



BERMUDA STATUTORY INSTRUMENT

BR 7/1997

**DEVELOPMENT AND PLANNING (APPLICATION PROCEDURE)
RULES 1997**

*[made under section 78 of the Development and Planning Act 1974 [title 20
item 1] and brought into operation on 1 April 1997]*

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**PART I
PRELIMINARY**

Citation and commencement

1 These Rules may be cited as the Development and Planning (Application Procedure) Rules 1997 and shall come into effect on 1st April 1997.

Interpretation

2 In these Rules, unless the context otherwise requires—

"the Act" means the Development and Planning Act 1974 [*title 20 item 1*];

"applicant" means a person applying for planning permission and "application" shall be construed accordingly;

"architectural plan" means plans, elevations and sections drawn in accordance with, and showing the matters specified in, rule 3;

"the Board" means the Development Applications Board established under section 3 of the Act;

"the Department" means the Department of Planning;

"the Director" means the Director of Planning;

"draft plan of subdivision" means a plan drawn in accordance with, and showing the matters specified in, rule 4;

"location plan" means a plan drawn in accordance with rule 5;

"planning permission" has the meaning assigned to it by section 1 of the Act;

"planning permission in principle" has the meaning assigned to it by section 23(8) of the Act;

"prescribed fee" means the appropriate fee, if any, prescribed under the Government Fees Act 1965 [*title 15 item 18*];

"private road" means a road that is not a public highway and includes an estate road;

"public road" means a public highway;

"site excavation plan" means a plan drawn in accordance with, and showing the matters specified in, rule 6;

"site excavation work" includes—

(a) any excavation upon any land, whether by the use of excavation equipment or otherwise, preparatory to the commencement of any building or engineering operations; and

(b) any quarrying operations;

"site plan" means a plan drawn in accordance with, and showing the matters specified in, rule 7.

Architectural plans

3 (1) An architectural plan shall show—

(a) the roof, foundation and each floor of the building with extensions clearly marked;

(b) elevations of all sides, in the case of a proposed new building and, in any other case, elevations of all sides of any building which will be affected by the proposed development;

(c) two cross-sections of the building and its relationship to the site, taken at right angles, showing the levels of all ground floors and of the existing and proposed finished grades of the site in relation to all adjoining public or private roads and lot lines; and

(d) the materials proposed to be used in the development, and, where appropriate, their colour.

(2) An architectural plan shall be drawn to a scale of not less than 1:100 except where, after consultation with the Director, a scale of not less than 1:200 may be used.

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Draft plan of subdivision

4 A draft plan of subdivision shall be drawn to a scale of not less than 1:500 and shall show—

- (a) the boundaries of the application site edged in red, dimensions, area or areas, development plan zonings and surveyed contours (at one metre intervals) of the existing lot or lots of land to be subdivided;
- (b) the approximate area or areas and boundaries to be created by the subdivision;
- (c) the widths, location, and grades of the road or roads intended to provide access to the subdivision;
- (d) the location, area or areas and boundaries of any land to be dedicated for community purposes;
- (e) the location and dimensions of any rights or easements which exist over the parcel or parcels to be subdivided;
- (f) the location of all existing structures (including walls, fences, water tanks, wells and any cess pits known to exist) and existing uses on or under the land to be subdivided; and
- (g) the location of any sewers, pipelines, cables or other apparatus known to exist, including those of statutory undertakers.

Location plan

5 A location plan shall be drawn to a scale of 1:2500 and shall show—

- (a) the location of the land proposed to be developed or subdivided shown edged in red, and any adjoining properties, owned by the person who owns the land proposed to be developed, or subdivided, shown edged in blue;
- (b) the location of all buildings on the adjoining properties as shown on the most recent Ordnance Survey map; and
- (c) the location, and the means of access from the land proposed to be developed or subdivided to the public road or roads coloured yellow.

Site excavation plan

6 A site excavation plan shall be drawn to a scale of not less than 1:500 and shall show—

- (a) the boundaries and area of the site, edged in red;

- (b) the location of all existing and proposed buildings, plant and machinery;
- (c) the existing and proposed uses of any buildings;
- (d) the surveyed contours (at one metre intervals) both as at the date of application and as they are proposed upon cessation of any site excavation work;
- (e) sufficient sections through the site to a scale not less than 1:250 to show—
 - (i) the present grade line and elevation;
 - (ii) the maximum depth of any site excavation work, vertical rock faces and steps; and
 - (iii) the proposed grade line and elevation; and
- (f) the location, width and grade of all existing and proposed means of vehicular access to the site.

Site plan

- 7 (1) A site plan or plans shall show—
- (a) the boundaries of the application site edged in red, together with its dimensions;
 - (b) the location and use of all existing and proposed buildings or structures within the site (including any proposed additions), and the location and use of all existing buildings or structures on adjacent land which lie within 4.5 metres of any part of the application site;
 - (c) the area of the application site;
 - (d) the surveyed contours of the site at one metre intervals;
 - (e) existing and proposed lines and levels of the rain or storm water surface runoff and sewage system;
 - (f) the location of any cess pits, water tanks and wells known to exist and the proposed location of any such structures;
 - (g) the location and layout of existing and proposed parking areas;
 - (h) proposed landscaping of the site, including all existing trees and shrubs to be removed or retained, and trees and shrubs to be planted;

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- (i) the location, width and grade of vehicular access to the site and grade and radii of any road junction (the bell-mouth);
 - (j) the location and dimensions of any rights or easements which exist over the application site;
 - (k) if a proposed change of use is involved, the part of the land or building subject to the change of use and the existing and proposed uses; and
 - (l) if any regrading of the application site is involved, the extent of the area to be excavated or filled and the depth to which it will be excavated or filled.
- (2) A site plan shall be drawn to a scale not less than—
- (a) 1:250 for application sites not exceeding 0.20 hectares in area; or
 - (b) 1:500 in all other cases.
- (3) Where the site plan relates to an application to develop undeveloped land, the site plan shall show the boundaries and dimensions of the application site confirmed by land survey and supported by calculations if so required by the Board.

**PART II
APPLICATIONS: GENERAL PROVISIONS**

Planning application

8 (1) Subject to rules 14 to 16, an application for planning permission shall be made on such form as the Minister may from time to time determine which shall be completed in full and shall be accompanied by such plans, maps and drawings of such quality and legibility as the Board considers appropriate.

(2) In addition to anything required by these Rules to be provided with respect to an application, an applicant may submit such other photographs, drawings, maps, plans, models or written representations as the applicant considers necessary to apprise the Board of the merits of the application; and any such supplementary documentation shall be regarded as forming part of the application unless expressly excluded, in writing, by the applicant.

(3) Subject to paragraph (4), where an application for planning permission does not comply with the requirements of these Rules, the Board may refuse to consider the application, and if it does shall so inform the applicant in writing.

(4) Nothing in paragraph (3) shall prohibit the Board from considering an application that does not comply with the requirements of these Rules.

Renewal of permission

9 (1) Notwithstanding rule 8, the Board may consider an application for renewal of planning permission made in writing and giving sufficient information to enable the Board to identify the previous grant of planning permission and any condition in question.

(2) Paragraph 1 applies only in relation to renewal of a planning permission—

- (a) previously granted for development which has not yet begun, and
- (b) in relation to which a time limit imposed under section 23 of the Act has not expired but has less than three months to run before it expires.

Additional information

10 The Board may, in addition to the information referred to in these Rules, require an applicant to provide further specified drawings, plans or other information, including a model, architectural renderings and such information relating to the environmental effects of the proposed development as it considers appropriate, to enable it to determine an application.

Proof of ownership of land

11 If so required by the Board, an applicant who claims to be the owner of the land in respect of which the application is made shall adduce evidence of title sufficient to establish his ownership to the satisfaction of the Board.

Consent of other persons

12 Where for any reason the consent of any other person to an application is sought by the applicant that consent shall be in writing in such form as the Board may from time to time determine.

Notification of receipt of application

13 (1) The Board may, with the approval of the Minister, establish guidelines as to the cases and circumstances in which the receipt of an application for planning permission will require public notification.

(2) Where in accordance with such guidelines the receipt of an application requires public notification—

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- (a) the Director shall, by notice published in the Gazette, give notification of such receipt; and
- (b) the Board may require the applicant to display a notice or notices on the site in question in accordance with such directions as the Board may give.

**PART III
APPLICATIONS TO DEVELOP LAND**

In principle application

14 An application for planning permission in principle for the development of land shall consist of—

- (a) the application form completed in duplicate;
- (b) four copies of the location plan;
- (c) four copies of the site plan, two copies of which shall be appropriately coloured so as to identify all proposed development;
- (d) if site excavation work is to be involved, four copies of the site excavation plan, unless the site plan incorporates all of the required features of the site excavation plan;
- (e) evidence of payment of the prescribed fee; and
- (f) a certificate of the kind referred to in section 16(2) of the Act, if required.

Final application

15 An application for final planning permission for the development of land shall consist of—

- (a) the application form completed in triplicate;
- (b) four copies of the location plan;
- (c) four copies of the site plan, two copies of which shall be appropriately coloured so as to identify all proposed development;
- (d) any information or material required pursuant to conditions attached by the Board to any approval for planning permission in principle;
- (e) four copies of the architectural plans, two copies of which shall be appropriately coloured so as to identify all proposed development;

- (f) evidence of payment of the prescribed fee; and
- (g) a certificate of the kind referred to in section 16(2) of the Act, if required.

**PART IV
APPLICATIONS TO SUBDIVIDE LAND**

Application to subdivide land

16 (1) Subject to paragraph (4), an application for planning permission for the subdivision of land shall consist of—

- (a) the application form completed in duplicate;
- (b) four copies of the location plan;
- (c) four copies of the draft plan of subdivision indicating the matters specified in section 35C(2)(a) of the Act;
- (d) evidence of payment of the prescribed fee; and
- (e) a certificate of the kind referred to in section 16(2) of the Act, if required.

(2) Upon receiving approval of the draft plan of subdivision from the Board, an applicant may apply for the approval of a final plan of subdivision and such an application shall consist of—

- (a) the application form completed in duplicate;
- (b) four copies of the final plan of subdivision;
- (c) evidence of the payment of the prescribed fee; and
- (d) a certificate of the kind referred to in section 16(2) of the Act, if required.

(3) In this rule, "final plan of subdivision" means a plan of subdivision which—

- (a) is a draft plan of subdivision or has been approved as such a plan but which, notwithstanding the provisions of rule 4(a), need not show the development plan zonings and surveyed contours referred to in that rule;
- (b) has been confirmed by land survey, and is supported by calculations if so required by the Board;
- (c) contains such engineering or other details as the Board may require relating to the construction of any roads.

(4) In such cases as the Board may allow, an application for planning permission for the subdivision of land pursuant to section 35C

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of the Act may consist of an application for approval of a final plan of subdivision which has not previously been approved as a draft plan.

**PART V
OTHER APPLICATIONS**

[Part V repealed by 1999:4 s.2(2)(d) effective 1 July 2000]

**PART VI
OBJECTIONS AND REPRESENTATIONS**

Method of making an objection

18 (1) Any person may make an objection to the Board with respect to an application, and any such objection shall be made in writing and shall be received by the Department within 14 days of the date of notification of the receipt of the application appearing in the Gazette.

(2) An objection shall—

- (a) identify the application to which the objection relates and the application's reference number;
- (b) contain the name of the person making the objection and an address in Bermuda at which notices may be served upon him;
- (c) where the objection is signed by more than one person, specify one address in Bermuda at which notice may be served upon those making the objection;
- (d) state whether the person signing the objection has an interest in land in the vicinity of the land to which the application relates and, if so, the nature of that interest and the location of that land;
- (e) state the grounds upon which the objection is made; and
- (f) be signed by the person or persons making the objection.

(3) Objections may be made on an objector's behalf by an authorised representative.

(4) The Board may disregard any objection which does not conform to the requirements of paragraph (2) and any objection so disregarded shall be deemed not to have been made.

Comments of Government Departments, etc

19 (1) The Board shall afford such Ministries and Departments within the Government of Bermuda as it considers may be affected by, or

interested in, an application, the opportunity to comment in writing on the application.

(2) The Board may invite such other persons as it thinks fit to make written representations or comments with respect to any application.

Timetable for objections

20 (1) Where an objection is made to an application under rule 18, a copy of such objection shall be made available to the applicant by the Director not less than 14 days before the date on which the application is to be considered by the Board.

(2) The applicant may make such submissions in writing as he may think fit upon the copy of the objection being made available to him under paragraph (1).

(3) Where the Board is satisfied that the provisions of paragraph (1) have been complied with and that the applicant has had proper opportunity of submitting his case to the Board (whether or not he has, in fact, done so), the Board may deal with the application as it sees fit.

(4) With the consent of the applicant, the Board may consider an application where an objection is made available to the applicant less than 14 days prior to its consideration.

Advice of Advisory Architectural Panel

21 (1) An applicant or an objector may, within 14 days of the notice appearing in the Gazette, request, in writing, the Board to seek the advice of the Advisory Architectural Panel; and the Board, after considering such a request may, in its discretion, seek the advice of the Advisory Architectural Panel or refuse the request.

(2) Where the Board seeks the advice of the Advisory Architectural Panel, the Advisory Architectural Panel shall not be required to take evidence or hear parties to the application but shall consider the application in any way it sees fit and shall advise the Board in writing.

(3) In this rule, the "Advisory Architectural Panel" means the Advisory Architectural Panel established under section 4 of the Act.

Inspection of records

22 (1) The record of any application made pursuant to these Rules shall, together with any plans or drawings annexed thereto, include the following documents—

- (a) the application;

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- (b) where notification of the receipt of an application has been published in the Gazette, a copy of such published notification;
 - (c) any objection made to the Board under rule 18;
 - (d) any representations or comments made to the Board under rule 19;
 - (e) any submission made to the Board under rule 20(2);
 - (f) any advice given by the Advisory Architectural Panel under rule 21;
 - (g) any recommendation made to the Board in respect of the application, by the Director;
 - (h) the minutes of the Board relevant to the application; and
 - (i) the notification to the applicant of the Board's decision with respect to the application.
- (2) Any member of the public may, upon payment of the prescribed fee, if any, examine the record of an application.

**PART VII
MEETINGS AND HEARINGS**

Notice of Board meetings

- 23 (1) At least twenty-four hours prior to a meeting of the Board, there shall be posted in the offices of the Department an agenda for that meeting.
- (2) The agenda shall, in respect of each application, consist of—
- (a) the name of the applicant;
 - (b) the location of the proposed development or subdivision;
 - (c) a brief description of the nature of the application; and
 - (d) whether there will be a hearing of the matter pursuant to rule 24.
- (3) An application in respect of which no objection has been made under rule 18 may be added to the agenda at any time prior to the closure of the meeting of the Board.

Guidelines for hearings

- 24 The Board may establish guidelines as to the cases and circumstances in which a hearing will be held.

Notice for hearings

25 (1) Notwithstanding rule 23(1) and subject to paragraphs (2) and (3) below, the date, time and place for the holding of a hearing by the Board shall be fixed by the Board and the Board shall give not less than 14 days notice of such date, time and place to the applicant and any person who has made an objection to the application.

(2) With the consent of the applicant and any person who has made an objection to the application, the Board may give a shorter period of notice.

(3) Where necessary, the time or place fixed for any hearing may be varied and the Board shall give such notice of the variation as may appear reasonable in the circumstances.

Hearing to be in camera

26 The Board shall, subject to the provisions of this Part, hold hearings in camera, but may, in any particular case, where it considers it appropriate so to do, invite members of the public to attend a hearing.

Parties at hearings

27 (1) Subject to rule 26, the applicant, the Director, and any person who has made an objection to the application may appear at a hearing either in person or through a duly authorised representative.

(2) The Chairman shall have conduct of a hearing and, without prejudice to the generality of the foregoing—

(a) shall bring a hearing and any person addressing the hearing to order;

(b) may impose general time limits on addresses made during a hearing.

(3) The applicant, the Director, and any person who has made an objection shall be entitled to call witnesses, and to rebut the evidence of others, but any other person appearing at a hearing may only comment on the evidence of others to the extent permitted by the Chairman.

(4) If any person entitled to appear at a hearing fails to do so, the Board may, in its discretion, proceed with the hearing.

(5) The Chairman may, in his discretion, permit any person to address the Board.

(6) The Chairman may from time to time adjourn a hearing and shall do so if, in his opinion, time is needed to allow the interested parties to respond to new evidence or previously unknown representations.

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(7) If the date, time and place of an adjourned hearing are announced before the adjournment, no further notice shall be required.

New issues after the hearing

28 If after a hearing the Board proposes to take into consideration any new information, which was not presented at a hearing and which they consider material to their decision, they shall not come to a decision without first notifying the applicant, the Director and any person having made a representation, of the new information and affording them an opportunity of making representations thereon in writing within such time as the Board may think fit.

**PART VIII
MINUTES AND NOTIFICATION**

Board's records

29 (1) The Board shall keep written minutes of its meetings and hearings and such minutes shall be signed by the Chairman or acting Chairman.

(2) The minutes of each meeting or hearing shall be posted in the Department within twenty-four hours of the meeting at which they were confirmed by the Board, and shall remain posted for the duration of the period for appealing the decision of the Board specified in any provisions governing appeals.

(3) The minutes, as confirmed and posted, shall be the official record of the Board and shall take priority over any other notice, letter, writing or other communication as to the decision of the Board.

(4) For the avoidance of doubt, it is hereby declared that planning permission shall be deemed to have been granted as of the date the minutes of the meeting of the Board granting the planning permission are confirmed.

Notification of decision

30 (1) The Board shall as soon as practicable after determining an application for planning permission give notice of its decision in writing to the applicant and anyone having made a representation under rule 18 or 19.

(2) For the purposes of any appeal under Part IX of the Act, notification of the Board's decision under paragraph (1) shall be deemed to have been received by the applicant or other person on the day on which it was actually received by him or seven days after the date of posting, whichever is earlier.

**PART IX
REVOCATION**

Revocation of 1970 Regulations

31 The Development and Planning (Development Application Procedure) Regulations 1970 [*title 20 item 1d*] (which are superseded by these Rules) are revoked.

[Amended by:
1999 : 4]