



BERMUDA

DEVELOPMENT AND PLANNING (APPEALS) RULES 2018

BR 48 / 2018

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The Chief Justice, in exercise of the power conferred by section 61(3) of the Development and Planning Act 1974 and section 62 of the Supreme Court Act 1905, makes the following Rules:

Citation

1 These Rules may be cited as the Development and Planning (Appeals) Rules 2018.

Interpretation

2 In these Rules, unless it is otherwise expressly provided or required by the context—

“the Act” means the Development and Planning Act 1974;

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- “appeal” includes an application for an extension of time within which to appeal;
- “appellant” means the Director or any party to proceedings before the Board, who is appealing under section 61 of the Act from a decision or direction of the Minister, and includes his legal or other representative;
- “the Board” has the same meaning as under the Act;
- “the Court” means the Supreme Court;
- “Director” has the same meaning as under the Act;
- “Minister” has the same meaning as under the Act;
- “record” means the aggregate of documents relating to an appeal proper to be laid before the Court on the hearing of an appeal and such documents may be in electronic or hard copy form;
- “Registrar” means Registrar of the Court and includes the Assistant Registrar of the Supreme Court, and any officer of the Supreme Court exercising functions analogous to those of the Registrar of the Supreme Court;
- “Registry” means the Registry of the Court;
- “respondent” means any person who was a party to the appeal before the Minister, other than the appellant;
- “Rules” means these Rules and includes the Forms appended to these Rules.

### Notice of appeal

- 3 (1) A notice of appeal shall be in Form 1 of the Schedule or as near thereto as circumstances admit.
- (2) The notice of appeal shall be signed by the appellant and shall—
- (a) set forth specifically and concisely the grounds of appeal and clearly state each error on a point of law complained of;
  - (b) state whether the whole or part only of the decision or direction of the Minister is complained of (in the latter case specifying such part);
  - (c) state the specific nature of the relief sought;
  - (d) state the name and address of the respondent(s);
  - (e) be endorsed with the address for service of the appellant.
- (3) The notice of appeal shall be delivered to the Registry within 21 days of the date of the decision or direction being appealed, or within such longer period as the Court may allow.
- (4) A copy of the notice of appeal shall be served by the appellant on each respondent and the Minister.

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(5) An appellant may apply to the Court in Form 2 of the Schedule to extend the period within which to lodge a notice of appeal.

(6) The Court may give leave for the appellant to amend his grounds of appeal at any time on such terms as to costs or otherwise as to the Court may appear just.

(7) Except with the leave of the Court, no grounds, other than those stated in the notice of appeal or any amended notice, may be relied upon by the appellant at the hearing; but the Court may amend the grounds so stated or make any other order, on such terms as it thinks just, to ensure the determination on the merits of the real question in controversy between the parties.

(8) No ground which is vague or general in terms or which discloses no reasonable ground of appeal shall be permitted except the general ground that the decision or direction of the Minister is unlawful; and any ground of appeal or any part thereof which is not permitted under this rule may be struck out by the Court of its own motion or on application by the respondent.

### Record

4 (1) Without prejudice to the proviso to paragraph (2) of this rule, the Minister shall compile the record and forward it to the Registrar within 14 days of the date of service on him of the notice of appeal, or within such longer period as the Court may allow.

(2) The record shall consist of the following documents, together with any plans, drawings, development plan, development order, or zoning order annexed thereto—

- (a) the application to the Board;
- (b) any notice of objection received by the Board and considered by them;
- (c) any recommendation made to the Board in the matter by the Department of Planning or its officers and considered by the Board;
- (d) the minutes of the Board relevant to the application;
- (e) the notification to the applicant of the results of the application and the report, if any, of the Chairman of the Board;
- (f) the notice of appeal to the Minister and submissions made to the Minister by the parties to the appeal;
- (g) where applicable, any representations made to the Minister by objectors under section 60(3) of the Act;
- (h) the report, if any, of the inspector appointed by the Minister to advise him in connection with the appeal,

provided that in each case the parties shall cooperate with a view to agreeing a record comprising all but no more than those documents which are indispensable to the fair disposal of the appeal.

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(3) The Court shall have power, either of its own motion or on an application by either of the parties to the appeal, to supplement the record by such other evidence or statement of what occurred before the Minister which the Court may deem sufficient.

(4) The power under paragraph (3) shall only be exercised where—

- (a) the supplementary material is sought to be adduced by consent of all parties affected by it;
- (b) it appears to the Court that the record should be supplemented to ensure the fair hearing of the appeal.

### Notice of hearing

5 (1) After transmission of the record to the Registrar pursuant to rule 4, the Registrar shall, on the application of the appellant, enter the appeal, fix a day for the hearing of the appeal and give to the parties not less than seven days' notice of the date on which the appeal will be heard.

(2) Notwithstanding paragraph (1), the parties may accept such shorter period of notice as may be mutually agreed.

### Control by Supreme Court

6 After an appeal has been entered by the Registrar and until it has been finally disposed of, the Court shall be seized of the whole of the proceedings as between the parties thereto and every application therein shall be made to the Court and not to the Minister.

### Judgment

7 (1) The judgment of the Court upon an appeal shall, unless the Court otherwise directs, be pronounced in open court either on the hearing of the appeal or at any subsequent time of which notice shall be given by the Registrar to the parties to the appeal.

(2) Every judgment of the Court shall be embodied in an order.

### Costs

8 (1) Where the costs of an appeal are allowed, they may either be ordered to be taxed or be summarily assessed at the time when judgment is given.

(2) Where costs are ordered to be taxed under paragraph (1), the provisions of Order 62 of the Rules of the Supreme Court 1985 apply *mutatis mutandis*.

### Court fees

9 The fees prescribed in Part I of the Schedule to Order 62 of the Rules of the Supreme Court 1985 shall apply to appeals under the Act.

### Application of Supreme Court Rules

10 The Rules of the Supreme Court 1985 shall apply *mutatis mutandis* in respect of matters not expressly provided for in these Rules, in so far as those Rules are not inconsistent with the provisions of the Act or these Rules.

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### Commencement

11 These Rules come into operation on 15 June 2018.

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SCHEDULE

(paragraph 3(1) and (5))

FORMS

FORM 1

NOTICE OF APPEAL

BETWEEN

[BLANK]

Appellant

and

[BLANK]

Respondent

NOTICE OF APPEAL

TAKE NOTICE that the Appellant being aggrieved with the whole decision or direction/that part of the decision or direction more particularly stated in paragraph 2\* of the Minister dated the [blank] day of [blank] 20 [blank] doth hereby appeal to the Supreme Court upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

AND the Appellant further states that the name and address of the respondent(s) are those set out in paragraph 5.

2 Part of decision or direction complained of:

- (a)
- (b)
- (c)

3 Grounds of appeal:

- (a)
- (b)
- (c)

4 Relief sought from the Supreme Court:

- (a)
- (b)
- (c)

5 Respondent(s) name and address:

Dated this [blank] day of [blank] 20 [blank] .....

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Appellant or his legal or other representative,  
whose address for service is:

\* Delete as applicable

FORM 2  
APPLICATION FOR EXTENSION OF TIME FOR APPEALING

BETWEEN

[BLANK]

Appellant

and

[BLANK]

Respondent

SUMMONS

Let C. D. of [blank] attend before the Judge in Chambers (or the Registrar) at the Supreme Court in Hamilton, Bermuda, on [blank] day, the [blank] day of [blank] 20 [blank] at [blank] o'clock, on the hearing of an application by the Appellant for an Order that:

[blank]

Dated the [blank] day of [blank] 20 [blank]

This summons was taken out by [blank] of [blank] the Appellant/attorney/representative\* for the said Appellant whose address is [blank]

\* Delete as applicable

Made this 4th day of June 2018

Chief Justice  
The Supreme Court of Bermuda

[Operative Date: 15 June 2018]