the plan is approved by the Legislature under section 11.

(3) Where any land is designated by a development plan as subject to acquisition by the Government, then if at the expiration of six years from the date on which the plan, or the amendment of the plan, by virtue of which the land was first so designated came into operation in accordance with section 11(10) any of that land has not been acquired by the Government, any owner of an interest in the land may serve on the Minister a notice requiring the interest of the owner in the land to be so acquired and if, within six months after the service of that notice, the interest of the owner in the land has not been so acquired, the development plan shall have effect, after the expiration of the said six months, as if the land in which the said interest subsists was not designated as subject to acquisition by the Government, but subject to such alternate restrictions as to user as shall be specified in the development plan.

Review and amendment of development plan

9 (1) At least once in every five years after the date upon which a development plan for any area is approved by the Legislature, the Minister shall review the plan and submit a report on such review to the Legislature.

(2) The Minister may at any time submit to the Legislature proposals for such alterations or additions to any development plan or local plan as appear to him to be expedient.

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Draft development plan or local plan to operate as development plan or local plan pending approval of Legislature

10 (1) The Minister may, by notice in the Gazette, at any time prior to the approval of a development plan or local plan by the Legislature under section 11, declare that a draft development plan or a draft local plan shall be operative as a development plan or local plan, as the case may be, from such date as may be specified in the notice and until such approval is obtained:

Provided that if such approval is not obtained within eighteen months of the publication of such notice such draft development plan or draft local plan shall cease to be operative as a development plan or a local plan.

(2) Nothing in this section shall apply in the case of any alterations or additions to a development plan or local plan.

(3) During the period during which a draft development plan is operative in any part of Bermuda, any other development plan in force in respect to that area prior thereto shall cease to have effect, save to the extent that the draft development plan provides to the contrary.

Approval of development plans

11 (1) The Minister shall in the course of preparing a development plan relating to any land, or proposals for alterations or additions to any such plan, consult with the Municipality in whose area any of the land is situated and any other public authority concerned with the development contemplated in the area concerned, and may consult with such other persons or bodies as he thinks fit, and the Minister shall—

- (a) before declaring that a draft plan shall be operative in accordance with the powers vested in him by section 10; and
- (b) before submitting any development plan or proposals for alterations or additions to such plan for approval by the Legislature,

give to the Municipality and public authority as aforesaid and to any such persons or bodies as aforesaid an opportunity to make objections or representations with respect thereto.

(2) Notice shall be published in the Gazette and in at least one daily newspaper that the Minister has prepared in draft any such plan or proposals for the amendment of any such plan, and of the place or places where copies of such plan or proposals may be inspected by the public.

(3) If any objection or representation with respect to any such plan or proposals is made in writing to the Minister within two months after the publication of the notice referred to in subsection (2) or within such greater period after the publication of such notice as the Minister may by notice in the Gazette specify, the Minister shall appoint one or more tribunals each of three persons to hold a public inquiry into such objections or representations.

(4) The Minister shall, before submitting any such plan or proposals for the approval of the Legislature, take into consideration the objections or representations

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together with the reports thereon of the tribunals, and shall include such reports with the plan or proposals submitted to the Legislature.

(5) Where a Municipality objects to any such draft plan or proposals in so far as they relate to land within the municipal limits of that Municipality, that Municipality may include in its representations to the persons holding such inquiry alternative draft plans or proposals in relation to such land and, in that event, such alternative draft plans or proposals shall be included in the report of the Minister submitted to the Legislature unless modifications in the development plan submitted by the Minister to the Legislature take account of such alternative draft plans or proposals to the satisfaction of that Municipality.

(6) Where any such plan proposes any variation to a zoning order, the owners of all land comprised in such zoning order shall be notified of the proposed variation by the Minister by notice in the Gazette within one week after the publication of the plan pursuant to subsection (2); and such notification shall set out the right of the owner to object or make representations.

(7) If as the result of any objection or representation considered, or public inquiry held, in connection with a development plan or proposals for amendment of such a plan the Minister is of the opinion that a Municipality or any other authority or person ought to be consulted before he decides to make the plan either with or without modifications, or to amend the plan, as the case may be, the Minister shall consult that authority or person, but he shall not be obliged to consult any other authority or person, or to afford any opportunity for further objections or representations or to cause any further public inquiry to be held.

(8) The Legislature may, by resolution of each House, approve a development plan, or proposals for the amendment of such plan either as originally prepared or as modified so as to take account of any objections or representations made under this section and the report of the Minister thereon.

(9) The approval of a development plan, or of proposals for amendment of such a plan, by the Legislature shall be published in the Gazette by the Minister and in at least one daily newspaper and copies of any such plan or proposals as approved by the Legislature shall be available for inspection by the public at the offices of the Minister and at such other places as the Minister may determine.

(10) Subject to section 10, a development plan, or an amendment of a development plan, shall become operative on the date on which it is approved by the Legislature or on such subsequent date as may be specified in such plan or amendment.

Deposit of development plan

12 (1) A development plan and any amendment thereof, as approved by the Legislature, shall be deposited with the Minister.

(2) A copy of—

(a) each development plan and each amendment thereof deposited with the Minister under subsection (1);

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- (b) any draft development plan or draft local plan which is operative as a development plan or local plan in accordance with section 10,

certified by or on behalf of the Minister to be a true copy of the original shall be available for inspection by the public at all reasonable hours on payment of such fee as may be prescribed under the Government Fees Act 1965 [*title 15 item 18*].

Alteration of designation, or de-designation, of land in local plan area

13 Where in any development plan any part of Bermuda is designated as an environmental conservation area or a special study area within the meaning of section 6(4) and the Minister considers that any land within such an area ought not to continue to be so designated, the Minister may either—

- (a) by an independent order published in the Gazette either—
 - (i) alter the designation of the land to the designation appertaining to adjacent land that is not so designated; or
 - (ii) direct that the development plan shall have effect as if the land had not been so designated in the first place; or
- (b) in a local plan prepared in respect of the area under section 7 include provision of a kind described in paragraph (a)(i) or (ii),

and where provision is made as aforesaid by an independent order or in a local plan the development plan shall, with effect from the date of the coming into force of the order or the local plan, as the case may be, have effect in relation to the area in question subject to that provision.

PART IV

CONTROL OF DEVELOPMENT OF LAND

Development requiring planning permission

14 (1) Subject to this Act, planning permission is required for any development of land that is carried out on or after 3 August 1965.

(2) In this Act, except where the context otherwise requires, “development” means the carrying out of building, engineering or other operations in, on, over or under any land, the making of any material change in the use of any building or other land or the demolition or the making of a material alteration to the external appearance of a listed building, except that the following operations or uses of land shall not be deemed for the purposes of this Act to involve development of the land—

- (a) the carrying out of works for the maintenance, improvement or other alteration of any building, if the works affect only the interior of the building or do not materially affect the external appearance of the building unless such works are carried out for the purpose of increasing the number of dwellings within a building;

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- (b) the carrying out by a highway authority of any works required for the maintenance or improvement or widening of a road;
- (c) the carrying out by any Municipality or statutory undertaker of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;
- (d) the use of any buildings or other land within the curtilage of a dwelling-house for any purpose incidental to the enjoyment of the dwelling-house as such;
- (e) the use of any land for the purposes of agriculture (except dairy farming or the breeding or keeping of livestock) or afforestation;
- (f) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Minister under this section, the use thereof for any other purpose of the same class.
- (g) the carrying out of any works required in relation to the laying of roads and installation of services in accordance with a final plan of subdivision registered under section 35D.

(3) For the purposes of this section—

- (a) the increase in the number of dwellings within a building involves a material change in the use of the building and of each part whereof which is so used;
- (b) the deposit of refuse or waste materials on land involves a material change in the use thereof, notwithstanding that the land is comprised in a site already used for that purpose, if either the superficial area of the deposit is thereby extended, or the height of the deposit is thereby extended, and exceeds the level of the land adjoining the site;
- (c) the following are acts of development within subsection (2)—
 - (i) any act in a designated area, being an act regulated by section 28 and the Fourth Schedule;
 - (ii) any act in a historic area, being an act for the doing of which section 31(2) provides that planning permission is required.

(4) Without prejudice to the Advertisements Regulation Act 1911 [*title 20 item 9*], the use for the display of advertisements of any external part of a building that is not normally used for that purpose shall be treated for the purposes of this section as involving a material change in the use of that part of the building.

(5) Where planning permission to develop land has been granted for a limited period, planning permission is not required for the resumption, at the end of that period, of the use of the land for the purpose for which it was normally used before the permission was granted unless such use constituted a contravention of this Act or other provision of law in force at the time when such grant for a limited period was made.

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(6) Orders made under this section are subject to the negative resolution procedure.

[Section 14 amended by 1997:3 effective 1 April 1997; Section 14 subsection (6) inserted by 2022 : 42 s. 2 effective 22 December 2022]

Emergency Development Order

14A (1) Where it appears to the Minister to be expedient during a national emergency, the Minister may, after consultation with the Director and after taking into account and having due regard to such representations as the Director may make to him, by order (in this Act referred to as an “emergency development order”) published in the Gazette provide for the emergency procedures to be followed in the granting of planning permission for one year from the date of the order.

(2) Planning permission granted under emergency development order procedures shall either grant planning permission unconditionally or subject to such conditions, directions, reservations and restrictions as may be specified in the order.

(3) An order may either grant planning permission for development specified in the order or for development of any class so specified.

(4) An order in subsection (3) relating to a class of development shall be taken to be a separate planning permission for each development carried out under the order.

(5) Orders made under this section are subject to the negative resolution procedure.

(6) In this section—

“national emergency” means—

- (a) a natural disaster such as a hurricane, flood, earthquake or similar natural disaster or force majeure event;
- (b) a public health emergency declared by the Minister responsible for health under section 107A of the Public Health Act 1949;
- (c) a proclamation of emergency made by the Governor under section 14 of the Bermuda Constitution Order 1968.

[Section 14A inserted by 2021 : 33 s. 3 effective 1 July 2022]

Development orders

15 (1) The Minister may by order (in this Act referred to as a “development order”) provide for the granting of planning permission.

(2) A development order may either—

- (a) itself grant planning permission for development specified in the order, or for development of any class so specified; or
- (b) in respect of development for which planning permission is not granted by the order itself, provide for the granting of planning permission by the

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Board on an application in that behalf made to the Board in accordance with the order.

(2A) Prior to making a development order, the Minister shall cause the conduct of a public consultation of any environmental impact assessment of a proposed development.

(2B) The Director and the Board shall determine the manner in which public consultation is conducted under subsection 2(A) with the period of public consultation being no less than 21 days.

(3) A development order may be made either as a general order applicable (subject to such exceptions as may be specified therein) to all land, or as a special order applicable only to such land as may be so specified.

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

(5) Without prejudice to the generality of subsection (4) where planning permission is granted by a development order for the erection, extension or alteration of any buildings, the order may require the approval of the Board to be obtained with respect to the design or external appearance of the buildings.

(6) Any provision of a development order whereby planning permission is granted for the use of land for any purpose on a limited number of days in a period specified in that provision shall (without prejudice to the generality of references in this Act to limitations) be taken to be a provision granting planning permission for the use of land for any purpose subject to the limitation that the land shall not be used for any one purpose in pursuance of that provision on more than that number of days in that period.

(7) Orders made under this section are subject to the negative resolution procedure.

[Section 15 subsection (7) inserted by 2011 : 3 s. 2 effective 21 March 2011; Section 15 subsections (2A) and (2B) inserted, and subsection (7) amended by 2021 : 33 s. 4 effective 1 July 2022]

Procedures; development orders

15A The Director shall prepare and the Minister shall publish procedures for section 14A or 15 (emergency development order or special development order) and any procedure issued under this section is subject to the negative resolution procedure.

[Section 15A inserted by 2021 : 33 s. 5 effective 1 July 2022]

Form and content of applications

16 (1) Any application to the Board for planning permission shall be made in such manner as may be prescribed in the rules and shall include such particulars, and be verified by such evidence, as may be required by the rules or by directions given thereunder.

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(2) The Board may, if they think fit, refuse to entertain an application for planning permission unless it is accompanied by one or other of the following certificates in the form prescribed by the rules signed by or on behalf of the applicant—

- (a) a certificate stating that, in respect of every part of the land to which the application relates, the applicant is either the estate owner in respect of the fee simple or is entitled to a tenancy thereof;
- (b) a certificate stating that the applicant has given notice of the application to all the persons (other than the applicant) who, at the beginning of the period of twenty-one days ending with the date of the application, were owners of any of the land to which the application relates, and setting out the names of those persons, the addresses at which notice of the application was given to them respectively, and the date of service of each such notice;
- (c) a certificate stating that the applicant is unable to issue a certificate in accordance with paragraph (a) or (b), that he has given notice of the application to such one or more of the persons mentioned in paragraph (b) as are specified in the certificate (setting out their names, the addresses at which notice of the application was given to them respectively, and the date of the service of each such notice), that he has taken such steps as are reasonably open to him (specifying them) to ascertain the names and addresses of the remainder of those persons and that he has been unable to do so;
- (d) a certificate stating that the applicant is unable to issue a certificate in accordance with paragraph (a), that he has taken such steps as are reasonably open to him (specifying them) to ascertain the names and addresses of the persons mentioned in paragraph (b) and that he has been unable to do so.

(3) Any person who issues any certificate which purports to comply with the requirements of this section and which contains a statement which he knows to be false or misleading in a material particular, or recklessly issues a certificate which purports to comply with those requirements and which contains a statement which is false or misleading in a material particular, commits an offence:

Punishment on summary conviction: a fine of \$500.

(4) In this section “owner”, in relation to land, means a person who is for the time being the estate owner in respect of the fee simple thereof or is entitled to a tenancy thereof granted or extended for a term of years certain of which not less than ten years remain unexpired, and includes a life tenant.

Determination of applications

17 (1) Subject to this Act, where application is made to the Board for planning permission, the Board may grant permission either unconditionally or subject to such conditions as they think fit or may refuse permission and, in the exercise of their discretion under this section the Board

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- (a) shall not grant planning permission which would result in development at variance with this Act, a development plan, regulations, rules, a zoning order, a municipal bye-law or other statutory provision, to the extent that the same may be relevant to the application;
- (aa) shall not grant planning permission under this Act unless the application is accompanied by a fire certificate issued by the Chief Fire Officer under section 13 of the Fire Safety Act 2014 or by written confirmation from the Chief Fire Officer that he has surveyed the premises and concluded fire safety requirements under Part 4 of that Act, as the case may be;
- (b) shall have regard to any other relevant consideration.

(2) In determining any application for planning permission the Board shall take into account any representations relating to the application which are received by them during such period as may be determined in accordance with regulations or rules.

[Section 17 subsections (1) and (2) amended by 2014 : 24 s. 4 effective 29 July 2014; Section 17 subsection (1) amended by 2014 : 33 s. 55 effective 1 January 2018]

Conditional grant of planning permission

18 (1) Without restricting the generality of section 17, conditions may be imposed on the grant of planning permission thereunder—

- (a) for regulating the development or use of any land under the control of the applicant (being land contiguous to the land that is the subject of the application) or requiring the carrying out of works on any such land, so far as appears to the Board to be expedient for the purposes of or in connection with the development authorized by the permission;
- (b) for requiring the removal of any buildings or work authorized by the permission, or the discontinuance of any use of land so authorized, at the expiration of a specified period, and the carrying out of any works required for the reinstatement of land at the expiration of that period.

(2) Any permission granted subject to any such condition as is mentioned in subsection (1)(b) is in this Act referred to as permission granted for a limited period only.

(3) Planning permission shall be deemed to be granted subject to a condition suspending the effect of such permission during—

- (a) the period limited by the rules for the service of notice of appeal under section 57(2) and, thereafter, in the event of such service, until the final determination or abandonment of the appeal;
- (b) in the case of planning permission granted by a Municipality, the period during which appeal may be made to the Board under section 58(1) and, thereafter, in the event of the making of an appeal, until the final determination or abandonment of the appeal; and

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- (c) in the case of planning permission granted by the Director, the period during which appeal may be made to the Board under section 58A(1) and, thereafter, in the event of the making of an appeal, until the final determination or abandonment of the appeal.

[Section 18 subsection (3) amended by 2014 : 24 s. 5 effective 29 July 2014]

Decision of Board to be final

19 Subject to Parts VII and IX, the decision of the Board on any application for the grant of planning permission shall be final.

Permission to retain buildings or works or continue use of land

20 (1) An application for planning permission may relate to buildings or works constructed or carried out, or a use of land instituted, before the date of the application, whether—

- (a) the buildings or works were constructed or carried out, or the use instituted, without planning permission or in accordance with planning permission granted for a limited period; or
- (b) the application is for permission to retain the buildings or works, or continue the use of the land, without complying with some condition subject to which a previous planning permission was granted.

(2) Any power to grant planning permission to develop land under this Act shall include power to grant planning permission for the retention on land of buildings or works constructed or carried out, or for the continuance of a use of land instituted, as mentioned in subsection (1); and references in this Act to planning permission to develop land or to carry out any development of land, and to applications for such permission, shall be construed accordingly.

(2A) Notwithstanding the power to grant planning permission in accordance with subsection (2), where development of land has been carried out in breach of planning control and an application for planning permission for the development is subsequently made, the Board shall not grant planning permission—

- (a) for the retention on the land of buildings or works constructed or carried out before the date of the application; or
- (b) for the continuance of a use of the land instituted before the date of the application,

unless the applicant shows to the satisfaction of the Board that he was not responsible for the breach of planning control or that, at the time the development was being so carried out, he did not know, and could not reasonably be expected to have known, that the development was in breach of planning control.

(2B) Subsection (2A) does not apply to an application for planning permission referred to in subsection (1) if, at the time the application is made, enforcement action can no longer be taken in respect of that breach.

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(2C) In this section, “breach of planning control” and “enforcement action” have the meanings given in section 61A(2).

(3) Any planning permission granted in accordance with subsection (2) may be granted so as to take effect from the date on which the buildings or works were constructed or carried out, or the use was instituted, or (in the case of buildings or works constructed or a use instituted in accordance with planning permission granted for a limited period) so as to take effect from the end of that period, as the case may be.

[Section 20 subsections (2A), (2B) and (2C) inserted by 2018 : 31 s. 3 effective 1 September 2018]

Effect of planning permission

21 (1) Without prejudice to the provisions of this Act as to the duration, revocation or modification of planning permission, any grant of planning permission to develop land shall (except in so far as the permission otherwise provides) enure for the benefit of the land of all persons for the time being interested therein.

(2) Where planning permission is granted for the erection of a building, the grant of permission may specify the purposes for which the building may be used; and if no purpose is so specified, the permission includes permission to use the building for the purpose for which it is designed.

Registers of applications and decisions

22 (1) The Minister shall keep, in such manner as he may determine, a register containing such information as he may determine with respect to—

- (a) applications—
 - (i) for planning permission made to the Board, including applications to subdivide any land;
 - (ii) for compensation payable under Part VII; including information as to the manner in which such applications have been dealt with;
- (b) the revocation or modification of planning permission under section 25;
- (c) notices served;
- (d) agreements made under section 34.

(2) Every register kept under this section shall be available for inspection by the public at all reasonable hours on payment of such fee as may be prescribed under the Government Fees Act 1965 *[title 15 item 18]*.

[Section 22 amended by 1997:3 effective 1 April 1997]

Duration of planning permission

23 (1) Subject to section 38 every planning permission granted before 27 June 1974 shall, if the development to which it relates has not been begun by 27 June 1974, be deemed to have lapsed on 27 June 1974 if it had not, before 27 June 1974, ceased to have had effect.

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(2) Subject to this Act every planning permission other than a planning permission in principle granted after 26 June 1974 shall be granted subject to the condition that the development to which it relates must be begun not later than the expiration of—

- (a) two years beginning with the date on which the permission is granted; or
- (b) such other period (whether longer or shorter) beginning with the said date as the Board may direct.

(3) If after 26 June 1974 planning permission other than planning permission in principle is granted without the condition required by subsection (2), it shall be deemed to have been granted subject to the condition that the development to which it relates must be begun not later than the expiration of two years beginning with the date of the grant.

(4) Subject to this Act every planning permission in principle granted after 26 June 1974 shall be granted subject to conditions to the following effect—

- (a) that, in the case of any reserved matter, application for approval must be made not later than the expiration of two years beginning with the date of the grant of planning permission in principle; and
- (b) that the development to which the permission relates must be begun not later than which ever is the later of the following dates—
 - (i) the expiration of two years from the date of the grant of planning permission in principle; or
 - (ii) the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

(5) If after 26 June 1974 planning permission in principle is granted without the conditions required by subsection (4), it shall be deemed to have been granted subject to those conditions.

(6) The Board may, in applying subsection (4), substitute for the periods of two years referred to in that subsection such other periods (whether shorter or longer) as they may consider appropriate.

(7) In the exercise of their powers under this section the Board shall have regard to the provisions of the development plan and to any other material considerations.

(8) In this section “planning permission in principle” means planning permission granted with the reservation for subsequent approval by the Board of matters (referred to in this section “reserved matters”) not particularized in the application or which are specified by the Board when granting such permission.

(9) For the purposes of this section development shall be taken to have begun on the earliest date on which any operation comprised in the development begins to be carried out with the exception of works of excavation or site clearance preparatory to the building, erection or construction of any building or structure.

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Termination of planning permission by reference to time limit

24 (1) Where by virtue of section 23 a planning permission is subject to a condition that the development to which the permission relates must be begun before the expiration of a particular period and that development has been begun within the period but the period has elapsed without the development having been completed the Minister may, if he is of the opinion that the development will not be completed within a reasonable period, serve a notice (hereinafter in this section referred to as a "completion notice") stating that the planning permission will cease to have effect at the expiration of a further period specified in the notice, being a period of not less than twelve months after the notice takes effect.

(2) A completion notice shall be served on the owner and occupier of the land and on any other person whom in the opinion of the Minister will be affected by the notice.

(3) If, within such period as may be specified in a completion notice (not being less than twenty-eight days from the service thereof) any person on whom the notice is served so requires the Minister shall afford to that person an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose and the Minister may then, after receiving the report of the person so appointed, if he thinks fit, confirm, vary or revoke the completion notice.

(4) The planning permission referred to in a completion notice shall at the expiration of the period specified in the notice, whether the original period specified in subsection (1) or a longer period substituted by the Minister under subsection (3), lapse.

(5) Where by reason of subsection (4) any planning permission lapses, the Minister may, upon giving not less than fourteen days' notice to the persons upon whom the completion notice was served, enter upon the land and take such steps as may to him seem necessary, whether by the removal of any building or structure or by the execution of any works, to restore the land to its state previous to the grant of such planning permission or to render any building or structure erected or works undertaken in accordance therewith safe or sightly, and the Minister may further recover as a debt owing to the Crown in any court of competent jurisdiction from the person who is then the owner of the land any expenses reasonably incurred by him in taking such steps.

Revocation and modification of planning permission

25 (1) Subject to this section, if it appears to the Minister that it is expedient, having regard to the development plan and to any other material considerations, that any planning permission should be revoked or modified, he may by order revoke or modify the permission to such extent as appears to him to be expedient as aforesaid.

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

- (a) where the permission relates to the carrying out of building or other operations, at any time before those operations have been completed;
- (b) where the permission relates to a change of the use of any land, at any time before the change has taken place:

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

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

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

(5) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work or upon other matters preparatory thereto shall be deemed to be included in the expenditure incurred in carrying out that work, but except as aforesaid no compensation shall be paid under this section in respect of any work carried out before the grant of the planning permission that is revoked or modified, or in respect of any other loss or damage (not being loss or damage consisting of the depreciation in value of an interest in land) arising out of anything done or omitted to be done before the grant of that planning permission.

(6) Where the planning permission that is revoked or modified by an order under this section is planning permission for which compensation would be payable under Part VII in the circumstances therein mentioned, Part VII shall apply as if for references in section 43 to the refusal of the planning permission or the imposition of conditions on the grant thereof there were substituted references to the revocation of permission or the modification thereof by the imposition of conditions.

(7) Where, by virtue of this section, compensation is payable in respect of expenditure incurred in carrying out any work on land, then if the Minister purchases any interest in that land, or a claim for compensation is made in respect of any such interest under section 43, any compensation payable in respect of the acquisition of that interest or, as the case may be, any compensation payable in respect of the interest under section 43, shall be reduced by an amount equal to the value of the works in respect of which compensation is payable under this section.

PART IVA

PROTECTED CONSERVATION AREAS

Protected conservation area

25A (1) The Minister may, on written agreement with the owner of the land, by order designate an area as a protected conservation area for one or more of the following purposes—

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- (a) to safeguard and maintain plants and animals as well as geological, marine and other natural features where protection is required with human use generally limited to scientific research and educational purposes in order to protect and preserve the natural resources;
 - (b) to provide for the use of the area in its natural state with a minimum of commercial and mechanized activity to provide open space for use by the public for educational, social or recreational purposes;
 - (c) to protect and maintain natural or historic monuments or features (including forts), sites of particular historic, archaeological, or aesthetic value—
 - (i) to so maintain them to protect their integrity;
 - (ii) to so manage them to protect them from deterioration; and
 - (iii) to provide public enjoyment, research and educational opportunities.
 - (d) to protect and maintain arable land to ensure the integrity of the land for cultivation.
- (2) An order made under subsection (1)—
- (a) may restrict or regulate the development or use of the area of land designated as a protected conservation area and the Minister may enforce the agreement against the owner of the land and his successors in title as a restrictive covenant;
 - (b) shall amend the Fifth Schedule to include a description of the land the purposes for which it is protected;
 - (c) is subject to the negative resolution procedure.
- (3) The Minister may, on written agreement with the owner of the land, by order amend the Fifth Schedule—
- (a) by adding to an area or part of an area specified in the Fifth Schedule;
 - (b) by changing an area or part of an area specified in the Fifth Schedule;
 - (c) by removing an area or part of an area specified in the Fifth Schedule.
- (4) An order—
- (a) under subsection (3)(a) or (b) is subject to the negative resolution procedure;
 - (b) under subsection (3)(c) is subject to the affirmative resolution procedure.
- (5) On written agreement with the owner of the land, the Minister may, by notice published in the Gazette, amend the Fifth Schedule by renaming an area or part of an area specified in the Fifth Schedule.

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(6) The Minister shall cause a map of each area specified in the Fifth Schedule to be prepared and shall publish a notice in the Gazette of the place or places and hours where copies may be inspected.

(7) A notice under subsection (5) or (6) is not a statutory instrument and shall not be subject to the Statutory Instruments Act 1977.

[Section 25A inserted by 2021 : 33 s. 6 effective 1 July 2022]

Notification; construction or change of use

25B (1) The Minister shall by notice published in the Gazette announce any proposal by the owner of the land for the construction of any road or building, the change of use or the change of boundary with respect to a protected conservation area and shall give opportunity for and shall take into account public comments before acting on the proposal.

(2) A notice under subsection (1)—

- (a) shall specify the nature of and the reason for the proposed action, and the time within which and manner by which public comments will be received;
- (b) is subject to the negative resolution procedure.

[Section 25B inserted by 2021 : 33 s. 6 effective 1 July 2022]

PART V

SPECIAL PROVISION IN CERTAIN CASES

Conditions requiring preservation or planting of trees

26 The Board shall ensure whenever it is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees or shrubs.

Tree preservation order

27 (1) If it appears to the Minister that it is expedient in the interests of amenity to make provision for the preservation of any tree, trees, groups of trees or woodlands in any area, he may for that purpose make an order (in this Act referred to as “tree preservation order”) with respect to any such tree, trees, groups of trees or woodlands as may be specified in the order; and, in particular, provision may be made by any such order—

- (a) for prohibiting (subject to any exemptions for which provision may be made by the order) the cutting down, topping, lopping or wilful destruction of trees except with the consent of the Minister, which may be given subject to conditions;
- (b) for securing the replanting, in such manner as may be prescribed by or under the order, of any part of a woodland area that is felled in the course of forestry operations permitted by or under the order;

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- (c) for applying, in relation to any consent under the order, and to applications therefor, any of the provisions of this Act relating to planning permission, and to applications for any such permission, subject to such adaptations and modifications as may be specified in the order;
- (d) for the payment by the Minister, subject to such exceptions and conditions as may be specified in the order, of compensation in respect of damage or expenditure caused or incurred in consequence of the refusal of any consent required under the order. or of the grant of any such consent subject to conditions.

(2) Provision may be made by regulations under this section with respect to the form of tree preservation orders, and the procedure to be followed in connection with the making and approval of such orders, and such regulations shall make provision for securing—

- (a) that notice shall be given to the owners and occupiers of land affected by any such order;
- (b) that objections and representations with respect to the proposed order duly made in accordance With the regulations shall be considered before the order is made by the Minister; and
- (c) that copies of the order when it comes into operation shall be served on the owners and occupiers of the land to which it relates.

(3) Notwithstanding subsection (2), where it appears to the Minister that any tree preservation order should take effect immediately, he may make the order provisionally without complying with the requirements of any regulations with respect to the consideration of objections and representations, but any order so made shall cease to have effect upon the expiration of two months from the date on which it is so made unless within that period it has again been made, with or without modifications, after compliance with those requirements.

(4) Without limiting the other exemptions for which provision may be made by a tree preservation order, no such order shall apply to the cutting down, topping or lopping of trees that are dying or dead or have become dangerous or the cutting down, topping or lopping of any trees in compliance with any obligation imposed by any statutory provision or so far as may be necessary for the prevention or abatement of a nuisance.

(5) Any person who contravenes a tree preservation order commits an offence:

Punishment on summary conviction: a fine of \$500 and, in case of a continuing offence, a further fine \$25 for every day after the first day during which the contravention is so continued.

Designated areas

28 (1) A development plan may designate by reference to this section areas of Bermuda (being areas considered to possess natural features of special environmental

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value) as areas (to be called “designated areas”) to which one or more of the following heads of protection shall extend by virtue of this section—

- (a) woodlands protection;
- (b) agricultural land protection;
- (c) beach protection;
- (d) cave protection;
- (e) habitat protection;
- (f) other natural features protection.

(2) Where it is desired in a development plan to obtain the benefit of this section for an area, the plan shall designate that area for the purpose and declare that one or more of the heads of protection listed in subsection (1) (specifying the head or heads) shall have effect in that designated area, and thereupon the provisions set forth in the Fourth Schedule in respect of that head or those heads shall have effect within that designated area.

[Section 28 amended by 1998:18 effective 18 June 1998]

Hotel development

29 (1) Where an application for planning permission is made to the Board in pursuance of section 16 and the proposed development relates to the erection of a hotel within the meaning of the Hotels (Licensing and Control) Act 1969 [*title 17 item 2*] or the extension or alteration of an existing hotel involving any increase in the provision of sleeping accommodation for guests at that hotel, the Board shall, without prejudice to the generality of its discretion to refuse planning permission under section 17(1), refuse planning permission unless the application is accompanied by a certificate of approval granted under this section and a fire certificate issued by the Chief Fire Officer under section 13 of the Fire Safety Act 2014 or by written confirmation from the Chief Fire Officer that he has surveyed the premises and concluded fire safety requirements under Part 4 of that Act, as the case may be.

(2) An application for a certificate of approval shall be made to the Minister responsible for tourism in such form and in such manner as may be specified by the Minister responsible for tourism.

(3) The Minister responsible for tourism may, in his discretion, grant a certificate of approval in respect of which application has been made under subsection (2) either unconditionally or subject to such conditions as he thinks fit, but if, in relation to any application, the Minister responsible for tourism is of the opinion, having regard to economic factors affecting the phased development of hotel accommodation, that it would be undesirable in the public interest that a certificate of approval should be granted, he may refuse to grant a certificate and need not give any reason for so refusing.

(4) Any person aggrieved by the refusal of the Minister responsible for tourism to grant a certificate of approval or by the imposition of any condition on the grant of such certificate may, within thirty days after receipt of notification of the decision of the

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Minister responsible for tourism or such longer period as the Cabinet may for good cause allow, appeal against that decision to the Cabinet and the decision of the Cabinet on the appeal shall be final and the Minister responsible for tourism shall act upon such decision accordingly.

(5) In the event that planning permission is granted, any condition in a certificate of approval shall, without prejudice to any other condition that the Board may impose, be deemed to be for all the purposes of this Act a condition subject to which the planning permission was granted.

[Section 29 amended by BR 5 / 2011 para. 5 effective 25 February 2011; Section 29 subsection (1) amended by 2014 : 33 s. 55 effective 1 January 2018]

Listed buildings

30 (1) The Minister shall compile lists of buildings of special architectural or historical interest or approve, with or without modifications, such lists compiled by other persons or bodies of persons, and may amend any list so compiled or approved.

(2) In considering whether to include a building in a list compiled or approved under this section, the Minister may take into account not only the building itself but also—

- (a) any respect in which its exterior contributes to the architectural or historic interest of any group of buildings of which it forms part; and
- (b) the desirability of preserving, on the ground of its architectural or historic interest, any feature of the building consisting of a man-made object or structure fixed to the building or forming part of the land comprised within the curtilage of the building.

(3) Before including a building in a list compiled or approved under this section the Minister shall—

- (a) give notice to the owners and occupiers of the building of his intention to include such building in such list;
- (b) give such owners and occupiers an opportunity of making such representations or objections as they think fit within such period, not being less than thirty days, of the service of notice under paragraph (a) as the Minister may determine,

and the Minister shall, upon including a building in such a list, give notice to the owners and occupiers of such building of such inclusion.

(4) Notwithstanding subsection (3), where it appears to the Minister that a building should be listed immediately, he may direct that such building shall be included provisionally in a list compiled or approved under this section without complying with the requirements of subsection (3), but such listing shall cease to have effect upon the expiration of 90 days from the date of such direction unless within that period such building has been included in such list after compliance with those requirement.

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(5) A copy of every list compiled or approved by the Minister under this section, or any amendments to such list, certified by or on behalf of the Minister to be a true copy thereof, shall be kept with the register required to be kept under section 22.

Historic areas

31 (1) A development plan may appoint by reference to this section areas of Bermuda (to be called “historic areas”) to which this section shall extend for the purpose of protecting the historic, architectural or cultural character or importance of those areas.

(2) No person shall in a historic area do any development consisting of—

- (a) altering a building; or
- (b) commencing or continuing a building operation,

unless planning permission therefor has been granted under this section, and for the purposes of this section section 4 and section 18(1)(a) of the Town of St. George (Protection of Buildings of Special Interest) Act 1950 [*title 20 item 11*] (and section 2 of that Act so far as necessary for the interpretation of those provisions) shall have effect for the purpose of defining the meaning of “altering a building” or “commencing or continuing a building operation”.

(3) The Board may refuse the grant of planning permission for the doing of any development regulated by subsection (2) on any of the following grounds—

- (a) that the development would cause detriment to the established historic, architectural or cultural character of the area;
- (b) that the development would cause detriment to the aspect, appearance or view of the area;
- (c) that the development would cause detriment to a prospect or view, being an environmentally important prospect or view, from one or more parts of the area.

(4) Where an application is made to the Board to alter an existing building within a historic area, the Board may determine, after consulting any body of persons appearing to the Board to have a special interest in preserving the heritage of Bermuda, or of the part of Bermuda affected by the application, that that building is of such historic, architectural or cultural importance to that heritage that no future alteration ought to be made to that building; and where such a determination has been made in relation to a building, the building shall be deemed by virtue of the determination to be a listed building unless upon an appeal made to him under section 57 against the determination the Minister himself determines otherwise.

(5) In dealing with an appeal from a determination of the Board under subsection (4) the Minister shall comply with section 30(2), (3) and (5) so far as applicable.

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Crown land

32 (1) Where application for planning permission to develop or subdivide land is made by the Government or any agency of the Crown and the Board refuses planning permission or grants such permission subject to any conditions or limitations which, in the opinion of the Minister, are inappropriate in all the circumstances of the case, the Minister may give a direction substituting his own decision for that of the Board.

(2) Before giving a direction under subsection (1) the Minister shall give notice in writing of his proposed direction to any person who appeared as an objector before the Board when the application for planning permission was determined and, if so required by such person, shall afford him an opportunity to appear before, and be heard by, a person appointed by the Minister for the purpose.

Community areas

33 (1) Where a development plan specifies in relation to any area of land—

- (a) a housing density above which such land may not ordinarily be developed; and
- (b) makes provision for the development of such land to a higher density than such density where the developer enters into an agreement with the Minister under this section,

the Board may grant planning permission for development to such higher density, but no such permission shall be of any effect until and unless such an agreement is entered into and, where any moneys are required to be paid under such agreement into a trust fund constituted under subsection (4), such moneys have been so paid, or the payment thereof has been secured to the satisfaction of the Minister.

(2) An agreement entered into under this section may provide for—

- (a) the creation on the land of the developer of a community area for the use of persons residing in the neighbourhood in such manner as may be agreed; or
- (b) where the Minister is of the opinion that a community area ought not to be created on such land, the payment by the developer into the trust fund constituted under subsection (4) of such sum as the Minister may determine as being the value of the land which would otherwise have been set aside as a community area.

(3) Where land is to be set aside as a community area by virtue of an agreement under this section such agreement shall provide for the vesting of such area in the Government subject to such trusts as may be agreed and where such agreement so provides no person shall undertake any development on the land to which the agreement relates until and unless such land has been conveyed to the Government or unless the Minister otherwise permits.

(4) There shall be a fund into which moneys paid by a developer by virtue of an agreement under this section shall be paid and such fund shall be managed by such

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trustees as the Minister may from time to time appoint, and such fund may be expended by such trustees on—

- (a) the provision of community areas in Bermuda;
- (b) the maintenance of community areas and the provision of facilities thereon;
- (c) such other purposes as may be prescribed by the Minister by regulations under this subsection.

(5) Where any land has been set aside as a community area by virtue of an agreement under this section and the Minister is of the opinion that such land ought no longer to be so set aside he may authorize on such terms and conditions as he may determine—

- (a) the setting aside of any other land as a community area in exchange for the land so set aside; or
- (b) the sale, lease or other disposition of the land so set aside, conditional upon the payment of the proceeds thereof into the fund established under subsection (4).

(6) For the purposes of section 68(2) any development of land in contravention of subsection (3) shall be deemed to be development undertaken without planning permission.

(7) Trustees appointed under subsection (4) shall hold office at the pleasure of the Minister.

Agreement regulating development or use of land

34 (1) The Minister may enter into an agreement with any person interested in land for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be specified in the agreement; and any such agreement may contain such incidental and consequential provisions (including provisions of a financial character) as appear to the Minister to be necessary or expedient for the purposes of the agreement.

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

(3) Nothing in this section or in any agreement made under this section shall—

- (a) restrict the exercise, in relation to land which is the subject of such an agreement, of any powers exercisable by the Board or the Minister or any other public authority under this Act so long as those powers are exercised in accordance with the provisions of this Act or any development plan; or

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- (b) require the exercise of any such powers otherwise than as mentioned in paragraph (a).

PART VI SUBDIVISIONS

Meaning of subdivision

35A In this Act, “subdivision” means—

- (a) any conveyance of a part of any lot or block of land by way of a deed or transfer,
- (b) the granting, assigning or exercising of a power of appointment with respect to a part of any lot or block of land,
- (c) the mortgaging or charging of a part of any lot or block of land,
- (d) the entering into of an agreement of sale and purchase of a part of any lot or block of land, or
- (e) the entering into any agreement which has the effect of granting the use of or right in a part of any lot or block of land directly or by entitlement to renewal for a period of twenty-one years or more;

and “person subdividing” shall be construed accordingly.

[Section 35A paragraphs (a) to (e) substituted by 2007:16 s.22 & Sch e]fective 22 June 2007]

Planning permission required for subdivision

35B (1) Subject to this section, planning permission is required for any subdivision of land.

(2) Planning permission for subdivision of land is not required—

- (a) where the person subdividing does not retain the fee or the equity of redemption in, or a power or right to grant, assign or exercise a power of appointment with respect to, any land abutting the land that is being subdivided;
- (b) where the land or any use of or right therein is being acquired or disposed of by the Government; or
- (c) where the land or any use of or right therein is being acquired solely for the purpose of providing a right of way to a statutory undertaker for a transmission line, pipe, or a pipeline and associated works;

but in the case mentioned in paragraph (b), a final plan of subdivision shall, on completion of the transaction, be submitted to the Minister by the Minister responsible for the land in question.

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(3) Subdivision in contravention of subsection (1) shall not create or convey any interest in land; but this subsection shall not affect an agreement entered into subject to the express condition contained therein that such agreement is to be effective only if planning permission is obtained.

Application for planning permission to subdivide

35C (1) Application may be made in such manner as may be prescribed by the rules for planning permission to subdivide land.

(2) In considering an application for planning permission under this section, the Board shall have regard to such of the following as may be relevant—

- (a) whether the plan conforms to the development plan for the area;
- (b) whether the proposed subdivision is premature or necessary in the public interest;
- (c) the suitability of the land for the purposes for which it is to be subdivided;
- (d) the number, width, location and proposed grades and elevations of roads, and the adequacy thereof, and the roads linking the roads in the proposed subdivision with the established road system in the vicinity, and the adequacy thereof;
- (e) the dimensions and shape of any lots of land;
- (f) the restrictions or proposed restrictions, if any, on the land, buildings and structures proposed to be erected thereon and the restrictions, if any, on adjoining lands;
- (g) the conservation of the visual amenities of the area;
- (h) the adequacy of utilities and services;
- (i) the area of land, if any, within the subdivision that, exclusive of highways, is to be conveyed or dedicated for public or community purposes.

(3) The Board may impose such conditions on the grant of planning permission as in its opinion are advisable.

(4) Without restricting in any way whatsoever the generality of subsection (3), the Board may, in particular, impose as a condition when the subdivision abuts on an existing road that sufficient land, other than land occupied by buildings or structures, shall be dedicated to provide for the widening of the road to such width as the Board, after consulting with the Minister responsible for public roads, considers necessary.

(5) Planning permission for the draft plan of subdivision shall expire at the end of the period of three years beginning with the date of its grant; accordingly, an application for planning permission based on a final plan of subdivision must be submitted within that period.

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(6) Part X of this Act shall apply with the necessary modifications in relation to failure to comply with a condition imposed by the Board under subsection (3) or (4) as it applies to failure to comply with any condition subject to which planning permission to develop land was granted.

Registration of planning permission to subdivide

35D (1) When the Board has granted planning permission based on a final plan of subdivision under section 35C, the Minister shall register that plan on the register kept under section 22.

(2) Planning permission by reference to a registered plan of subdivision shall continue to have effect until superseded by the registration under subsection (1) of any subsequent plan relating to the same land.

(3) But a registered plan of subdivision which indicates details of any planning permission—

- (a) previously registered under subsection (1), or
- (b) deemed by section 5(2) of the Development and Planning Amendment Act 1997 to have been so registered,

shall not have the effect of superseding any such permission.

[Sections 35 and 36 substituted by 1997:3 effective 1 April 1997]

More than one building on land prior to 3 August 1965

37 Notwithstanding any development plan, development order or any zoning order, permission under this Part may be granted to subdivide land where it is established to the satisfaction of the Board—

- (a) that more than one building (not being a building ancillary to another) existed on such land before 3 August 1965;
- (b) *[Repealed]*

[Section 37 amended by 1997:3 effective 1 April 1997]

38 *[Section 38 repealed by 1997:3 effective 1 April 1997]*

Certain subdivisions of buildings not to require planning permission

39 Where permission to subdivide land would otherwise be required under this Part but the land to be subdivided consists only of part of a building (and no other land) nothing in this Part shall operate so as to require planning permission to be obtained before such subdivision may be effected.

[Section 39 amended by 1997:3 effective 1 April 1997]

Certain persons not affected by section 35

40 (1) Nothing in section 35B shall prevent the sale of any land (“the land”) by a person retaining abutting land where either—

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- (a) that person—
 - (i) is a trustee, estate representative or mortgagee selling the land within his powers as trustee, estate representative or mortgagee in relation to that land; and
 - (ii) retains the abutting land otherwise than in the character of trustee, estate representative or mortgagee, as the case may be, in relation to the land sold; or
- (b) that person's interest in the land is different from his interest in the abutting land; or
- (c) that person's interest in the land is the same as his interest in the abutting land, but another person has an interest in either the land or the abutting land but not both.

(2) In this Part—

“interest”, in relation to abutting land, means an interest of a kind described in section 35B(1)(a);

“retain abutting land” means to retain an interest in abutting land; and

“sell”, in relation to land, means to convey it or deal with it in any of the other ways mentioned in section 35A, and grammatical variations of “sell”, and cognate expressions, shall have corresponding meanings.

[Section 40 amended by 1997:3 effective 1 April 1997]

Sale of pre-1974 lots not to require subdivision approval

41 (1) Nothing in section 35B shall prevent the sale of the whole of an existing lot, and the whole of such a lot shall be capable of being sold by any person (whether or not retaining abutting land) at any time, notwithstanding that section.

(2) Notwithstanding subsection (1), development of an existing lot shall not be made save pursuant to and in accordance with planning permission granted in respect of that development

(3) In this section “existing lot” means any parcel of land which on 26 June 1974 was held by a single title.

[Section 41 amended by 1997:3 effective 1 April 1997]

Retroactive effect of planning permission in certain cases

42 (1) Notwithstanding section 35B(3), where—

- (a) any person agrees to sell, or purports in good faith to sell, land in relation to whose sale planning permission for subdivision is required; and
- (b) the agreement or purported sale would be lawful and effective if such planning permission had been granted; and

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- (c) such planning permission is granted after the agreement has been made or the purported sale has taken place,

the grant of planning permission shall operate to make the agreement or purported sale valid and effectual for all purposes.

(2) Where planning permission affects land by virtue of subsection (1), it shall have effect as provided in that subsection in relation to any transaction made in relation to the land, whether so made before or after the grant of planning permission and by whomever so made.

[Section 42 substituted by 1997:3 effective 1 April 1997]

PART VII

COMPENSATION FOR REFUSAL OR CONDITIONAL GRANT OF PLANNING PERMISSION

Entitlement to compensation

43 Subject to this Part, a person shall be entitled to compensation under this Part in respect of a decision of the Board whereby planning permission for the carrying out of development of land is refused, or is granted subject to conditions, if—

- (a) the value of his interest in that land is depreciated by the decision; and
- (b) he or his predecessors in title have not previously received compensation under this Act or under Part IV of the Development and Planning Act 1965 in respect of that land,

and the amount of the compensation shall be the amount by which the value of that interest is depreciated by that decision.

Planning decisions not ranking for compensation

44 (1) Subject to any regulations under section 54 compensation under this Part shall not be payable in respect of the refusal of planning permission—

- (a) for any development that consists of or includes the making of any material change in the use of any building or other land;
- (b) to develop land if the refusal or one of the reasons stated for the refusal is that development of the kind proposed would be premature by reference to either or both of the following matters—
 - (i) the order of priority, if any, indicated in the development plan for the area in which the land is situated for development in that area;
 - (ii) any existing deficiency in the provision of roads, water supplies or sewerage services, and the period within which any such deficiency may reasonably be expected to be made good;

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- (c) to develop land if the reason or one of the reasons stated for the refusal is that the land is unsuitable for the proposed development on account of its liability to flooding or to subsidence;
- (d) subject to subsection (2), to develop land where the grant of planning permission would be contrary to any development plan;
- (e) to develop land where the grant of planning permission would be contrary to this Act, or any regulation, municipal bye-law, zoning order or other provision of law;
- (f) subject to subsection (2), to develop land in a manner which is not ordinarily permitted by a development plan in the area where the land is situated notwithstanding that there is a discretion vested in the Board by such plan to permit such development;
- (g) to develop land situated within an area designated in a development plan as an environmental conservation area or as a special study area pending the coming into force of a local plan relating to such area if the refusal of planning permission takes place within a period of two years from the date upon which the land was first so designated, and if the refusal or one of the reasons stated for the refusal is that the development of the kind proposed might prejudice the operation of a future local plan;
- (h) subject to subsection (2), to develop land in an area designated in a development plan as one reserved principally for the accommodation of tourist facilities if the refusal or one of the reasons given for the refusal is that it is desirable that the land be reserved for the future accommodation of tourist facilities;
- (i) authorizing the demolition or the making of material alterations to a listed building;
- (j) subject to subsection (2), to develop land in an area designated in a development plan as a ridge line preservation area.

(2) Nothing in subsection (1)(d), (f), (h) or (j) shall have effect with reference to any land which—

- (a) not being land comprised in a plan of subdivision registered under Part VI, may lawfully be alienated without planning permission being, or having been granted therefor, and without the registration of a plan of subdivision in respect thereof; or
- (b) being land comprised in a plan of subdivision registered under Part VI would be, if it were not so comprised, land which might lawfully be alienated without planning permission being, or having been, granted therefor, and without the registration of a further plan of subdivision in respect thereof,

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where no planning permission for any development of a character specified in section 45(4) is available in respect of such land or any part thereof.

(3) Compensation under this Part shall not be payable in respect of the imposition, on the granting of planning permission to develop land, of any condition relating to—

- (a) the number or disposition of buildings on any land;
- (b) the dimensions, design, structure or external appearance of any building, or the materials to be used in its construction;
- (c) the manner in which any land is to be laid out for the purposes of the development, including the provision of facilities for the parking, loading, unloading or fuelling of vehicles on the land;
- (d) the use of any buildings or other land;
- (e) the location or design of any means of access to a highway, or the materials to be used in the construction thereof;
- (f) the landscaping of any land, or the planting of trees or shrubs thereon, or the construction of any works to restore the land to its former condition or to a condition which is not unsightly;
- (g) the manner in which sewage or noxious substances are to be disposed of or treated prior to such disposal, and the nature of any works required for the purpose of such disposal or treatment,

or, where planning permission is granted by or under a development order in respect of any condition imposed by such order on such planning permission.

(4) Subsection (1)(a) applies only to a building or other land which has a predominant existing use at the time when, or within two years before, a development plan takes effect, including use as agricultural land, or to any land which has not been developed after a development plan takes effect, but does not apply to land which has not been developed in any way.

No compensation if other development permitted

45 (1) Subject to any regulations under section 54, compensation under this Part shall not be payable in respect of a planning decision whereby planning permission is refused for the development of land if, notwithstanding that refusal, there is available with respect to that land planning permission for development to which this section applies.

(2) Where planning permission for development to which this section applies is available with respect to part only of the land, this section shall have effect only in so far as the interest subsists in that part.

(3) Where a claim for compensation under this Part is made in respect of an interest in any land, planning permission for development to which this section applies shall be taken for the purposes of this section to be available with respect to that land or

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a part thereof if, immediately before the Minister gives notice of his findings in respect of that claim, there is in force with respect to that land or part a grant of, or an undertaking by the Board to grant, planning permission for some such development, subject to no conditions other than such as are mentioned in section 44(3).

(4) This section applies to any development of a residential, commercial or industrial character, if the development consists wholly or mainly of the construction of houses, flats, shops or office premises, hotels, garages and petrol filling stations, cinemas or industrial buildings (including warehouses), or any combination thereof.

Assessment of compensation

46 (1) For the purposes of this Part, the value of an interest in land, shall be taken to be depreciated by a planning decision (in this section referred to as “the relevant decision”) if, and to the extent to which, that value, calculated in accordance with the following provisions of this section, falls short of what that value, so calculated, would have been if the relevant decision had been a decision to the contrary effect.

(2) Subject to the following provisions of this section, any such value shall for the purposes of this section be calculated—

- (a) at the time of the relevant decision; but
- (b) as affected by that decision, by any grant of planning permission made after that decision and in force immediately before the Minister gives notice of his findings on the claim for compensation in respect of that decision, and by any undertaking to grant planning permission so in force; and
- (c) on the assumption that, after the relevant decision, planning permission would not be granted for any development of the land in question other than in respect of works of repair or renovation or other works of a minor or ancillary character.

(3) In this section “decision to the contrary effect”—

- (a) in relation to a decision refusing permission, means a decision granting the permission subject to such conditions (if any) of a description falling within section 44(3) as the Board might reasonably have been expected to impose if the permission had not been refused; and
- (b) in relation to a decision granting the permission subject to conditions, means a decision granting the permission applied for subject only to such of those conditions (if any) as fall within section 44(3).

Claims for compensation

47 (1) Compensation under this Act shall not be payable unless a claim for it is duly made to the Minister in accordance with this section.

(2) A claim for compensation under this Act shall not have effect unless it is made before the end of the period of six months beginning with the date of the planning decision to which it relates, but the Minister may in any particular case (either before, on

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or after the date on which the time for claiming would otherwise have expired) allow an extended, or further extended, period for making such a claim.

(3) Compensation payable under this Act shall, in default of determination by agreement, be referred by the Minister for determination by arbitration in accordance with the procedure under the Acquisition of Land Act 1970 [*title 19 item 2*] with such modifications as circumstances may require.

(4) Compensation payable under this Act shall be charged upon the Consolidated Fund,

Review of planning decisions where compensation claimed

48 (1) This section and section 49 shall have effect where, in accordance with this Part, one or more claims for compensation in respect of a planning decision have been made to the Minister and the claim, or (if there is more than one) one or more of the claims, has not been withdrawn.

(2) If it appears to the Minister that, if the application for permission to develop the land in question has been referred to him for determination, he would have made a decision more favourable to the applicant, the Minister may give a direction substituting that decision for the decision of the Board.

(3) If it appears to the Minister that planning permission could properly be granted (either unconditionally or subject to certain conditions) for some development of the land in question other than the development to which the application for planning permission related, the Minister may give a direction that this Act shall have effect in relation to that application and to the planning decision as if the application had included an application for permission for that other development, and the decision had included the grant of planning permission (unconditionally or subject to the said conditions, as the case may be) for that development; as may be specified in the direction.

(4) The reference in subsection (2) to a decision more favourable to the applicant shall be construed—

- (a) in relation to a refusal of permission, as a reference to a decision granting the permission, either unconditionally or subject to conditions, and either in respect of the whole of the land to which the application for permission related or in respect of part of that land; and
- (b) in relation to a grant of permission subject to conditions, as a reference to a decision granting the permission applied for unconditionally or subject to less stringent conditions.

Minister to give notice

49 (1) Before giving a direction under section 48 the Minister shall give notice in writing of his proposed direction to any person who made, and has not since withdrawn, a claim for compensation in respect of that decision; and, if so required by any such person, shall afford to him an opportunity to appear before, and be heard by, a person appointed by the Minister for the purpose.

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(2) In giving any direction under section 48, the Minister shall have regard to the provisions of the development plan for the area in which the land in question is situated, in so far as those provisions are material to the development of that land, and shall also have regard to the local circumstances affecting the proposed development, including the use which prevails generally in the case of contiguous or adjacent land, and to any other material considerations.

Effect on claims of direction under section 42

50 (1) Where, in accordance with section 49 the Minister gives notice of a direction under section 48 to a person who has made a claim for compensation in respect of the planning decision to which that direction relates, that person, if he does not withdraw the claim, may, at any time within thirty days after the service on him of the Minister's notice, give notice to the Minister modifying the claim.

(2) Subject to any modification by virtue of a notice given by a claimant under subsection (1) where the Minister gives a direction under section 48 in respect of a decision of the Board, any claim made in respect of that decision shall have effect as if it had been made in respect of the decision which, by virtue of the direction, is substituted for the decision of the Board, or, as the case may be, as if it had been made in respect of the decision of the Board as modified by the direction.

Acquisition of land in lieu of compensation

51 (1) Where a claim for compensation under this Part in respect of any interest in land has been determined in accordance with section 47 the Minister may within one month after the date of the determination of such compensation and in lieu of paying the same, make an offer in writing to purchase the interest in land to which the claim for compensation relates and if the person entitled to that interest is willing to sell the same the Government may forthwith acquire the interest in accordance with section 77.

(2) If the offer of the Minister under subsection (1) is not accepted within such time as may be specified therein, being a time reasonable in the circumstances, the Government may, unless the claim for compensation is sooner abandoned, acquire such interest in accordance with section 77.

Subsequent recovery of compensation

52 (1) Where compensation has been paid under this Part or under Part IV of the Development and Planning Act 1965 in respect of a decision of the Board and the Board subsequently makes a decision to the contrary effect within the meaning of section 46(3) in relation to the land for which compensation has been so paid or any part of it the Board may, and shall if the Minister so requires, impose upon the planning permission granted by such decision to the contrary effect a condition requiring the repayment to the Consolidated Fund of the amount of the compensation or of such part of the compensation as, in the opinion of the Board, is attributable to the part of the land in respect of which such planning permission is granted.

(2) Where a condition is imposed upon any planning permission under subsection (1), such planning permission shall not take effect until and unless the

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amount required to be repaid to the Consolidated Fund has been paid or secured to the satisfaction of the Minister.

PART VIII

BUILDING CONTROL AND OTHER REGULATIONS

[heading amended by 1988:18 effective 14 June 1991]

Building regulations etc

53 *[repealed by 1988:18]*

Planning regulations

54 The Minister may make regulations for—

- (a) regulating and controlling the design of buildings including—
 - (i) roads;
 - (ii) projections;
 - (iii) heights, site coverage, plot ratio and open spaces including service lanes;
 - (iv) sanitation;
 - (v) buildings for special uses including industrial buildings, places of public entertainment and schools;
 - (vi) any sea wall, breakwater, jetty, mole, quay, wharf or pier;
- (b) regulating the minimum size of any habitable room;
- (c) regulating the minimum size of dwelling units;
- (d) regulating and controlling the planning and design of any area designated in accordance with the regulations as a marina;
- (e) amending, varying, modifying, suspending or revoking any zoning order;
- (f) requiring building materials, boats, vehicles, garden tools and other materials or implements which are upon any premises to be screened from roads (including estate roads) and from other premises;
- (g) preventing, remedying or removing injury to amenities arising from the ruinous or neglected condition of any building or fence, boundary wall, sea wall, or by the objectionable or neglected condition of any land attached to a building or fence or abutting on a road or situate in a residential area;
- (h) preserving of buildings, caves, sites and objects of artistic, architectural, archaeological or historic interest;
- (i) preserving or protecting woods, trees, shrubs, plants and flowers;

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- (j) regulating the standards to which any works for the disposal of sewage or for the supply or removal of water are to conform and the method of the installation thereof;
- (k) the guarding or rendering safe of water tanks, excavations and other places of danger;
- (l) for the grant of relief in cases where the application of the provisions of this Act relating to compensation operate inequitably;
- (m) regulating and controlling the placement, height and maintenance of fences, walks, hedges, shrubs and trees and other objects where their regulation is necessary to maintain good visibility for the safe movement of persons and traffic;
- (n) regulating the excavation or filling in of land or the removal of topsoil from land or the prohibition thereof;
- (o) regulating and controlling the materials and colour of buildings, fences and boundary walls;
- (p) regulating and controlling the emission of noxious fumes or gas, or other airborne pollutants and of odours which are, or may be, detrimental to the environment or to the amenities of any area;
- (q) making provision supplementary to section 67.

Building phasing regulations

55 (1) The Minister may by regulations made under this section establish and maintain a system of licensing by which building work, being building work of a kind specified in the regulations, shall not be commenced or carried out unless a licence for the purpose (hereafter in this section referred to as a "phasing licence") has first been obtained from the Minister, on the basis of such priorities, and subject to such terms and conditions, as may be provided for in the regulations.

(2) Regulations made under this section—

- (a) may have effect so as to prohibit or restrict, either indefinitely or for such a period as may be specified in the regulations, building work of a kind so specified;
- (b) may contain provision that any permit or other right to carry out building work shall not be granted, by any person otherwise having power to grant such a permit or right, under any regulations made under or continued in force by the Building Act 1988 [*title 20 item 15*] unless a phasing licence has first been obtained; and
- (c) may, in addition to making provision as allowed in section 56(3), provided for a fine not exceeding one thousand dollars a day for any continuing offence.

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(3) Where building work is subject to a phasing licence, planning permission (other than planning permission in principle) under this Act shall not be granted in respect of any development involved in such work unless a phasing licence sanctioning that work has first been obtained; and in this subsection “planning permission in principle” has the same meaning as it has in section 23.

(4) Any person aggrieved by the refusal of the Minister to grant him a phasing licence may, within fourteen days beginning on the day on which he received notice of the refusal, appeal by instrument in writing setting out the grounds of his appeal to the Governor; and on any such appeal the Governor, acting on the advice of the Cabinet, may exercise any power that the Minister could have exercised in relation to the grant or refusal of a phasing licence.

[Section 55 amended by 1988:18 effective 14 June 1991]

Regulations: general provisions

56 (1) Regulations made under this Part may be made so as to apply generally or in relation to any particular area specified in the regulation.

(2) The affirmative resolution procedure shall apply to regulations made under this Part.

(3) Regulations made under this Part may provide for the imposition of a fine not exceeding one thousand dollars or a term of imprisonment not exceeding six months, or both, for any contravention of, or failure to comply with, such regulations.

(4) Regulations made under this Part may make provision—

- (a) empowering such authorities or persons as may be specified in the regulations to administer or execute the regulations and to make orders, impose requirements or give directions for the purposes of the regulations;
- (b) empowering such authorities or persons as may be specified in the regulations to take measures, including the entry and inspection of any land or building and the carrying out of works, to secure compliance with the regulations or any order, requirement or direction made, imposed or given thereunder; and for enabling such authorities or persons to recover expenses incurred by them in the exercise of any such power.

PART IX

APPEALS AND REVIEWS

Appeals to the Minister

57 (1) The Director or any person aggrieved by a decision of the Board may by notice under this section appeal to the Minister.

(2) Any notice under this section shall be served within such time and in such manner as may be prescribed by the rules.

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(3) The Minister, subject to this section, may allow or dismiss the appeal, or may reverse or vary any part of the decision of the Board, whether the appeal relates to that part or not, and may deal with the application as if it had been made to him in the first instance.

(4) Before determining an appeal under this section, the Minister shall, if the applicant so desires, afford him an opportunity of appearing before, and being heard by, a person appointed by the Minister for the purpose.

(5) Subject to section 61 the decision of the Minister on any appeal under this section shall be final.

(6) If before or during the determination of an appeal under this section in respect of an application for planning permission, the Minister forms the opinion that, having regard to this Act a development plan, zoning order or other provision of law, planning permission—

- (a) could not have been granted by the Board; or
- (b) could not have been granted by them otherwise than subject to the conditions imposed by them,

he may decline to determine the appeal or to proceed with the determination.

(7) In the exercise of his functions under this section the Minister shall have regard to the provisions of the development plan for the area where the land in question is situated, in so far as those provisions are material to the development of that land, and to any material consideration.

Appeal to the Board from decision of a Municipality

58 (1) Where application for planning permission is made to a Municipality to whom functions have been delegated under section 5 for planning permission, and planning permission is refused by that Municipality, or is granted by them subject to conditions, then the Director or any person aggrieved by their decision may by notice served within the time, not being less than twenty-eight days from receipt of notification of their decision, as may be specified in the notification, appeal to the Board.

(2) Notwithstanding subsection (1), the Board shall not be required to entertain an appeal under that subsection in respect of the determination of an application for planning permission if it appears to them that planning permission for that development could not have been granted by the Municipality, or could not have been so granted otherwise than subject to the conditions imposed by them,

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

(4) Unless within a period of twenty-eight days, or within such extended period as may at any time be agreed upon in writing between the applicant and the Municipality, the Municipality either—

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- (a) give notice to the applicant of their decision on any application for planning permission; or
- (b) give notice to him that the application has been referred to the Board in accordance with directions given by them under section 5,

subsection (1) shall apply in relation to the application as if the planning permission or approval to which it relates has been refused by the Municipality and as if notification of their decision had been received by the applicant at the expiration of the period of twenty-eight days or the extended period agreed upon as aforesaid, as the case may be.

[Section 58 heading amended by 2014 : 24 s. 6 effective 29 July 2014]

Appeal to the Board from decision of the Director

58A (1) Where functions have been delegated to the Director under section 5A and application for planning permission is made to him but is refused by him, or is granted by him subject to conditions, then any person aggrieved by his decision may by notice served within the time, not being less than twenty-eight days from receipt of notification of his decision, as may be specified in the notification, appeal to the Board.

(2) Notwithstanding subsection (1), the Board shall not be required to entertain an appeal under that subsection in respect of the determination of an application for planning permission if it appears to them that planning permission for that development could not have been granted by the Director, or could not have been so granted otherwise than subject to the conditions imposed by him.

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

(4) Unless within a period of twenty-eight days, or within such extended period as may at any time be agreed upon in writing between the applicant and the Director, the Director either—

- (a) gives notice to the applicant of his decision on any application for planning permission; or
- (b) gives notice to the applicant that the application has been referred to the Board in accordance with directions given by them under section 5A,

subsection (1) shall apply in relation to the application as if the planning permission or approval to which it relates had been refused by the Director and as if notification of his decision had been received by the applicant at the expiration of the period of twenty-eight days or the extended period agreed upon as aforesaid, as the case may be.

[Section 58A inserted by 2014 : 24 s. 7 effective 29 July 2014]

Appeal in default of planning decision

59 Where an application is made to the Board for planning permission, or for any approval of that authority required under a development order, then unless within six

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months or in the case of an approval required under a development order such period as may be prescribed by the development order, or within such extended period as may at any time be agreed upon in writing between the applicant and the Board, the Board gives notice to the applicant of their decision on the application, section 57 shall apply in relation to the application as if the permission or approval to which it relates had been refused by the Board, and as if notification of their decision had been received by the applicant at the end of the six months or, as the case may be the period prescribed by the development order, or at the end of the said extended period, as the case may be.

Power of Minister to correct decisions which are contrary to law

60 (1) Where it appears to the Minister that any decision by the Board on an application for planning permission is contrary to this Act, a development plan, zoning order or other statutory provision he may give a direction substituting his own decision for that of the Board.

(2) The powers conferred upon the Minister by this section may be exercised either of his own volition or upon the application of any person having an interest in the property to which the decision relates.

(3) Before giving a direction under subsection (1) the Minister shall give notice in writing of his proposed direction to the applicant for planning permission and to any person who appeared as an objector before the Board when the application for planning permission was determined and shall give such persons an opportunity of making such representations in the matter as they may think fit.

(4) The powers conferred upon the Minister by this section shall not be exercised after—

- (a) the expiration of a period of six months after the decision of the Board; or
- (b) in the case of planning permission authorizing the construction of any building (otherwise than on an application under section 20), after the commencement of any building operations consequent upon the decision of the Board,

whichever event takes place the sooner.

Appeals to the Supreme Court

61 (1) The Director or any party to proceedings before the Board—

- (a) which have been the subject of an appeal under section 57;
- (b) where the decision of the Board in the matter has been varied by direction of the Minister in accordance with the powers vested in him by section 30, 48 or 60,

who is aggrieved by the decision or direction of the Minister in the matter may appeal to the Supreme Court on a point of law within twenty-one days or such longer period as the Supreme Court may allow after receipt of notification of such decision or direction.

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(2) On any appeal under this section the Supreme Court may make such order, including an order for costs, as it thinks fit.

(3) Section 62 of the Supreme Court Act 1905 [*title 8 item 1*] shall be deemed to extend to the making of rules under that section to regulate the practice and procedure on an appeal under this section.

PART X ENFORCEMENT

Interpretation of Part X

61A (1) In this Part, unless the context otherwise requires—

“activity” means an activity involved in building, engineering or other operations;

“conditions” includes limitations;

“panel” means the panel of members appointed under section 61C(4);

“Tribunal” means the Development and Planning Appeals Tribunal established under section 61C(1).

(2) For the purposes of this Part—

(a) carrying out development—

(i) without the required planning permission;

(ii) that fails to comply with any condition subject to which planning permission has been granted; or

(iii) that is in contravention of any regulations under Part VIII or any regulations or building Code under the Building Act 1988,

constitutes a “breach of planning control”; and

(b) the service of—

(i) a notice under section 62 (an “enforcement notice”);

(ii) a notice under section 62A (a “breach of condition notice”);

(iii) a notice under section 63 (a “stop notice”); or

(iv) a notice under section 67,

or taking action to enforce the requirements of such notice, constitutes taking “enforcement action”.

(3) For the avoidance of doubt, in this Part references to a use or an activity on land include a use or an activity in, under or over the land.

[Section 61A inserted by 2018 : 31 s. 4 e]fective 1 September 2018]

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Time limits for taking enforcement action

61B (1) Subject to subsection (3), where there has been a breach of planning control, no enforcement action can be taken after the end of the period—

- (a) of six years beginning with the date of the breach; or
- (b) of one year beginning with the date on which the Director becomes aware of the breach,

whichever period ends later.

(2) Subsection (1) does not prevent taking further enforcement action in respect of any breach of planning control if, during the period referred to in subsection (1), enforcement action has been taken in respect of that breach.

(3) No enforcement action can be taken in respect of a breach of planning control if the breach occurred before the commencement of the Development and Planning Amendment Act 2018 and, at the time of commencement of that Act, enforcement action could no longer be taken in respect of that breach.

[Section 61B inserted by 2018 : 31 s. 4 effective 1 September 2018]

Development and Planning Appeals Tribunal

61C (1) There is established a tribunal to be known as the Development and Planning Appeals Tribunal (“the Tribunal”), which shall have jurisdiction to hear and determine appeals under sections 62 and 63 and to perform such other functions as are assigned to it under this Act.

(2) The members of the Tribunal shall be—

- (a) the Chairman and Deputy Chairman appointed under subsection (3); and
- (b) a panel of members appointed under subsection (4).

(3) The Minister shall appoint the Chairman and the Deputy Chairman, who shall be barristers and attorneys of at least seven years’ standing.

(4) The Minister shall appoint a panel of not more than twelve members (“the panel”), who shall be persons appearing to him to have the appropriate expertise and experience to serve on the Tribunal.

(5) Subject to this section, a member of the Tribunal shall hold office for a term of two years, and may be reappointed from time to time for a like term.

(6) A member of the Tribunal may at any time, except during the course of a hearing before him, resign his appointment by notice in writing given to the Minister.

(7) A member of the Tribunal hearing an appeal shall hold office until the appeal has been determined, notwithstanding that the term of his appointment might otherwise end before the appeal is determined.

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(8) During any period of time when a member is absent from Bermuda or is for any other reason unable to act, the Minister may appoint another person to act in his place for the period of his absence or inability to act.

(9) Where a member of the Tribunal dies, is unable to perform his duties or resigns, the Minister may appoint a person to fill the vacancy.

(10) The appointment of a person as a member of the Tribunal to fill the vacancy occurring under subsection (9), shall be for the unexpired portion of the term of the member to whose office that person has been appointed and such a person is eligible for reappointment.

(11) There shall be paid to the members of the Tribunal such remuneration and such allowances as the Minister, with the approval of the Minister of Finance, may determine.

[Section 61C inserted by 2018 : 31 s. 4 effective 1 September 2018]

Hearings before Tribunal

61D (1) Where an appeal is to be heard before it, the Tribunal shall be constituted in accordance with subsections (2) and (3).

(2) The Chairman shall be the presiding officer unless he thinks it appropriate or expedient to designate the Deputy Chairman as the presiding officer for the appeal.

(3) The presiding officer (being the Chairman or the Deputy Chairman, as the case may be) shall select two members of the panel who, together with him, shall constitute the Tribunal that shall hear and determine the appeal.

(4) Parties to any proceedings before the Tribunal may appear personally or be represented, by counsel or otherwise.

(5) Where a member of the Tribunal has any direct or indirect interest in any matter before it, he shall—

- (a) fully disclose his interest to the Tribunal immediately he is aware of it; and
- (b) not take part in any, or any further, discussion of the matter, and have no vote in relation to the matter, unless the Tribunal has resolved that the interest does not give rise to a conflict of interest.

(6) For the purpose of conducting a hearing, the Tribunal shall have all the powers of a court of summary jurisdiction in relation to the summoning of witnesses, their examination on oath or otherwise and compelling the production of any document or thing relevant to the subject matter of the proceedings.

(7) A decision of the Tribunal may be reached by a majority of the members but any question of law shall be decided by the presiding officer.

(8) Where, in the course of hearing an appeal, one of the members of the Tribunal (other than the presiding officer) is unable to continue to act as a member for any reason, then, if all parties concerned agree, the Tribunal may proceed with the

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hearing of that appeal in the absence of that member and shall be deemed to be duly constituted in so doing.

(9) In the case of an equality of votes, the presiding officer shall have, in addition to a deliberative vote, a second vote.

(10) The Tribunal shall keep an adequate record of their proceedings, and shall include in such record a statement of the grounds on which the appeal is made and a statement of the reasons for their decision.

(11) Subject to subsection (12), the Tribunal may regulate the practice and procedure to be followed at a hearing as it thinks fit and shall not be bound by the rules of evidence in civil or criminal proceedings.

(12) The Minister may make rules under section 78 regarding the practice and procedure to be followed at hearings before the Tribunal.

[Section 61D inserted by 2018 : 31 s. 4 effective 1 September 2018]

Director's power to require information about use or activity on land

61E (1) Where it appears to the Director that there may have been a breach of planning control in respect of any land, he may serve notice to that effect (a "planning contravention notice") on any person who—

- (a) is the owner or occupier of the land or has any other interest in it; or
- (b) is a contractor, or is otherwise carrying out any activity on the land, or is using the land for any purpose.

(2) A planning contravention notice may require the person on whom it is served to give such information as to—

- (a) any use of the land;
- (b) any activity being carried out on the land; or
- (c) any matter relating to the conditions subject to which any planning permission in respect of the land has been granted.

(3) Without prejudice to the generality of subsection (2), the notice may require the person on whom it is served, so far as he is able, to provide the Director with the following information—

- (a) the purpose for which the land is being used;
- (b) which activity is being or has been carried out on the land;
- (c) when any use or activity began;
- (d) the nature of his interest (if any) in the land and the name, address and telephone number of any other person known to him to have an interest in the land;
- (e) the name, address and telephone number of any person known to him to use or have used the land for any purpose, or to be carrying out or have

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carried out any activity on the land (whether as a contractor or otherwise); and

- (f) any information he holds as to any planning permission for any use or activity or any reason for planning permission not being required for any use or activity.

(4) A planning contravention notice may give notice of a time (not being earlier than seven days, or later than fourteen days, after the day the notice is served on the person) and place at which—

- (a) any offer which the person on whom the notice is served may wish to make to apply for planning permission, to cease any use, to refrain from carrying out any activity or to undertake remedial works; and
- (b) any representations which he may wish to make about the notice,

will be considered by the Director, and the Director shall give him an opportunity to make in person any such offer or representations at that time and place.

(5) A planning contravention notice must inform the person on whom it is served—

- (a) that if, at any time after the end of a period of twenty-one days beginning with the day on which the planning contravention notice is served on him, he has failed to comply with any requirement of the notice, he shall be guilty of an offence;
- (b) of the likely consequences of his failing to respond to the notice and, in particular, that enforcement action may be taken; and
- (c) that no compensation shall be payable in respect of any loss or damage suffered by him which could have been avoided if he had provided the information or had otherwise co-operated with the Director when responding to the notice.

(6) Any requirement of a planning contravention notice shall be complied with by giving, in writing to the Director, the information required to be given.

(7) If, at any time after the end of a period of twenty-one days beginning with the day on which a planning contravention notice has been served on any person, he has failed to comply with any requirement of the notice, he shall be guilty of an offence.

(8) It shall be a defence for a person charged with an offence under subsection (7) to prove that he had a reasonable excuse for failing to comply with the requirement.

(9) A person guilty of an offence under subsection (7) shall be liable on summary conviction to a fine not exceeding \$5,000 for the failure and, in the case of a continuing failure, to a further fine not exceeding \$1,000 for every day after the first day during which the requirements of the notice remain unfulfilled.

(10) If any person—

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- (a) makes any statement purporting to comply with a requirement of a planning contravention notice which he knows to be false or misleading in a material particular;
- (b) purporting to comply with a requirement of a planning contravention notice, with intent to deceive, withholds any material information; or
- (c) recklessly makes a statement which is false or misleading in a material particular,

he shall be guilty of an offence.

(11) A person guilty of an offence under subsection (10) shall be liable—

- (a) on summary conviction, to a fine not exceeding \$5,000; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine of \$20,000, or both.

(12) The service of a planning contravention notice does not affect any other power exercisable in respect of any breach of planning control.

[Section 61E inserted by 2018 : 31 s. 4 effective 1 September 2018]

Enforcement notice

62 (1) The Director may issue a notice (an “enforcement notice”) where it appears to him—

- (a) that there has been a breach of planning control; and
- (b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.

(2) An enforcement notice shall be served—

- (a) on the owner or occupier of the land to which it relates; and
- (b) on any other person who—
 - (i) has an interest in the land, being an interest which, in the opinion of the Director, is materially affected by the notice;
 - (ii) is a person who is using, or has used the land; or
 - (iii) is a contractor or other person who is carrying out, has carried out, or has caused to be carried out, any activity on the land,and on whom, in the opinion of the Director, it is necessary or expedient to serve the notice.

(3) Where a prospective purchaser of any land serves notice on the Director that—

- (a) he intends purchasing land described in the notice; and

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- (b) he is unaware of any development having been carried out on that land without the grant of planning permission in that behalf,

then, unless the Director, within twenty-eight days of the receipt of such notice, notifies such prospective purchaser of any development which has been carried out on that land without planning permission granted in that behalf, then all development thereon at the time of the receipt of such notice by the Director shall, for the purposes of any enforcement action thereafter taken, be deemed to have received planning permission.

(4) The notice by the prospective purchaser under subsection (3) shall be in such form as the Director may determine.

(5) An enforcement notice shall specify the development that is alleged to have been carried out without the grant of planning permission or, as the case may be, the matters in respect of which it is alleged that any regulations, building Codes or conditions have not been complied with, and may require such steps as may be specified in the notice to be taken within such period as may be so specified for restoring the land to its condition before the development took place, or for securing compliance with the regulations, building Codes or conditions, as the case may be, and in particular any such notice may, for the purposes aforesaid, require the demolition or alteration of any building or work, the discontinuance of any use of land, or the carrying out on land of any activity.

(6) Except as otherwise provided in this section, an enforcement notice shall take effect at the expiration of such period, not being less than twenty-eight days after the service thereof, as may be specified therein.

(7) Where, at any time after the end of the period for compliance with an enforcement notice, any step required by the notice to be taken has not been taken or any activity or use required by the notice to cease is being carried on, the person who is then the owner of the land is in breach of the notice.

(8) Where the owner of the land is in breach of an enforcement notice, he shall be guilty of an offence.

(9) In proceedings against any person for an offence under subsection (8), it shall be a defence for him to show that he did everything he could reasonably be expected to do to secure compliance with the notice.

(10) A person who has control of, or an interest in, the land to which an enforcement notice relates (other than the owner) shall not carry on any activity or use which is required by the notice to cease or cause or permit such activity or use to be carried on.

(11) A person who, at any time after the end of the period for compliance with the notice, contravenes subsection (10) shall be guilty of an offence.

(12) Where a person charged with an offence under this section has not been served with a copy of the enforcement notice, it shall be a defence for him to show that he was not aware of the existence of the notice.

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(13) When, within the period mentioned in subsection (6), an application is made to the Director for permission—

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

the operation of the enforcement notice shall be suspended pending the final determination of the application and if the permission applied for is granted on that application, the enforcement notice shall not take effect.

(14) When, within the period mentioned in subsection (6), an appeal is made to the Tribunal under this section by a person on whom the enforcement notice was served, the operation of the enforcement notice shall be suspended pending the final determination or withdrawal of the appeal.

(15) If any person on whom an enforcement notice is served under this section is aggrieved by the enforcement notice, he may, at any time within the period mentioned in subsection (6), appeal against the enforcement notice to the Tribunal; and on any such appeal the Tribunal—

- (a) if satisfied that planning permission was granted for the development to which the enforcement notice relates, or that no such planning permission was required in respect thereof, or, as the case may be, that the regulations or conditions aforesaid have been complied with, shall quash the enforcement notice to which the appeal relates;
- (b) if satisfied that a variation of the enforcement notice would be appropriate, may vary the enforcement notice accordingly;
- (c) in any other case shall dismiss the appeal,

and may make such order as to costs as the court thinks just.

(16) An appeal under this section shall be in such form as the Tribunal may determine.

(17) Where the enforcement notice is varied or the appeal is dismissed, then the Tribunal may, if it thinks fit, direct that the enforcement notice shall not come into force until such date, not being later than twenty-eight days from the determination of the appeal, as the Tribunal thinks fit.

(18) Where a person is aggrieved by a decision of the Tribunal, he may appeal to the Supreme Court within twenty-eight days after the date of the decision.

(19) Rules of Court made under the Supreme Court Act 1905 regulating the practice and procedure on appeals from a tribunal to the Supreme Court shall apply to appeals under this section.

(20) For the purposes of this section “development” includes the building or erection of any structure in contravention of the provisions of any regulation made under

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Part VIII of this Act or of the building Regulations or building Codes made under the Building Act 1988, notwithstanding that no planning permission is required therefor.

[Section 62 amended by 1988 : 18 effective 14 June 1991; amended by 1998 : 33 effective 1 September 1998; Section 62 repealed and replaced by 2018 : 31 s. 5 effective 1 September 2018]

Breach of condition notice

62A (1) Without prejudice to section 62, this section applies where planning permission for carrying out any development of land has been granted subject to conditions.

(2) The Director may, where it appears to him that any of the conditions is not complied with, serve a notice (a “breach of condition notice”) on—

- (a) the owner, occupier or any other person having control of the land; or
- (b) a contractor or any other person who is carrying out, has carried out, or has caused to be carried out, the development,

requiring him (“the person responsible”) to secure compliance with such of the conditions as are specified in the notice.

(3) A breach of condition notice shall specify the steps which the Director considers ought to be taken, or the activity or use which the Director considers ought to cease, to secure compliance with the conditions specified in the notice.

(4) The period allowed for compliance with the notice is—

- (a) such period of not less than twenty-eight days beginning with the date of service of the notice as may be specified in the notice; or
- (b) that period as extended by a further notice served by the Director on the person responsible.

(5) If, at any time after the end of the period allowed for compliance with the notice—

- (a) any of the conditions specified in the notice is not complied with; and
- (b) the steps specified in the notice have not been taken or, as the case may be, the activity or use specified in the notice has not ceased,

the person responsible is in breach of the notice.

(6) If the person responsible is in breach of the notice, he shall be guilty of an offence.

(7) It shall be a defence for a person charged with an offence under subsection (6) to prove—

- (a) that he took all reasonable measures to secure compliance with the conditions specified in the notice; or
- (b) where the notice was served on him by virtue of subsection (2)(a), that he no longer had control of the land.

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(8) In this section, references to carrying out any development include causing or permitting another to do so.

[Section 62A inserted by 2018 : 31 s. 6 effective 1 September 2018]

Stop notice

63 (1) Without prejudice to section 62 or 62A, and notwithstanding that a notice has been served under either section, in any case where it appears to the Director to be necessary in the public interest to require the immediate cessation of any development of land, he may serve a stop notice under this section on the owner of the land or the person in occupation of the land, and on any other person who appears to the Director to have an interest in the land or to be engaged in any relevant activity or use.

(2) In this section, “relevant activity or use” means any activity or use being carried out on the land specified in the stop notice as an activity or use which, in accordance with subsection (1), the Director requires to cease and any activity or use carried out as part of that activity or use, or associated with that activity or use.

(3) A stop notice served under this section shall specify the development that is alleged to have been carried out without the grant of planning permission or, as the case may be, the matters in respect of which it is alleged that any conditions subject to which such permission was granted have not been complied with, and shall require any relevant activity or use to be discontinued.

(4) A stop notice shall take effect immediately or on the expiration of such period as may be specified therein and, notwithstanding any provision of this section relating to appeals, shall continue in operation until the Tribunal or court hearing the appeal relating thereto otherwise orders.

(5) If any person contravenes a stop notice after the stop notice has been served on him, he shall be guilty of an offence.

(6) References in this section to contravening a stop notice include causing or permitting its contravention.

(7) In proceedings for an offence under this section it shall be a defence for the accused to prove—

- (a) that the stop notice was not served on him; and
- (b) that he did not know, and could not reasonably have been expected to know, of its existence.

(8) If any person on whom a stop notice is served under this section is aggrieved by the stop notice, he may, within twenty-eight days after the service thereof, appeal against the stop notice to the Tribunal and on such appeal the Tribunal—

- (a) if satisfied that planning permission was granted for the development to which the special enforcement notice relates, or that no such permission was required in respect thereof, or, as the case may be, that the conditions subject to which such permission was granted have been

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complied with, shall quash the special enforcement notice to which the appeal relates;

(b) if satisfied that a variation of the special enforcement notice would be appropriate, may, with the consent of the parties, vary the special enforcement notice accordingly;

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

and make such order as to costs as the court thinks just.

(9) An appeal under this section shall be in such form as the Tribunal may determine.

(10) Where, under subsection (8)(a), the Tribunal orders that a stop notice be quashed, damages shall, in default of determination by agreement, be recoverable in civil proceedings brought against the Director in respect of any loss sustained by an aggrieved party by virtue of the stop notice having been in force:

Provided that where appeal proceedings against a stop notice are adjourned at the request of an aggrieved party, no account shall be taken, in assessing the damages which may be recovered under this subsection, of any such period of adjournment.

(11) Where a person is aggrieved by a decision of the Tribunal, he may appeal to the Supreme Court within twenty-eight days after the date of the decision.

(12) Rules of Court made under the Supreme Court Act 1905 regulating the practice and procedure on appeals from a tribunal to the Supreme Court shall apply to appeals under this section.

[Section 63 repealed and replaced by 2018 : 31 s. 7 effective 1 September 2018]

Supplementary provisions as to enforcement

64 (1) If within the period specified in an enforcement notice (which in this section includes a stop notice and a breach of condition notice), or within such extended period as the Director may allow, any steps required by the enforcement notice to be taken (other than the discontinuance of any use of land) have not been taken, the Director may enter on the land and take those steps, and may recover as a debt owing to the Crown in any court of competent jurisdiction from the person who is then the owner of the land any expenses reasonably incurred by the Director in that behalf; and if that person, having been entitled to appeal to the Tribunal under section 62 or 63 failed to make such an appeal, he shall not be entitled in proceedings under this subsection to dispute the validity of the action taken by the Director upon any ground that could have been raised by such an appeal.

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

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(3) Where by virtue of an enforcement notice any use of land is required to be discontinued or any conditions are required to be complied with in respect of any use of land or in respect of the carrying out of any activity thereon, any person who, without the grant of planning permission, uses the land or cause or permits the land to be used, or carries out or causes or permits to be carried out that activity, in contravention of the enforcement notice, commits an offence.

(4) Nothing in this Act shall require planning permission to be obtained for the use of any land for the purpose for which it could lawfully have been used under this Act if the development in respect of which an enforcement notice is served under section 62, 62A or 63 had not been carried out.

[Section 64 amended by 2018 : 31 s. 8 effective 1 September 2018]

Penalties for offences under sections 62, 62A, 63, 64, 66 and 67

65 A person guilty of an offence for a failure to comply with a notice under section 62, 62A, 63, 64, 66 or 67 shall be liable—

- (a) on summary conviction, to a fine not exceeding \$5,000; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine of \$25,000, or both,

and, in the case of a continuing failure, to a further fine not exceeding \$1,000 for every day after the first day during which the failure to comply with the notice is so continued.

[Section 65 repealed and replaced by 2018 : 31 s. 9 effective 1 September 2018]

Continuing operation of enforcement notices

66 (1) Compliance with an enforcement notice (which in this section includes a stop notice and a breach of condition notice), whether as respects—

- (a) the demolition or alteration of any building or work; or
- (b) the discontinuance of any use of land; or
- (c) any other requirements in the enforcement notice,

shall not discharge the enforcement notice.

(2) Without restricting the generality of subsection (1), where any development is carried out on land by way of reinstating or restoring buildings or works that have been demolished or altered in compliance with an enforcement notice, the enforcement notice shall, notwithstanding that its terms are not apt for the purpose, be deemed to apply in relation to the buildings or works as reinstated or restored as it applied in relation to the building or works before they were demolished or altered and section 64(1) and (2) apply accordingly.

(3) Without affecting the operation of section 65, a person who carries out any development on land by way of reinstating or restoring buildings or works that have been demolished or altered in compliance with an enforcement notice commits an offence.

[Section 66 amended by 2018 : 31 s. 10 effective 1 September 2018]

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Certificate of lawfulness of existing use or development

66A (1) If any person wishes to ascertain whether—

- (a) any existing use of buildings or other land is lawful;
- (b) any activity which has been carried out on land is lawful; or
- (c) any other matter constituting a failure to comply with any condition subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the Director, in such form as the Director may determine, specifying the land and describing the use, activity or other matter.

(2) For the purposes of this Act, a use or activity is lawful at any time if—

- (a) no enforcement action may then be taken in respect of it (whether because it did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- (b) it does not constitute a contravention of any of the requirements of any enforcement notice, stop notice or breach of condition notice then in force.

(3) For the purposes of this Act, any matter constituting a failure to comply with any condition subject to which planning permission has been granted is lawful at any time if—

- (a) the time for taking enforcement action in respect of the failure has then expired; and
- (b) it does not constitute a contravention of any of the requirements of any enforcement notice, stop notice or breach of condition notice then in force.

(4) If, on an application under this section, the Director is provided with information satisfying him of the lawfulness at the time of the application of the use, activity or other matter described in the application, or that description as modified by the Director or a description substituted by him, he shall issue a certificate to that effect.

(5) A certificate under this section shall be in such form as the Director may determine and shall—

- (a) specify the land to which it relates;
- (b) describe the use, activity or other matter in question;
- (c) give the reasons for determining the use, activity or other matter to be lawful;
- (d) if the use, activity or other matter is lawful by reason only that the time for enforcement action has expired, include a caveat that such use, activity or other matter (as the case may be) is lawful only because the time for taking enforcement action has expired, and that this does not

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imply that the use, activity or other matter is deemed (for any purpose other than for precluding the taking of enforcement action) to have planning permission or to comply with any building Code under the Building Act 1988; and

(e) specify the date of the application for the certificate.

(6) For the avoidance of doubt, if planning permission is subsequently granted under section 20 (permission to retain buildings or works or continue use of land) in respect of the use, activity or other matter mentioned in a caveat referred to in subsection (5)(d), the Director may on application therefor issue a fresh certificate without the caveat.

(7) If any person, for the purpose of procuring a particular decision on an application (whether by himself or another) for the issue of a certificate under this section—

(a) knowingly or recklessly makes a statement which is false or misleading in a material particular;

(b) with intent to deceive, uses any document which is false or misleading in a material particular; or

(c) with intent to deceive, withholds any material information,

he shall be guilty of an offence.

(8) A person guilty of an offence under subsection (1) shall be liable—

(a) on summary conviction, to a fine not exceeding \$5,000; or

(b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine of \$10,000, or both.

[Section 66A inserted by 2018 : 31 s. 11 effective 1 July 2022]

Maintenance of waste land

67 (1) If it appears to the Director that the amenity of any area is injured by the condition of any building or land in the area, the Director may serve on the owner of the land or the person in occupation of the land a notice requiring such steps for abating the injury as may be so specified.

(2) In relation to any notice served under this section, section 62(6) to (19), inclusive, and sections 64, 65 and 66 shall, subject to such exceptions and modifications as may be prescribed by regulations under section 54 apply as those provisions apply in relation to an enforcement notice served under section 62.

(3) A person who fails to comply with a notice served under this section shall be guilty of an offence.

[Section 67 amended by 2018 : 31 s. 12 effective 1 September 2018]

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Unauthorized excavation, site preparation and development

68 (1) No person shall—

- (a) undertake any quarrying operations;
- (b) make any excavation upon any land preparatory to the commencement of any building or engineering operations; or
- (c) prepare any land for building or engineering operations,

unless planning permission for such operations has been granted under this Act, and such development is carried out in accordance with such planning permission and any conditions subject to which such planning permission is granted.

(2) No person shall undertake any development on any land unless planning permission for such development has been granted under this Act, and such development is carried out in accordance with such planning permission and any conditions subject to which such planning permission is granted.

(2A) No person shall—

- (a) do any act in an area designated by a development plan as possessing natural features of special environmental value (a “designated area”), being an act regulated by section 28 and the Fourth Schedule; or
- (b) do any act in a historic area, being an act for the doing of which section 31(2) provides that planning permission is required,

unless planning permission for such act has been granted under this Act.

(3) Nothing in subsections (1) or (2) shall apply to any works carried out for the purposes specified in section 14(2)(a), (b) or (c) or in accordance with such use of land as is specified in section 14(2)(e) or (f).

(4) Any person who—

- (a) contravenes subsection (1); or
- (b) being the owner or person in occupation of any land, authorizes or acquiesces in the doing by any person of an act which such person is prohibited from doing upon such land under subsection (1),

commits an offence.

(5) Any person who—

- (a) contravenes subsection (2);
- (b) being the owner or person in occupation of any land authorizes or acquiesces in the doing by any person of an act which such person is prohibited from doing upon such land under subsection (2),

commits an offence.

(5A) Any person who—

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- (a) contravenes subsection (2A);
- (b) being the owner or person in occupation of any land, authorizes or acquiesces in the doing by any person of an act which such person is prohibited from doing upon such land under subsection (2A),

commits an offence.

(5B) A person guilty of an offence under subsection (4) or (5) shall be liable—

- (a) on summary conviction, to a fine not exceeding \$25,000; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine of \$50,000, or both.

(5C) A person guilty of an offence under subsection (5A) shall be liable—

- (a) on summary conviction, to a fine not exceeding \$50,000; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine of \$100,000, or both.

(6) Where in any prosecution of an owner or person in occupation of land for an offence under subsections (4), (5) or (5A) it is established that any person has done an act upon such land which such person is prohibited from doing under subsections (1), (2) or (2A), whether or not such person has been convicted for any offence in respect thereof, the owner or person in occupation as the case may be, shall be deemed to have authorized or acquiesced in the doing of such act unless it is established by such owner or person in occupation that the act took place—

- (a) without his knowledge; or
- (b) without his authority or connivance and that he took such steps as were reasonable in the circumstances to prevent it.

(7) Conviction for an offence under this section shall not relieve the person convicted of the necessity for complying with a notice served under section 62, 62A or 63.

[Section 68 amended by 2018 : 31 s. 13 effective 1 September 2018]

Site excavation licences

69 *[Repealed by 2018 : 31 s. 14]*

[Section 69 repealed by 2018 : 31 s. 14 effective 1 September 2018]

Power to impose civil penalties

69A (1) Subject to subsection (2), the Director may, in accordance with section 69C, impose on a person who, without reasonable excuse, contravenes or fails to comply with—

- (a) a notice served under section 61E (a “planning contravention notice”)—
 - (i) a civil penalty of not more than \$1,000 for the failure to comply with the requirements of the notice; and

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- (ii) in the case of a continuing failure to comply with the requirements of the notice, a further civil penalty of not more than \$200 for every day after the first day during which the requirements of the notice remain unfulfilled;
- (b) a notice served under section 62 (an “enforcement notice”), a notice served under section 62A (a “breach of condition notice”), a notice served under section 63 (a “stop notice”), or a notice served under section 67 (maintenance of waste land)—
 - (i) a civil penalty of not more than \$20,000 for the failure to comply with the requirements of the notice; and
 - (ii) in the case of a continuing failure to comply with the requirements of the notice, a further civil penalty of not more than \$1,000 for every day after the first day during which the requirements of the notice remain unfulfilled;
- (c) section 64(3) or 66(3), a civil penalty of not more than \$20,000;
- (d) section 68(1) or 68(2) or, being the owner or person in occupation of any land, authorizes or acquiesces in the doing by any person of an act which such person is prohibited from doing upon such land under section 68(1) or 68(2), a civil penalty of not more than \$25,000; and
- (e) section 68(2A) or, being the owner or person in occupation of any land, authorizes or acquiesces in the doing by any person of an act which such person is prohibited from doing upon such land under section 68(2A), a civil penalty of not more than \$50,000.

(2) For the avoidance of doubt, a civil penalty may be imposed on a person who contravenes or fails to comply with a provision of subsection (1) only if the contravention or failure to comply occurred after the commencement of the Development and Planning Amendment Act 2018.

[Section 69A inserted by 2018 : 31 s. 15 effective 1 July 2022]

Statement of principles for imposing civil penalties

69B (1) The Director shall, as soon as practicable after the coming into operation of this section, publish in the Gazette a statement of principles in accordance with which he shall act in exercising his powers to impose a civil penalty and to determine the appropriate amount of the penalty.

(2) If the Director makes a material change to the principles, he shall publish the statement of the change or the revised statement of principles in the Gazette.

(3) For the avoidance of doubt, a statement published under subsection (1) or (2) is not a statutory instrument and the Statutory Instruments Act 1977 shall not apply to it.

[Section 69B inserted by 2018 : 31 s. 15 effective 1 July 2022]

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Procedure for imposing civil penalties

69C (1) When the Director proposes to impose a civil penalty on a person, he must give the person a notice (a “warning notice”) of—

- (a) the amount of the penalty;
- (b) the reasons for imposing the penalty; and
- (c) the right to make representations within seven days of the date of the warning notice.

(2) After considering any representations, the Director must decide, within seven days of the end of the period specified in subsection (1)(c) whether to impose a penalty.

(3) The Director must give the person a notice (a “decision notice”) of—

- (a) his decision not to impose a penalty; or
- (b) his decision to impose a penalty and—
 - (i) the amount of the penalty;
 - (ii) the reasons for his decision;
 - (iii) the right to appeal to the Supreme Court within twenty-eight days after the date of the decision notice.

(4) A person upon whom a penalty is imposed by decision notice who does not appeal under subsection (3)(b)(iii), shall within twenty-eight days pay the penalty.

(5) The Director—

- (a) shall pay any civil penalties into the Consolidated Fund; and
- (b) may recover any unpaid civil penalty as a debt owing to him in any court of competent jurisdiction.

(6) A person may appeal to the Supreme Court against a decision of the Director to impose a civil penalty.

(7) Rules of Court made under the Supreme Court Act 1905 regulating the practice and procedure on appeals from a person to the Supreme Court shall apply to appeals under this section.

(8) An appeal must be brought within the period specified in the decision notice.

(9) A decision appealed against under this section shall not have effect—

- (a) until the end of the period within which the appeal can be brought; and
- (b) if such an appeal is brought, until it is determined or withdrawn.

[Section 69C inserted by 2018 : 31 s. 15 effective 1 July 2022]

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PART XI SUPPLEMENTAL

Powers of entry

70 (1) Any person duly authorized in writing by or on behalf of the Minister may, at any reasonable time, enter upon any building or other land for the purpose of inspecting it, examining it, surveying it or estimating its value, in connection with—

- (a) the preparation, approval, making or amendment of a development plan relating to the land under Part III, including the carrying out of any survey under that part;
- (b) any application under this Act or any rule, order or regulations thereunder, for any permission, consent or determination to be given or effected in relation to that or any other land under this Act or under any such rule, order or regulations;
- (c) any proposal by the Minister to serve or make any notice or order under any such rule, order or regulations as aforesaid;
- (ca) any proposal by the Director to serve or make any notice under Part X;
- (d) any claim for compensation payable by the Minister under this Act,

or where there are reasonable grounds for believing that any contravention of this Act, or of the regulations under Part VIII, has taken place.

(2) A person authorized under this section to enter upon any land shall, if so required, produce evidence of his authority before so entering.

(3) Any person who wilfully obstructs a person acting in the exercise of his powers under this section commits an offence.

(4) A person guilty of an offence under subsection (3) shall be liable on summary conviction to a fine not exceeding \$10,000.

[Section 70 amended by 2018 : 31 s. 16 effective 1 September 2018]

Service of notice

71 (1) Subject to this section, any notice or other document required or authorized to be served or given under this Act, or under any rule, regulation, order, direction, or instrument in writing made under this Act, may be served or given either—

- (a) by delivering it to the person on whom it is to be served or to whom it is to be given; or
- (b) by leaving it at the usual or last known place of abode of that person, or, in a case in which an address for service has been furnished by that person, at that address; or

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- (c) by sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode, or, in a case in which an address for service has been furnished by that person, at that address; or
- (d) in the case of a body corporate by delivering it to the secretary or clerk of the body corporate at their registered or principal office, or sending it in a prepaid registered letter addressed to the secretary or clerk of the body corporate at that office.

(2) Where the notice or document is required or authorized to be served on any person as having an interest in premises, and the name of that person cannot be ascertained after reasonable inquiry, or where the notice or document is required or authorized to be served on any person as the owner or occupier of premises, the notice shall be deemed to be duly served if—

- (a) being addressed to him either by name or by the description of “the owner” or “the occupier”, as the case may be, of the premises (describing them) it is delivered or sent in the manner prescribed by subsection (1) (a), (b) or (c); or
- (b) being addressed as aforesaid and marked in such manner that it is plainly identifiable as a communication of importance, it is sent in a prepaid registered letter to the premises and is not returned to the authority sending it, or is delivered to some person on those premises or is affixed conspicuously to some object on that land.

(3) Where the notice or other document is required to be served on or given to a person having an interest in or being the owner or occupier of any land that notice shall be deemed to be duly served on all persons having interests in, and on any owner or occupier of, the land (other than a person who has furnished an address for the service of the notice on him) if it is addressed to him by the description of “the owner” or “the occupier”, as the case may be, of the land (describing it) and is affixed conspicuously to some object on that land.

Powers to require information

72 (1) The Minister may, for the purpose of enabling him to make any order or serve any notice or other document that he is by this Act authorized or required to make or serve, require the occupier of any premises and any person who, either directly or indirectly, receives rent in respect of any premises, to state in writing the nature of his interest therein and the name and address of any other person known to him as having an interest therein, whether as the holder of a freehold estate, mortgagee, lessee or otherwise, and any person who, having been required in pursuance of this section to give any information, fails to give that information, or knowingly makes any mis-statement in respect thereof, commits an offence.

(2) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding \$5,000 and, in the case of a continuing failure to give

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information, to a further fine not exceeding \$1,000 for every day after the first day during which the requirement remains unfulfilled.

[Section 72 amended by 2018 : 31 s. 17 effective 1 September 2018]

Application to land regulated by special enactments

73 The provisions of this Act, and any restrictions or powers thereby imposed or conferred in relation to land, apply and may be exercised in relation to any land notwithstanding that provision is made by any Act or statutory instrument in force on 18 June 1974, or authorizing or regulating any development of the land.

Unfinished buildings

74 (1) Subject to this section, where any works for the erection or alteration of a building have been begun but not completed before 3 August 1965, then if any permission required under the Building and Land Development (Control) Rules 1948, for the carrying out of these works has been granted, planning permission shall, by virtue of this section, be deemed to have been granted under this Act in respect of the completion of those works.

(2) The permission deemed to have been granted by virtue of this section shall be deemed to have been so granted subject to any conditions imposed by the permission granted under the Building and Land Development (Control) Rules 1948, and shall include permission to use the building when erected or altered for the purpose for which the building, or the building as altered, is designed.

(3) Works shall not be deemed to have begun for the purposes of subsection (1) if the only works commenced before 3 August 1965 were works of excavation or of site clearance.

Zoning Orders

75 Any zoning order made under the Building and Land Development (Control) Rules 1948, and in force on 3 August 1965 shall continue to have effect subject to the provisions of this Act, any regulations thereunder, and to any development plan.

[See for example Hamilton Building Ordinance 1954 article 11 [title 4 item 1(d)]

Municipal Bye-laws

76 (1) In the event of any conflict between a development plan or a regulation made under this Act, and any ordinance made under the Municipalities Act 1923 [*title 4 item 1*], the plan or regulation, as the case may be, shall prevail.

(2) Planning permission granted under this Act for any development of land shall dispense with the necessity of obtaining approval for such development under any such ordinance as is mentioned in subsection (1); but subject to that subsection, any such development shall conform to the other requirements of any such ordinance.

(3) Notwithstanding subsection (2), where any approval, consent or authorization (including approval, consent or authorization of or to the waiver of any such ordinance as is mentioned in subsection (1) in accordance with the terms thereof) may be given by a

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Municipality or any person acting for such authority under any such ordinance, and such approval, consent or authorization is necessary in order to render effective planning permission granted under this Act, then the Board may give such approval, consent or authorization; and any reference in any such ordinance to a Municipality or any person acting for such authority shall, in relation to such approval, consent or authorization, include a reference to the Board.

(4) The Board may refuse permission for any development of land on the grounds that such development would be in contravention of any such ordinance as is mentioned in subsection (1).

[Section 76 subsection (4) amended by 2014 : 24 s. 8 effective 29 July 2014]

Acquisition of land

77 (1) Where any land is designated in a development plan as subject to acquisition by the Government or may otherwise be acquired by the Government under this Act, such land may be acquired by the Government under the Acquisition of Land Act 1970 [title 19 item 20] and the acquisition of such land shall, for the purposes of section 2(1) of that Act, be deemed to have been expressly authorized by the Legislature.

(2) Nothing in this section shall be deemed to prevent the acquisition by agreement of any land mentioned in subsection (1).

Rules

78 (1) The Minister may make rules for the better carrying out of this Act and for giving effect thereto and, in particular, such rules may—

- (a) prescribe the form of any notice, order or other document authorized or required by this Act to be served, made or issued;
- (b) require claims for compensation under Part VII to be made in a form prescribed therein;
- (c) require a claimant for compensation under Part VII to provide the Minister with such evidence in support of the claim, and such information as to the interest of the claimant in the land to which the claim relates, and as to the interests of other persons therein that are known to the claimant, as may be so prescribed;
- (d) prescribe the manner in which any hearing under this Act is to be conducted; and—
 - (i) the persons entitled to be given notice of the hearing;
 - (ii) the persons entitled to be heard at the hearing whether orally or by the submission of written representations or evidence;
 - (iii) the powers and duties of the person conducting the hearing;
- (e) require the public notification of applications for planning permission, the grant of which may affect neighbouring landowners, the right of

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objection of such landowners to the decision of the Board, and the right of appeal of objectors;

- (f) require the Board, before granting or refusing planning permission, to consult with such authorities or persons as may be prescribed by the rules or by directions given by the Minister thereunder;
- (g) require the Board to give to any applicant for planning permission, within such time as may be prescribed by the rules, such notice as may be so prescribed as to the manner in which his application has been dealt with;
- (h) prescribe any matters required or permitted by the Act to be prescribed by the rules.

(2) The negative resolution procedure shall apply to rules made under this section.

[Section 78 subsection (1)(e) amended by 2014 : 24 s. 9 effective 29 July 2014]

Offences by Corporations

79 Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any default on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who is purporting to act in any such capacity, he, as well as the body corporate commits that offence and is liable to be proceeded against accordingly.

Repeals and savings

80 *[omitted]*

Commencement

81 *[omitted]*

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FIRST SCHEDULE

(Section 3)

DEVELOPMENT APPLICATIONS BOARD

1 Any person appointed to be a member of the Board shall hold office during the Minister's pleasure and unless his appointment is earlier terminated it shall be deemed to terminate one year from the date upon which such appointment took effect.

2 A member of the Board may resign his office at any time by notice in writing given to the Minister.

3 The Board shall meet at such times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such places and times and on such days as the Board may determine.

4 The quorum of the Board shall consist of a majority of the members currently present in Bermuda but not, in any event, less than four.

5 There shall preside at any meeting of the Board—

- (a) the Chairman; or
- (b) in the absence of the Chairman, the Deputy Chairman; or
- (c) in the absence of the Chairman and Deputy Chairman, such member as those present may elect for that meeting.

6 Any question proposed for a decision by the Board shall be determined by a majority of the votes of the members present and voting at a meeting of the Board at which a quorum is present; each member present shall have one vote on a question proposed for decision by the Board and, in the event of an equality of votes, the person presiding at the meeting shall have, in addition to a deliberative vote, a second vote.

7 Minutes in proper form shall be kept and shall be confirmed by the person presiding as soon as practicable at a subsequent meeting.

8 A decision or an act of the Board shall not be rendered invalid by reason only—

- (a) that there is a vacancy in the membership of the Board or a defect in the appointment of a member;
- (b) by reason of the presence of the Director or other public officer during the deliberations of the Board and his participation in such deliberations.

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9 (1) A person appointed to fill the place of a member before the end of the member's term of office shall hold office so long only as the vacating member would have held office.

(2) Where the place of a member becomes vacant before the end of his term of office and the unexpired portion of his term of office is less than three months, the vacancy need not be filled.

10 The Board may appoint sub-committees from among their members and every such sub-committee shall consist of a Chairman and such number of sub-committee members as the Board may, in each case, determine, who shall hold office on the sub-committee for such period and on such terms as the Board may determine.

11 Notwithstanding anything contained in this Act the Board may, with the consent in writing of the Minister, authorize a sub-committee of the Board to perform any of their functions under this Act or other statutory provision; and the act of any sub-committee so authorized to perform any function of the Board shall be deemed to be an act of the Board when such sub-committee are acting within the scope of their authority.

12 The Minister may appoint any person to act temporarily in the place of the Chairman or the Deputy Chairman or a member of the Board in the case of the absence or inability to act of the Chairman or Deputy Chairman or of such member as the case may be.

13 (1) If a member or his spouse or any company of which he is a member or shareholder has any private interest, direct or indirect, in any matter which is the subject of consideration by the Board and whereby his private interest may conflict with his duties as a member, he shall disclose the same to the Board.

(2) A member referred to in sub-paragraph (1) shall not take part in the consideration of, or vote on, any question relating to a matter mentioned in that sub-paragraph.

14 The Board shall furnish the Minister with such returns and other information with respect to the exercise by them of their functions as he may from time to time require.

15 Acts of the Board may be signified under the hand of the Chairman or such other person as the Board may authorize.

16 Where the hearing of any application to the Board has commenced and the Chairman of the Board as originally constituted or any other member of the Board as originally constituted is absent at any time prior to the decision of the Board upon such application, then in any such case as the circumstances may require—

(a) any other member may act as Chairman in the place of the said absent Chairman;

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(b) any other member may act in the place of the said absent member, and everything may be done by the newly constituted Board as if the Chairman or member of the Board as originally constituted had continued to sit.

17 Subject to the Act and the rules the Board shall have power to regulate their own proceedings.

18 *[omitted][spent]*

19 For the purposes of this Schedule a reference to a member of the Board shall, unless the context requires otherwise, include the Chairman and Deputy Chairman.

[Schedule FIRST SCHEDULE amended by 2014 : 24 s. 8 effective 29 July 2014]

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SECOND SCHEDULE

(Sections 6 and 7)

MATTERS FOR WHICH PROVISION MAY BE MADE IN DEVELOPMENT PLANS

- 1 the minimum site area and dimensions of parcels required for particular uses of lands or of buildings;
- 2 the ground area, floor area, size, site coverage, height and bulk of buildings;
- 3 the depth, dimensions and area of yards, courts and other open spaces to be provided around buildings;
- 4 the placement and arrangement of buildings on their sites and their relationship to other buildings and to streets and property lines;
- 5 maximum and minimum permissible densities or population which may be expressed in the plan as a ratio of habitable rooms per acre or as a number of dwelling units per site area or in a similar manner;
- 6 the design, character and appearance of buildings;
- 7 the location and amount of the access to sites from adjoining roadways;
- 8 the facilities to be provided for off-street parking or the loading of vehicles for particular uses of land or buildings which may be expressed in the plan in terms of the minimum number of parking or loading stalls or the minimum area for parking or loading on the site or on another site;
- 9 the erection of buildings—
 - (i) within a specified distance of the sea;
 - (ii) within a specified distance of the boundaries of any airfield or airport;
 - (iii) on land that is subject to flooding or subsidence or is low-lying, marshy or unstable;
- 10 the placement of buildings;
- 11 the protection of ridge lines and other visual amenities of Bermuda;
- 12 the sequence in which specified areas of land may be developed or redeveloped;
- 13 the location and reservation of land for roads, schools, parks open spaces and public amenities;

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- 14 the purposes for and the manner in which buildings may be used or occupied;
- 15 the prohibition of building or other operations on any land
- 16 the allocation of any particular land, or all land in an particular area, for buildings of a specified class or classes, or prohibiting or restricting, either permanently or temporarily, the making of any building or any particular class or classes of buildings on any specified land;
- 17 limiting the number of buildings or the number of buildings of a specified class which may be constructed, erected or made, on, in or under any area;
- 18 providing for the control of land by zoning or designating it for specific uses;
- 19 regulating the layout of housing areas including density, site coverage, subdivisions, spacing, grouping and orientation of houses in relation to roads, open space and other buildings;
- 20 determining the siting of community facilities including shops, schools, churches, meeting halls, play centres and recreation grounds whether in relation to the number and siting of houses or otherwise;
- 21 allocation of lands as open spaces;
- 22 the preservation or protection of the natural environment and of the character of Bermuda;
- 23 matters ancillary to Part VI;
- 24 the management of traffic;
- 25 designating or reserving land for future acquisition as the site or location of any public roadway, service or building or for a school, park or other open space;
- 26 specifying the manner in which any particular area of land is to be used, subdivided, or developed, and regulating or prohibiting the construction of buildings that would interfere with the carrying out of the development scheme;
- 27 making available any land for agricultural, residential, commercial industrial, or other uses of any class at any particular time;
- 28 the manner in which the area of land to be set aside by virtue of an agreement under section 33 is to be calculated.

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THIRD SCHEDULE

(Section 6(4)(b))

MATTERS FOR WHICH STUDIES IN SPECIAL STUDY AREAS MAY PROVIDE

- 1 The general improvement of an area (whether residential or commercial or industrial) that is derelict or that contains eyesores or buildings that are derelict or in danger of becoming so, or that is otherwise of poor quality.
- 2 The improvement of an area by requiring provision to be made for—
 - (a) regulating the location and design including the height and fenestration of buildings;
 - (b) preserving or opening up views or vistas;
 - (c) preserving trees or landscapes.
- 3 The preservation or reinforcement of the architectural character of an area.
- 4 The improvement in an area of community services, such as shops, and facilities such as roads and other means of access (including access to water and public open space).

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FOURTH SCHEDULE

(Section 28)

DESIGNATED AREAS OF SPECIAL ENVIRONMENTAL VALUE

1 Subject to paragraphs 2 and 3 of this Schedule, the extent of the protection afforded by the several heads of protection listed in section 28(1) is respectively as follows—

A: WOODLANDS PROTECTION

1 Subject to paragraphs 2 and 3, the following acts, if done wilfully, are forbidden—

- (a) cutting down, topping, lopping, destroying, removing or otherwise altering a tree;
- (b) destroying or removing any shrub, ground cover or other form of vegetation;
- (c) disturbing or destroying any soil, rock or other ground material.

2 Paragraph 1(a) shall not apply so as to prevent a Government Department or the Bermuda Electric Light Company Limited or the Bermuda Telephone Company Limited from dealing with a tree in a manner which in the absence of planning permission would, apart from this paragraph, be forbidden by paragraph 1, being a manner of dealing with the tree—

- (a) in the case of a Government Department, considered by that Department to be necessary for clearing a roadway in the exercise of a statutory power conferred upon that Department in that behalf;
- (b) in the case of the Bermuda Electric Light Company Limited or the Bermuda Telephone Company Limited, considered by that Company to be necessary in relation to the construction by that Company of an electricity or telephone line or the carrying out by it of maintenance or other work on such a line.

3 The Board may grant planning permission for any act forbidden in paragraph 1—

- (a) to the extent allowed by the development plan in the circumstances specified in that plan; and
- (b) if of the opinion that the doing of the act will not cause material damage to the woodland.

[Paragraph 3 amended by 1998:18 effective 18 June 1998]

B: AGRICULTURAL LAND PROTECTION

1 Subject to paragraph 2, the following acts, if done wilfully, are forbidden—

- (a) removing, burying or demolishing topsoil;

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- (b) altering subsoil or substrata.

2 The Board may grant planning permission for the doing of any act forbidden by paragraph 1 to the extent allowed by the development plan in the circumstances specified in that plan.

[Heading B amended by 1998:18 effective 18 June 1998]

C: BEACH PROTECTION

1 Subject to paragraph 2, wilfully burying or otherwise altering any sand or gravel on a beach is forbidden.

2 The Board may grant planning permission for the doing of any act forbidden by paragraph 1—

- (a) to the extent allowed in the development plan in the circumstances specified in that plan; and
- (b) if of the opinion that the doing of the act will not cause material damage to the beach environment.

[Paragraph 2 amended by 1998:18 effective 18 June 1998]

D: CAVE PROTECTION

1 Subject to paragraph 2, wilfully defacing, filling, destroying or otherwise altering a cave is forbidden.

2 The Board may grant planning permission for the doing of any act forbidden by paragraph 1—

- (a) to the extent allowed in the development plan in the circumstances specified in that plan; and
- (b) if of the opinion—
 - (i) that the doing of the act is necessary for the preservation of the cave or the maintenance of its flora and fauna; or
 - (ii) that the cave is of no scientific value.

[Paragraph 2 amended by 1998:18 effective 18 June 1998]

E: HABITAT PROTECTION

1 Subject to paragraph 2, wilfully removing, destroying or otherwise altering any substance necessary to the composition or sustenance of any flora or fauna is forbidden.

In this paragraph “substance” means soil, vegetation, rocks, sand, nesting sites, burrows, bodies of water and waterways.

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2 The Board may grant planning permission for the doing of any act forbidden by paragraph 1—

- (a) to the extent allowed by the development plan in the circumstances specified in that plan; and
- (b) if of the opinion that the doing of the act is necessary to the proper management or maintenance of the habitat.

[Paragraph 2 amended by 1998:18 effective 18 June 1998]

F: OTHER NATURAL FEATURES PROTECTION

1 Subject to paragraph 2, wilfully destroying, removing, disturbing or otherwise altering a natural feature is forbidden.

In this paragraph “natural features” means a natural feature specified in the development plan, not being a natural feature provided for elsewhere in this Schedule.

2 The Board may grant planning permission for the doing of any act forbidden by paragraph 1—

- (a) to the extent allowed by the development plan in the circumstances specified in that plan; and
- (b) if of the opinion that the doing of the act is necessary to the survival and continuation of that natural feature.

3 The Board shall be bound to grant planning permission for the doing of an act notwithstanding that the doing of the act is forbidden by paragraph 1 if either—

- (a) some law requires that the act be done; or
- (b) the doing of the act is necessary for preventing or abating a nuisance.

4 The word “alter” in paragraph 1, in relation to a thing, means to change the existing state of the thing by cutting, burying or demolishing the thing or changing in any way.

[Paragraph 2 amended by 1998:18 effective 18 June 1998]

[Schedule FOURTH SCHEDULE amended by 2014 : 24 s. 8 effective 29 July 2014]

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FIFTH SCHEDULE

(Section 25A)

PROTECTED CONSERVATION AREAS

The following areas are hereby designated as protected conservation areas—

Location	Description of Land	Purpose of Designation
<i>Riddell's Bay</i>	Southwestern area of former Riddell's Bay Golf Course, Warwick Parish 16.6 acres (725,038 feet) to West of Riddell's Bay Road and North of the foreshore of Riddell's Bay (excluding residential lots) including the Northernmost island of Riddell's Bay	To allow for the establishment and preservation of the land as a Nature Reserve in perpetuity wherein the land will be reserved principally for plants and habitats for local wildlife by restricting actions which can be carried out within the designated area as per A, E and F of the Fourth Schedule.
<i>White Crest Hill</i>	Land adjacent to White Crest Hill, Smith's Parish Four areas of land with a cumulative area of 3.4 acres (147,241 square feet) abutting the roadway of White Crest Hill to its East, West and South	To allow for the establishment and preservation of the land as an Open Space Reserve in perpetuity for the enjoyment by the public, restricting all forms of development other than site works and accessory structures which are ancillary to the enjoyment of the land as open space.

[Fifth Schedule inserted by 2021 : 33 s. 7 effective 1 July 2022; Fifth Schedule amended by BR 111 / 2022 para. 2 effective 1 November 2022]

[Assent Date: 18 June 1974]

[This Act was brought into operation on 27 June 1974 by GN 244/74]

[The Development and Planning Act 1965 (now repealed) was brought into operation on 3 August 1965]

Amended by

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1977 35
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1980 15

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1982 26
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