

# Physical Planning Act [Cap 193]

Commencement: 2 March 1987

## CHAPTER 193

## PHYSICAL PLANNING

Act 22 of 1986

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## PHYSICAL PLANNING

**To provide for controlling the development of land.**

**1. Interpretation**

In this Act, unless the context otherwise requires –

“Council” means Municipal Council or Local Government Council;

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

“material change of use” means any change of use of a building or land which so alters the character of the building or land such that the new use lies outside the use class of the former or existing use, the use classes being –

**CLASS 1** Retailing any commodity other than those defined in Classes 2, 3, and 4.

2 Retailing hot food.

3 Retailing liquor.

4 Retailing fuel and oil.

5 A wholesale warehouse or repository for any purpose.

6 An office for any purpose.

7 Light industry for any purpose which would not affect the amenities of a residential area.

8 General industry for any purpose which would not seriously affect the amenities of a residential area.

9 Special industry for any purpose which by virtue of the materials used or stored, or the hours of operation would seriously affect the amenities of a residential area.

10 Single household residence.

11 Multiple occupation (more than one household), or as an apartment building.

12 Boarding or guest house, or a hotel providing sleeping accommodation.

13 Residential boarding school or a residential college.

14 School or college.

15 Public worship or religious instruction.

16 Institution providing for the boarding, care and maintenance of children, old people or persons under disability, a convalescent home, a nursing home, a sanatorium or a hospital.

17 Use (other than residentially) as a health centre, a school treatment centre, a clinic, a day nursery or a dispensary, a consulting room, or surgery.

18 Art gallery (other than for business purposes) a museum, a public library or reading room, a public hall or an exhibition hall.

19 Theatre, a cinema, a music hall or a concert hall.

20 Dance hall, a swimming bath, vapour or foam bath or a gymnasium or sports hall.

21 Sports field with ancillary facilities, open space, garden, landscaped area or park.

22 Marina with ancillary facilities excluding accommodation.

23 Any other class that the Minister may by Order prescribe;

“outline permission” means permission granted following an application under section 6;

“plan” means a plan prepared in accordance with section 3.

## 2. Physical planning areas

(1) A Council may declare any area within its jurisdiction to be a Physical Planning Area..

(2) In making such a declaration a Council –

(a) shall have due and proper regard for the rules of custom;

(b) shall consider the welfare both of the people in the area affected and of the people of Vanuatu generally;

(c) shall ensure that persons affected by the proposed declaration have been given adequate notice of it, and that those people are given an opportunity to make representations to the Council.

(3) In declaring an area to be a Physical Planning Area, the Council may in its absolute discretion decide that one or more of the types of development specified in Schedule 1 shall not require permission for development, and it shall specify those types of development in the declaration.

(4) All declarations shall be published in the Gazette.

## 3. Plans

(1) Whenever a Council declares an area to be a Physical Planning Area it shall prepare a plan of that area.

(2) In preparing the plan, the Council shall follow the proceedings specified in section 2(2).

(3) The plan shall specify those areas in which the Council is prepared to consider applications for specified kinds of development, and may contain such other information as the Council may see fit.

(4) When it is completed notice of the plan shall be published in the Gazette, together with information on where and when that plan may be viewed by the public.

## 4. Development in a physical planning area

No person shall carry on development in a Physical Planning Area, except as specified in the declaration of that Physical Planning Area, without having first received permission in writing from the Council.

## 5. Application for planning permission

An application for development shall be made to the Council in such form and containing such information as the Council may specify, and shall be accompanied by such number of copies as the Council may specify.

## 6. Application for outline permission

If an applicant wishes to apply for general permission for development subject to details being later agreed by the Council, he may apply for outline permission to develop land subject to the subsequent grant of permission by the Council for those details, but the grant of permission by the Council in respect of those details shall be required before any development is begun.

## 7. Powers of the Council to deal with applications

- (1) Where application is made to the Council for permission to develop, the Council may grant permission either unconditionally or subject to such conditions as it thinks fit, or may refuse permission, and in dealing with any such application the Council shall have regard to the plan in force and any other material considerations.
- (2) Any permission granted under this section shall lapse on the expiration of 24 months from the date of its grant, or, where permission has been granted following an appeal, the date of determination of such appeal, unless the permitted development has been completed to the satisfaction of the Council.
- (3) Any permission granted under this section to an outline application under section 6 shall lapse at the expiration of 12 months from the grant thereof, or, where permission has been granted following an appeal, from the date of the determination of such appeal unless, in the case of those matters which are the subject of a later application, application for permission is made to the Council.
- (4) The Council may, on application, extend the time of permissions under subsections (2) and (3) at its discretion.
- (5) The Council may grant permission for the retention on land of any buildings or works constructed or carried out thereon before the date of the application or for the continuance of any use of land instituted before that date.
- (6) The Council may grant permission to develop for a limited period only.
- (7) Where any development has been commenced but not completed before the coming into operation of this Act, then if any permission required for the carrying out of that development had been duly granted, permission shall be deemed to have been granted in respect of the completion of that development.

## 8. Register of applications

- (1) The Council shall keep a register describing each application it has received and the decision made on each application.
- (2) The register shall be available for inspection by the public at all reasonable hours.

## 9. Powers of the Minister

(1) Where an application is made under this Act to the Council for permission to develop, and such permission is refused or is granted subject to conditions, the applicant may, if aggrieved by the decision of the Council by notice served on it within 40 days from the receipt of notification of its decision, appeal to the Minister, and the Council shall forthwith transmit such notice to the Minister.

(2) The Minister shall not entertain any appeal –

(a) submitted after the expiry of the time allowed for the appeal; or

(b) where it appears to the Minister that the application in respect of which permission has been refused could not have been granted by the Council or could not have been granted by the Council otherwise than subject to the conditions imposed upon it.

(3) Where an appeal is brought under this section the Minister may allow or dismiss the appeal or may reverse or vary any part of the decision of the Council and may deal with the application as if it had been made to him in the first place.

(4) Where an objection in writing to any Physical Planning Area or Plan is received by the Minister from any aggrieved person within 60 days of publication in the Gazette, the Minister shall consider such objection, and may in his absolute discretion direct the Council to make any appropriate amendments, and publish notice of the amendments in the Gazette.

#### 10. Demolition of dangerous buildings

(1) If the Council is of the opinion that any structure endangers human life or safety, it may serve upon any person having an interest in that building a notice stating –

(a) that in the opinion of the Council the structure is dangerous;

(b) the reasons for that opinion;

(c) that the person having the interest must make the structure safe;

(d) the date by which it shall be made safe.

(2) Appeal against such notice shall lie in the manner specified in paragraph 2 of Schedule 2 as if it were an appeal against an enforcement notice.

(3) If the structure is not made safe by the date in the notice, the Council may demolish the structure and recover its costs from any court of competent jurisdiction as a simple contract debt.

#### 11. Enforcement

The provisions of Schedule 2 (which relate to enforcement) shall have effect.

#### 12. Powers of entry

(1) Any person, duly authorised in writing by the Council may, at any reasonable time, enter upon any land for the purpose of carrying out any of the duties or powers imposed or conferred on such Council by this Act.

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

(3) Any person who, in compliance with the provisions of this section is admitted onto any land and who discloses to any person any information obtained by him there, shall, unless the disclosure is made in the course of performing his duty in connection with which he was authorised to enter the premises, be guilty of an offence and liable on conviction to a fine not exceeding VT 50,000 or to imprisonment for a term not exceeding 6 months.

- (4) Where any land is damaged in the exercise of a power of entry under this section, compensation in respect of that damage may be recovered from the Council by any person entitled thereto.
- (5) Any power conferred by this section to enter onto land shall be construed as including the power to search and bore for the purpose of ascertaining the nature of the subsoil.
- (6) A person shall not carry out any works authorised by subsection (5) unless notice of his intention to do so has been included in the notice required by subsection (2).

### 13. Service of notices

- (1) Subject to the provisions of this section, any notice or other document required or authorised to be served or given 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 the case in which an address for service has been furnished by that person, at that address; or
  - (c) by sending it in a prepaid registered letter addressed to the usual or last known place of abode of that person, or, in the case in which an address for service has been furnished by that person, at that address; or
  - (d) in the case of an incorporated company or body, by delivering it to the Secretary or Clerk of the company or body at their registered or principal office, or sending it in a prepaid registered letter addressed to the Secretary or Clerk of the company or body at that office.
- (2) Where the notice or document is required or authorised to be served on any person as having an interest in the premises, and the name of that person cannot be ascertained after reasonable inquiry, or where the notice or document is required or authorised to be served on any person as an occupier of the premises, the notice shall be deemed to be duly served if –
  - (a) being addressed to that person either by name or by suitable description, as the case may be, of the premises (describing them) it is delivered or sent in the manner prescribed in subsection (1); or
  - (b) being addressed as aforesaid and marked in such manner that is clearly 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 responsible person on those premises or is affixed conspicuously to some object on those premises.
- (3) Where the notice or other document is required to be served on or given to all persons having interests in, or being occupiers of, premises comprised in any land, and it appears that any part of that land is unoccupied, the notice shall be deemed to be duly served on all persons having interests in, and on any occupiers of, premises comprised in that part of the land (other than a person who has furnished an address for the service of the notice on him) if it is addressed with suitable description and is affixed conspicuously to some object on the land.
- (4) Any notice or document to be served on the Council shall be served either by sending it in a prepaid registered letter addressed to the Secretary or the Town Clerk of the Council or by delivering it to the Secretary or Town Clerk personally at that person's office.

### 14. Immunity from proceedings

Except where specifically provided for in this Act no action may be taken against the Government or the Councils or any of their employees in consequence of any decision, order or action given, made or taken by them under or in pursuance of the provisions of this Act.

### 15. Fees

The Minister by regulations may prescribe fees for payment of any application under this Act.

## **SCHEDULE 1**

(Section 2(3))

### **DEVELOPMENTS FOR WHICH PERMISSION MAY NOT BE REQUIRED IN A PHYSICAL PLANNING AREA**

1. 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 and do not materially affect the external appearance of the building.
2. The extension, on one occasion only, of any building for which permission has already been given by the Council, by 10 per cent of its net floor area.
3. The carrying out of works by a public authority required for the maintenance or improvement of a road if the works are carried out on land within the road reserve.
4. The carrying out by any public authority or statutory undertaker or of any works for the purpose of inspecting, repairing or renewing any sewers, pipes, cables or other apparatus including the breaking open of any other land for that purpose.
5. The use of any building or other land within the curtilage of a dwelling-house for any purpose incidental to the enjoyment of the dwelling-house.
6. The use of any land and associated buildings, though not living accommodation, for the purposes of livestock keeping, agriculture, fishing or forestry.
7. Any other operations or use of land which may be prescribed, in regulations made by the Minister.

## **SCHEDULE 2**

(Section 10(2), 11)

### **ENFORCEMENT**

#### **1. Enforcement of planning control**

- (1) If it appears to the Council that any development has been carried out without the grant of permission required, or that any conditions subject to which a permission was granted in respect of any development have not been complied with, then the Council may within 1 year of such development being carried out, or, in the case of non-compliance with a condition, within 1 year of the date of the alleged failure to comply with such a condition, may serve on the occupier of the land and all other persons having an interest in the land or the permission a notice under this paragraph.
- (2) Any notice served under subparagraph (1) (hereinafter called an "enforcement notice") shall specify the development that is alleged to have been carried out without the grant of permission required or, as the case may be, the matters in respect of which it is alleged that any such conditions as aforesaid have not been complied with, and may require such steps as may be specified in the notice to be taken within such period after the notice takes effect as may be specified therein for restoring the land to its condition before the development took place, or for securing compliance with the conditions, as the case may be; and in particular any such notice may require the demolition or alteration of any buildings or works; the discontinuance of any use of land, or the carrying out on land of any building or other operations.
- (3) Except as otherwise provided in this paragraph, an enforcement notice shall take effect at the expiration of such period (not being less than 28 days after the service thereof) as may be specified therein.

(4) If within the period mentioned in subparagraph (3), an application is made to the Council under this paragraph for permission –

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

the operation of the enforcement notice shall be suspended pending the determination of the application and any appeal made thereafter, and if the permission applied for is granted on that application or any appeal arising therefrom, the enforcement notice shall not take effect.

## 2. Appeal against an enforcement notice

(1) If any person on whom an enforcement notice is served under this Schedule is aggrieved by the enforcement notice, he may, at any time within the period mentioned in paragraph 1(3), appeal against the enforcement notice to the Magistrates' Court having jurisdiction in the area within the land to which the notice relates is situated; and on any such appeal the court –

- (a) if satisfied that permission was granted under this Act for the development to which the enforcement notice relates, or that no such permission was required for the said development, or, as the case may be, that the conditions subject to which the permission was granted have been complied with, shall quash the enforcement notice to which the appeal relates;
- (b) if not so satisfied, but satisfied that the requirements of the notice exceed what is necessary for restoring the land to its condition before development took place or for securing compliance with the conditions, as the case may be, shall vary the notice accordingly; or

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

(2) When, within the period mentioned in paragraph 1(3), an appeal is made to the court under this paragraph by a person on whom the enforcement notice was served, the operation of the enforcement notice shall be suspended pending the determination or withdrawal of the appeal.

(3) Where the enforcement notice is varied or the appeal is dismissed then, the court may direct that the enforcement shall not come into force until such date as it thinks fit.

## 3. Supplementary provisions as to enforcement

(1) If within the period specified in an enforcement notice those steps required by the enforcement notice to be taken (other than the discontinuance of any use of land) have not been taken, the Council may enter on the land and take those steps and may recover as a simple contract debt in any court of competent jurisdiction from those persons having beneficial occupation of the land any expenses reasonably incurred by the Council in that behalf; and if those persons, having been entitled to appeal to the court under this Act failed to make such an appeal they shall not be entitled in proceedings under this paragraph to dispute the validity of the action taken by the Council upon any ground that could have been raised in such an appeal.

(2) Any expenses incurred by those persons having beneficial occupation of any land for the purposes of complying with an enforcement notice served under this Act, in respect of the expenses of the Council in taking steps required to be taken by such an enforcement notice, shall be deemed to be incurred at the request of the person by whom the development was carried out.

(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 operations thereon, then if any person, without the grant of permission in that behalf under this Act, uses the land or causes or permits to be carried out those operations, in contravention of the enforcement notice, he shall be guilty of an offence and liable on conviction to a fine not exceeding VT 50,000, and, in the case of continuing offence, to a further fine not exceeding VT 10,000 for every day after the first day during which the use is so continued.

(4) Nothing in this Act shall be construed as requiring permission to be obtained thereunder for the use of any land for the purpose for which it could lawfully have been used if the development in respect of which an enforcement notice served under this Schedule had not been carried out.

## 4. Penalties for failure to comply with certain enforcement notices

(1) Where an enforcement notice has been served under this Schedule on the person who was, when the notice was served on him, the person in beneficial occupation of the land to which the enforcement notice relates and within the period specified by the enforcement notice, any steps required by the enforcement notice to be taken (other than the discontinuance of any use of land) have not been taken by the said person, he shall be guilty of an offence and liable on conviction to a fine not exceeding VT 50,000, and, in the case of a continuing offence to a further fine not exceeding VT 10,000 for every day after the first day during which the requirements of the enforcement notice (other than the discontinuance of any use of land) remain unfulfilled.

- (2) If a person against whom proceedings are brought under this Schedule (hereinafter referred to as the "original defendant") has at some time before the end of the period specified in the enforcement notice for compliance with the notice ceased to be the person in beneficial occupation of the land, he shall, upon information duly laid by him and on giving to the prosecution not less than 3 days clear notice of his intention, be entitled to have the person who then became the beneficial occupant of the land brought before the Court in the proceedings.
- (3) If it has been proved that any steps required by the enforcement notice have not been taken as aforesaid, and the original defendant proves that the failure to take the required steps was attributable in whole or in part to the default of the said other person, that other person may be convicted of the offence.
- (4) If the original defendant further proves that he took all reasonable steps to secure compliance with the enforcement notice, then he shall be acquitted of the offence.

#### 5. Discharge of enforcement notices

(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 may not be apt for the purpose, be deemed to apply in relation to the building or works as reinstated or restored as it applied in relation to the buildings or works before they were demolished or altered and paragraphs 3(1) and 3(2) shall apply accordingly.

- (2) Without affecting the operation