



BERMUDA

1983 : No. 34

## THE DEVELOPMENT AND PLANNING AMENDMENT ACT 1983

[Date of Assent 5th July, 1983]

[Operative Date 5th July, 1983]

WHEREAS it is expedient to amend the Development and Planning Act 1974:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

1. This Act may be cited as the Development and Planning Amendment Act 1983. Amends 1983.

2. In this Act — Interpretation.  
 "the Act" means the Development and Planning Act 1974;  
 "section" means section of the Act.

3. Subsection (3) of section 14 is amended by replacing the full stop at the end of the subsection with a semi-colon and adding the following paragraph to the subsection — Amends s. 14(3).

"(c) the following are acts of development within subsection (2), that is to say —

- (i) any act in a designated area, being an act regulated by section 27A and the Fourth Schedule;

- (ii) any act in a historic area, being an act for the doing of which subsection (2) of section 29A provides that planning permission is required."

**Amends s. 22(1).** 4. Subsection (1) of section 22 is amended by replacing the full stop at the end of the subsection with a semi-colon and adding the following paragraph to the subsection —

"(d) agreements made under section 31A.

**Amends s. 25(1).** 5. Subsection (1) of section 25 is amended by deleting the words "Board", "they" and "them" and substituting the words "Minister", "he" and "him" respectively.

**Inserts new s. 27A.** 6. There shall be inserted in the Act immediately after section 27 the following section 27A —

**Designated areas.**

27A. (1) A development plan may designate by reference to this section areas of Bermuda (being areas considered to possess natural features of special environmental 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, that is to say —

- (a) woodlands protection;
- (b) arable 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."

**Fourth Schedule.**

**Inserts new s. 29A.**

7. There shall be inserted in the Act immediately after section 29 the following section 29A —

**"Historic  
areas."**

29A. (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 paragraph (a) of subsection (1) of section 18 of the Town of St. George (Protection of Buildings of Special Interest) Act 1950 (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 shall have power to refuse the grant of planning permission for the doing of any development regulated by subsection (2) on any of the following grounds, that is to say —

- (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 50 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 subsections (2), (3) and (5) of section 29 so far as those subsections are applicable."

Insert  
new s.31A.

8. There shall be inserted in the Act immediately after section 31 the following section 31A -

"Agreements  
relating  
development or  
use of land.

31A. (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 be construed -

(a) as restricting 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

- (b) as requiring the exercise of any such powers otherwise than as mentioned in paragraph (a) of this subsection.”.

9. Subsection (1) of section 56 is amended by deleting the words “and occupier” and substituting the words “of the land or the person in occupation”. Amends s 56(1).

10. Section 58 is repealed and the following section is substituted:— Repeals and replaces s 58

“Penalties for failure to comply with enforcement notices.

58. (1) Where any steps (other than the discontinuance of any use of land) required by an enforcement notice that has been served pursuant to section 55 or 56 have not been taken within the period specified in the notice for compliance with the notice, or within any lawful extension of that period, the following provisions of this section shall have effect for the purpose of enforcing the notice.

(2) In a case where the notice was served on the owner of the land —

- (a) the owner (“the original defendant”) may be prosecuted summarily under this paragraph for the failure to take the steps referred to in subsection (1) and, if it is proved to the court that those steps have not been taken, he shall, subject to paragraphs (b) and (c), be liable to a fine not exceeding one thousand dollars for the failure and, in the case of a continuing failure, to a further fine not exceeding two hundred and fifty dollars for every day after the first day during which the requirements of the enforcement notice (other than the discontinuance of any use of the land) remain unfulfilled;
- (b) if the original defendant ceased to be the owner of the land at any time before the expiry of the period referred to in subsection (1), he shall, if he gives the court not less than three clear days notice in writing of his intention to act under this paragraph, be entitled to have the person who then became the owner of the land (“the second defendant”) summoned and

brought before the court to be tried for the failure and

- (c) if the original defendant proves to the court that he took all reasonable steps available to him to secure compliance with the notice he shall be acquitted; and if the court determines that the failure to comply with the notice was due to the default of the second defendant, it shall find him guilty of the failure and shall thereupon have the same power to punish the second defendant as it would have had to punish the first defendant if it had found the first defendant guilty under paragraph (a).

(3) In a case where the notice was served on a person who was in occupation of land without being the owner of the land, paragraph (a) of subsection (2) (but excluding the reference to paragraphs (b) and (c)) shall apply in relation to him as if he were the owner unless he satisfies the court that in his circumstances (including in particular the nature and quality of his occupation of the land) his failure or refusal himself to comply with the requirements of the notice was justified.

Amendment 10.

11. Subsection (1) of section 60 is amended by deleting the words "and occupier" and substituting the words "of the land or the person in occupation".

Amendment 11.

12. Section 61 is amended —

- (a) by deleting from subsection (4) the phrases "or occupier" and "five thousand" and substituting the phrases "or person in occupation" and "twenty-five thousand" respectively;
- (b) by deleting from subsection (5) the phrases "or occupier" and "one thousand" and substituting the phrases "or person in occupation" and "twenty-five thousand" respectively; and
- (c) by deleting from subsection (6) the word "occupier" wherever it appears and substituting the words "person in occupation" in every case.

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ACT 1983**

11. There shall be inserted in the Act immediately after section 61 the following section 61A — Inserts  
new s.61A.

61A. (1) No person shall commence any work of a kind described in subsection (1) of section 61 (in this section called "site excavation work") unless either a planning permission has been issued expressly authorizing the commencement of that work or there is a licence in force under this section authorizing the commencement of that work.

(2) This section shall have effect in addition to subsection (1) of section 61 or any other law requiring a permit or other permission of any kind for, or otherwise restricting, site excavation work, and shall not derogate from that subsection or any such law.

(3) A person who contravenes subsection (1) shall be guilty of an offence and liable on summary conviction therefor to a fine not exceeding twenty-five thousand dollars.

(4) A person desiring to commence site excavation work in a case where the planning permission does not include express authority for the commencement of site excavation work shall, before he commences that work, apply for a licence under this section to the Director by a letter which —

- (a) describes the work; and
- (b) establishes that planning permission in relation to the work was granted either to him or to some other person who has authorized him to carry out the work, in the latter case enclosing evidence of that authority.

(5) Where application for a licence is properly made to the Director under subsection (4), he shall issue the licence in accordance with subsection (6) within fourteen days of the date on which he received the application.

(6) A licence under this section —

- (a) shall specify the name of the person or persons who will do the work;

- (b) shall describe the work that is to be done, but so that the description shall accord with the terms of the planning permission; and
  - (c) may contain such terms and conditions as the Director considers to be needed for ensuring that the work will be done lawfully and properly.
- (7) If the Director either —
- (a) fails or refuses to issue a licence under this section; or
  - (b) issues a licence which includes a term or condition to which the applicant for the licence objects,

the applicant for the licence may appeal to a court of summary jurisdiction —

- (a) in the case of a failure to issue a licence, within twenty-one days of the date fixed by subsection (5) for the issue of the licence; or
- (b) otherwise within twenty-one days of —
  - (i) the date on which the applicant received notification of the Director's refusal to issue the licence; or
  - (ii) the date on which the applicant received the licence.

whichever earlier occurs; and upon such an appeal the court shall have all the powers conferred upon the Director by this section and may, in addition, make such order as to the costs of the appeal as the court thinks fit.

(8) The decision of the court on an appeal under subsection (7) shall be final.”

Add Fourth  
Schedule.

11. There shall be added to the Act immediately after the Third Schedule the following Schedule —

**"FOURTH SCHEDULE (Section 27A)****DESIGNATED AREAS OF SPECIAL  
ENVIRONMENTAL VALUE****HEADS OF PROTECTION**

1. Subject to paragraphs 2 and 3 of this Schedule, the extent of the protection afforded by the several heads of protection listed at paragraphs (a) to (f) of subsection (1) of section 27A is respectively as follows —

Heads of  
protection.

**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. Sub-paragraph (a) of paragraph 1 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;

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 if --

- (a) they are of opinion that the doing of the act will not cause measurable damage to the thing in question; and
- (b) the Minister responsible for Agriculture agrees.

#### B: ARABLE LAND PROTECTION

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

- (a) removing, burying or demolishing topsoil;
- (b) altering subsoil or substrata.

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 the Minister responsible for Agriculture agrees.

#### 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 any act forbidden by paragraph 1 if --

- (a) they are of opinion that the doing of the act will cause little or no environmentally significant damage to the beach; and
- (b) the Minister responsible for Agriculture agrees.

#### 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 if --

- (a) they are of 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; and
- (b) the Minister responsible for Agriculture agrees.

#### **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.

2. The Board may grant planning permission for the doing of any act forbidden by paragraph 1 if they are of opinion that the doing of that act is necessary to the proper management or maintenance of the habitat and the Minister responsible for Agriculture agrees.

#### **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 feature" 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 if they are of opinion that the doing of that act is necessary to the proper management or maintenance of that natural feature and the Minister responsible for Agriculture agrees.

Obligation  
to grant  
planning  
permission in  
certain cases.

2. 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.

Interpretation.

3. 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 it in any way."