

DEVELOPMENT AND PLANNING AMENDMENT ACT 1997



**BERMUDA
1997 : 3**

DEVELOPMENT AND PLANNING AMENDMENT ACT 1997

[Date of Assent 11 March 1997]

[Operative Date 1 April 1997]

WHEREAS it is expedient to amend the Development and Planning Act 1974 with respect to subdivision and to make consequential provision;

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:—

Short title and commencement

1 This Act, which amends the Development and Planning Act 1974 ("the 1974 Act"), may be cited as the Development and Planning Amendment Act 1997, and shall come into operation on 1st April 1997.

Subdivision control

2 For sections 35 and 36 of the 1974 Act (subdivision control) there shall be substituted—

"Meaning of subdivision

35A In this Act, "subdivision" means—

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

and "person subdividing" shall be construed accordingly.

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.

(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

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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

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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.

(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."

Minor and consequential amendments and repeals in 1974 Act

3 (1) In section 1 of the 1974 Act (interpretation)—

(a) in the definition of "registered plan of subdivision", for "section 36(6)" there shall be substituted "section 35D(1)"; and

(b) for the definition of "subdivide", there shall be substituted—

" "subdivision" has the meaning given by section 35A."

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(2) At the end of section 14(2) of the 1974 Act (development not requiring planning permission) there shall be added—

"(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) In section 22 of the 1974 Act (register of applications and decisions) in subsection (1)(a)(ii) (compensation), for "Part VI" there shall be substituted "Part VII".

(4) The following provisions of the 1974 Act—

(a) in section 37 (more than one building on land prior to 3 August 1965), paragraph (b) and the word "and" immediately preceding it; and

(b) section 38 (subdivisions approved before June 1974),

shall cease to have effect and are hereby repealed.

(5) In section 39 of the 1974 Act (certain subdivisions not to require planning permission) for the words "is a part of a building to which no land, other than parts of the same building, are appurtenant" there shall be substituted, and deemed always to have been substituted, the words "consists only of part of a building (and no other land)".

(6) In section 40 of the 1974 Act (certain persons not affected by section 35)—

(a) in subsection (1), for "section 35" there shall be substituted "section 35B";

(b) in the definition of "interest" in subsection (2), for "section 35(1)(b), or section 35(2)(a)" there shall be substituted "section 35B(1)(a)"; and

(c) in the definition of "sell" in subsection (2), for "section 35(1) or (2)" there shall be substituted "section 35A".

(7) In section 41 of the 1974 Act (sale of pre-1974 lots not to require approval), for "section 35" there shall be substituted "section 35B".

(8) For section 42 of the 1974 Act there shall be substituted—

"Retroactive effect of planning permission in certain cases

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

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- (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
- (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."

Other consequential amendments

4 (1) In section 64 of the Condominium Act 1986 (application of 1974 Act), for subsection (2) there shall be substituted—

"(2) The creation of units as part of the development of land as a condominium under this Act and any transfer or grant of a lease relating to such a unit—

- (a) are not subdivisions of land within the meaning of section 35A of the 1974 Act; and accordingly
- (b) are not restricted or controlled by anything in section 35B of that Act."

(2) In Head 16 of the Schedule to the Government Fees Regulations 1976 (which relates to the 1974 Act)—

- (a) in paragraph (3)(f), for "section 36(6)" there shall be substituted "section 35D(1)"; and
- (b) in the definition of "Final plan" in paragraph 2 of the Notes, for "section 36(5)" there shall be substituted "section 35C(6)";

but the amendment of the 1976 Regulations by this subsection shall not prevent their further amendment by subordinate legislation.

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Transitional provision

5 (1) Except for the amendment to section 39 of the 1974 Act in section 3(5) above, the amendments made by this Act shall apply only in relation to subdivisions of land and applications for planning permission to subdivide land made on or after 1st April 1997.

(2) Subject to subsection (4), any planning permission—

- (a) registered under section 36(6) of the 1974 Act,
- (b) deemed to have been so registered under section 38 of the 1974 Act, or
- (c) granted under section 35 or 36 of the 1974 Act on or after 31st March 1995 and not registered by 31st March 1997,

shall be deemed to have been registered by the Minister under section 35D(1) of the 1974 Act (as inserted by section 2 above) on 1st April 1997.

(3) Any statement issued by the Minister purportedly extending any time limits for registration of subdivision permission under section 38 of the 1974 Act shall be deemed to have so modified the effect of section 38; and, accordingly, the reference in subsection (2)(b) above to planning permission deemed under section 38 to have been registered under section 36(6) shall include any permission registered by virtue of any such statement.

(4) Where the effect of subsection (2) would be that two or more plans relating to the same land would be deemed to be registered, the Minister shall give the owner of the land written notice stating—

- (a) that only the plan most recently granted planning permission shall be deemed to be registered under subsection (2), unless
- (b) within sixty days from the date of the notice (or such longer period as the Minister may allow) the owner notifies the Minister in writing which other plan should instead be deemed to be registered.