

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE DEVELOPMENT AND
PLANNING LAW (2011 REVISION) TO MAKE THE PLANNING
PROCESS MORE EXPEDITIOUS AND EFFICIENT; TO MAKE
FURTHER PROVISION FOR THE EFFECTIVENESS OF THE
CENTRAL PLANNING AUTHORITY AND THE DEVELOPMENT
CONTROL BOARD; AND TO MAKE PROVISION FOR INCIDENTAL
AND CONNECTED MATTERS**

THE DEVELOPMENT AND PLANNING (AMENDMENT) BILL, 2013

MEMORANDUM OF OBJECTS AND REASONS

This Bill amends the Development and Planning Law (2011 Revision).

Clause 1 of the Bill provides the short title of the legislation.

Clause 2 amends section 2(1) of the principal Law to re-define the word “days” to mean “calendar days unless otherwise specified”. The clause also corrects two clerical errors.

Clause 3 amends section 3 of the principal Law to add a Deputy Chairman to both the Central Planning Authority and the Development Control Board in order to ensure consistency and effectiveness in the operation of these bodies.

Clause 4 of the Bill amends section 4 of the principal Law to enable a designate to attend meetings of the Central Planning Authority on behalf of the Director of Planning. The clause also empowers the Director of Planning to delegate his authority.

Clauses 5, 11, 16, 19 and 20 correct clerical errors.

Clause 6 repeals and substitutes section 6 of the principal Law to change the current framework that requires certain criteria to be considered by the Authority or the Board when reviewing applications relating to major developments, so that these criteria may be applied to the review of all applications.

Clause 7 repeals section 8 of the principal Law to remove the requirement for the Authority or the Board to notify the Trade and Business Licensing Board and the Immigration Board of decisions relating to applications for permission to carry out major developments.

Clause 8 of the Bill amends section 9 of the principal Law to empower the Government, instead of the Authority, to determine what land is subject to acquisition by the Government. The clause also clarifies the process involved in cases where the Government fails to acquire land that has been designated in a development plan as subject to acquisition by the Government.

Clause 9 amends section 11 of the principal Law to empower the Minister responsible for planning, instead of the Cabinet, to refer matters to the Appeals Tribunal or a Development Plan Tribunal for an enquiry into objections or representations relating to a development plan.

Clause 10 amends section 13 of the principal Law, among other things -

- (a) to increase the maximum allowable height of a fence or wall that is exempt from the planning permission requirement (clause 10(a)(ii)); and
- (b) to remove the requirement for “polling” adjacent land owners for certain types of development applications - the current process requires obtaining written consent from a majority of land owners within a thousand foot radius (clause 10(d)).

Clause 12 of the Bill amends section 15 of the principal Law to make further provision in respect of the publication of applications for planning permission.

Clause 13 amends section 24 of the principal Law to specify the circumstances in which compensation is not payable for loss due to the issue of a stop notice.

Clause 14 inserts into the principal Law a new section 24A to enable the grant of an injunction to restrain a breach of planning control.

Clause 15 amends section 26 of the principal Law to make provision for the preservation of mangrove buffer.

Clause 17 amends section 29B of the principal Law to ensure that the penalty for non-compliance with a notice relating to maintenance of land, is the same penalty in a Commercial zone as in a Hotel/Tourism zone.

Clause 18 amends section 39 of the principal Law to make further provision in respect of entry upon land by persons authorized by the Authority.

Clause 21 amends section 43 to increase the membership of a Development Plan Tribunal so that a quorum can be more easily established.

Clause 22 repeals and substitutes section 50 to revise the date on which the Authority’s Annual Report is due, in order to reflect the fiscal year instead of the calendar year.

Clause 23 of the Bill amends section 51 of the principal Law to update the list of Laws from which the principal Law does not derogate, to include the Electricity Law (2008 Revision) and the Electricity Regulatory Authority Law (2010 Revision).

Clause 24 effects an amendment to Schedule 1 as a consequence of the addition of a Deputy Chairman to the Central Planning Authority and the Development Control Board.

Clause 25 contains savings and transitional provisions.

THE DEVELOPMENT AND PLANNING (AMENDMENT) BILL, 2013

ARRANGEMENT OF CLAUSES

1. Short title
2. Amendment of section 2 of the Development and Planning Law (2011 Revision) - definitions
3. Amendment of section 3 - establishment and constitution of Central Planning Authority
4. Amendment of section 4 - appointment of Staff
5. Amendment of section 5 - duties of Authority
6. Repeal and substitution of section 6 - applications to carry out major developments
7. Repeal of section 8 - notification of decisions relating to major developments
8. Amendment of section 9 - preparation of development plans
9. Amendment of section 11 - approval of development plans
10. Amendment of section 13 - provisions for development
11. Amendment of section 14 - functions of the Board
12. Amendment of section 15 - application for planning permission
13. Amendment of section 24 - compensation for loss due to stop notice
14. Insertion of section 24A - grant of injunction
15. Amendment of section 26 - storm belts
16. Amendment of section 28 - taking ballast from shoreline an offence
17. Amendment of section 29B - penalty for non-compliance with notice under section 29A
18. Amendment of section 39 - powers of entry
19. Amendment of section 40 - service of notices
20. Amendment of section 42 - regulations
21. Amendment of section 43 - Development Plan Tribunals
22. Repeal and substitution of section 50 - annual report
23. Amendment of section 51 - saving of existing laws
24. Amendment of Schedule 1 - constitution and procedure of Authority and Board
25. Savings and transitional provisions

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ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Development and Planning (Amendment) Law, 2013. Short title

2. The Development and Planning Law (2011 Revision), in this Law referred to as the “principal Law”, is amended in section 2(1) as follows - Amendment of section 2
of the Development and
Planning Law (2011
Revision) - definitions
 - (a) by deleting the definition of the word “days” and substituting the following definition -
“ “days” means calendar days unless otherwise specified;”;
 - (b) in the definition of the word “development” by deleting the words “section 13(2) and” and substituting the words “section 13(3) and”; and
 - (c) in the definition of the word “owner” by deleting the words “in sections 13, 15, 48 and 49” and substituting the words “in section 13”.

The Development and Planning (Amendment) Bill, 2013

- Amendment of section 3
- establishment and
constitution of Central
Planning Authority
3. The principal Law is amended in section 3 as follows -
- (a) in subsection (2) by deleting the words “a Chairman and twelve” and substituting the words “a Chairman, a Deputy Chairman and eleven”; and
 - (b) in subsection (3) by deleting the words “a Chairman and six” and substituting the words “a Chairman, a Deputy Chairman and five”.
- Amendment of section 4
- appointment of Staff
4. The principal Law is amended in section 4 as follows -
- (a) in subsection (1) by inserting after the words “and such other officers” the words “(including Assistant Directors of Planning)”; and
 - (b) by repealing subsection (2) and substituting the following subsections -
 - “ (2) All meetings of the Authority shall be attended by either the Director or a person designated by him for the purpose; and the Director shall make to the Authority and the Board such recommendations as may appear to the Director to be necessary for the implementation of this Law.
 - (3) The Director may delegate all or any part of his authority under this Law (other than this power of delegation).”.
- Amendment of section 5
- duties of Authority
5. The principal Law is amended in section 5(1) by deleting the words “Executive Cabinet” and substituting the word “Governor”.
- Repeal and substitution
of section 6 -
applications to carry out
major developments
6. The principal Law is amended by repealing section 6 and substituting the following section -
- “Applications to carry out major developments
6. Where the Authority or Board receives an application for permission to carry out development, the Authority or Board, as the case may be, may -
- (a) consider the likely impact of the proposed development on the infrastructure of the Islands as well as on the educational, social, medical and other aspects of life in the Islands;
 - (b) consider whether there are other issues of national importance which are relevant to the determination of the application for development and require evaluation;
 - (c) consider whether there are technical or

scientific aspects of the proposed development which are of so unfamiliar a character as to jeopardise a proper determination of the question unless there is a special inquiry for the purpose;

- (d) identify and investigate the considerations relevant to, or the technical or scientific aspects of, the proposed development which, in its opinion, are relevant to the question whether the application should be approved;
- (e) assess the importance to be attached to those considerations or aspects;
- (f) consider whether the development proposed in the application should instead be carried out at an alternative site; and
- (g) arrange for the carrying out of research of any kind appearing to it to be relevant to an application.”.

7. The principal Law is amended by repealing section 8.

Repeal of section 8 -
notification of decisions
relating to major
developments

8. The principal Law is amended in section 9 as follows -

Amendment of section 9
- preparation of
development plans

(a) by repealing subsection (1)(c) and substituting the following paragraph -

“(c) designate, as land subject to acquisition by the Government -

- (i) land allocated by the plan for purposes of any of the functions of the Government or a statutory undertaker or a highway authority; and
- (ii) other land that, in the opinion of the Government, ought to be subject to acquisition by the Government for the purpose of securing its use in the manner proposed by the plan.”;

(b) in subsection (2) by deleting the word “Authority” and substituting the word “Government”; and

(c) by repealing subsection (3) and substituting the following subsection -

“(3) Where any land is designated by a development plan, or amendment of a development plan, as subject to acquisition by the Government, it shall be acquired within one year of the date

on which the plan, or the amendment, came into operation; and, if the land is not acquired within that year, any owner of an interest in the land to be acquired may serve on the Government a notice to acquire the land within six months after the service of the notice, or such longer period as may be agreed between the owner and the Government; and, if at the end of that period the land has not been acquired, the land shall be deemed to be designated as provided in the development plan in effect at the time as approved by the Legislative Assembly.”.

Amendment of section 11 - approval of development plans

9. The principal Law is amended in section 11(3)(a) by deleting the word “Governor” and substituting the words “Minister charged with responsibility for planning”.

Amendment of section 13 - provisions for development

10. The principal Law is amended in section 13 as follows -

- (a) in subsection (3), in the definition of the word “development” -
 - (i) in paragraph (c) by deleting the words “Chief Engineer” and substituting the words “Managing Director of the National Roads Authority”;
 - (ii) in paragraph (e) by deleting the words “three feet six inches in height and not constructed of sheet metal;” and substituting the words “four feet in height and not constructed of sheet metal; or”;
 - (iii) in paragraph (f)(v) by deleting the words “the Authority; or” and substituting the words “the Authority.”; and
 - (iv) by repealing paragraph (g);
- (b) by repealing subsection (4);
- (c) in subsection (5) by deleting the word “will” and substituting the word “may”; and
- (d) by repealing subsections (6) and (7).

Amendment of section 14 - functions of the Board

11. The principal Law is amended in section 14(1) by deleting “27,”.

Amendment of section 15 - application for planning permission

12. The principal Law is amended in section 15 by repealing subsection (4) and substituting the following subsections -

“ (4) Notice of an application for planning permission (other than an application for permission having relation to a detached house, semi-detached house, duplex or temporary development) -

- (a) shall be served not more than three working days prior to the date upon which the application is made, for a period of twenty-one days, upon all owners of buildings or land

adjacent to the buildings or land to which the application relates, and copies of the notice shall be forwarded to the Authority together with the application; and

- (b) where required by this Law or Regulations made under this Law, shall be published in a public newspaper circulating in the Islands in such number of issues as may be required by this Law or the Regulations;

and any objection to an application shall be submitted within the twenty-one day notification period, and the Authority shall not consider an application in the absence of evidence of service of such notice and, as the case may be, unless the Authority is satisfied that twenty-one days have elapsed since the mailing of the notice or publication of the last of such issues.

(4A) Applications for permission to develop land, the primary purpose of which is residential, for commercial, agricultural, religious, social or educational purposes (including recreational facilities and public and civic buildings), shall only be considered by the Authority if it is satisfied that the applicant has published adequate notice of his application for such permission in two consecutive issues of a public newspaper circulating in the Islands.”.

13. The principal Law is amended in section 24 as follows -

Amendment of section 24 - compensation for loss due to stop notice

- (a) in subsection (2) by deleting the word “A” and substituting the words “Subject to subsection (2A), a”;
- (b) by inserting after subsection (2) the following subsection -

“ (2A) Compensation is not payable under this section -

- (a) in respect of the prohibition contained in a stop notice of any activity which, at any time when the stop notice is in force, constitutes or contributes to a breach of planning control; or
- (b) in the case of a claimant who was required to give information under section 41, in respect of any loss or damage suffered by him which could have been avoided if he had given the information or had otherwise co-operated with the Authority.”.

14. The principal Law is amended by inserting after section 24 the following section -

Insertion of section 24A - grant of injunction

“Grant of injunction of 24A.(1) Where the Authority considers it necessary or expedient for any actual or apprehended breach of planning

control to be restrained by injunction, the Authority may apply to the Grand Court for an injunction, whether or not the Authority has exercised or is proposing to exercise any of its other powers under this Law.

(2) On an application under subsection (1), the Grand Court may grant such an injunction as the Court thinks appropriate for the purpose of restraining the breach.”

Amendment of section 26 - storm belts

15. The principal Law is amended in section 26 by deleting the words “Storm belts” where they appear in the marginal note and in the section and substituting the words “Mangrove buffer”.

Amendment of section 28 - taking ballast from shoreline an offence

16. The principal Law is amended in the proviso to section 28(1) by deleting the word “from” and substituting the word “for”.

Amendment of section 29B - penalty for non-compliance with notice under section 29A

17. The principal Law is amended in section 29B(2)(a) and (b), respectively, by inserting after the words “Hotel/Tourism zone” the words “or a Commercial zone”.

Amendment of section 39 - powers of entry

18. The principal Law is amended in section 39 as follows -

(a) by repealing subsection (1) and substituting the following subsections -

“ (1) Any person duly authorised in writing by the Authority may, at any reasonable time, enter upon any land -

- (a) for the purpose of examining it to determine if there has been any contravention of Part III;
- (b) to determine whether any of the powers conferred on the Authority or the Board should be exercised in relation to any land and, if so, the manner in which such power should be exercised;
- (c) to ascertain whether there has been compliance with any requirement imposed as a result of the exercise of any such power in relation to any land; or
- (d) for the purpose of surveying it or estimating its value in connection with -
 - (i) the preparation, approval, making or amendment of a development plan relating to the land under Part II, including the carrying out of any survey under that Part;

- (ii) any application under Part III, or under any order or regulations made thereunder, for any permission, consent or determination to be given or effected in relation to that or any other land under Part III or under any such order or regulations;
- (iii) any proposal by the Authority to serve or make any notice or order under Part III or under any such order or regulations as aforesaid; or
- (iv) any claim for compensation payable by the Authority under this Law.

(1A) A person authorised under this section to enter upon any land has, for the purpose of performing his duties pursuant to this section, all the powers, privileges and immunities of a constable.”; and

- (b) in subsection (3) by inserting after the words “wilfully obstructs” the words “, or fails to comply with a lawful instruction issued by,”.

19. The principal Law is amended in section 40(2) by deleting the words “to he served” and substituting the words “to be served”. Amendment of section 40 - service of notices

20. The principal Law is amended in section 42(1)(h) by deleting the words “review or decisions” and substituting the words “review of decisions”. Amendment of section 42 - regulations

21. The principal Law is amended in section 43(2) by deleting the word “two” and substituting the word “three”. Amendment of section 43 - Development Plan Tribunals

22. The principal Law is amended by repealing section 50 and substituting the following section - Repeal and substitution of section 50 - annual report

“Annual report 50. The Authority shall, during the month of September in every year, submit a report to the Governor for the information of the Legislative Assembly containing an account of the Authority’s activities during the twelve months ending on the thirtieth day of June next preceding the date of the report.”.

23. The principal Law is amended in section 51(1) by inserting after paragraph (a) the following paragraphs - Amendment of section 51 - saving of existing laws

“(aa) Electricity Law (2008 Revision);

(ab)Electricity Regulatory Authority Law (2010 Revision);”.

Amendment of Schedule
1 - constitution and
procedure of Authority
and Board

24. The principal Law is amended in Schedule 1 as follows -

- (a) in paragraph 2 by inserting after the word “Chairman” wherever it appears, the words “, Deputy Chairman”;
- (b) in paragraph 3 by inserting after the word “Chairman” the words “, Deputy Chairman”; and
- (c) in paragraph 4 by inserting after the word “Chairman” the words “or the Deputy Chairman”.

Savings and transitional
provisions

25. (1) Every application for permission to develop land made under the former Law and wholly or partly dealt with by the Authority or the Board when the new Law comes into force, is to be continued and dealt with in all respects as if the new Law had not come into force.

(2) Permission to develop land, granted as a result of an application determined under subsection (1), is to be granted on the same terms and conditions that would have applied if the new Law had not come into force.

(3) Every application for permission to develop land made under the former Law and not wholly or partly dealt with by the Authority or the Board when the new Law comes into force, is to be taken to be an application made under the new Law and the provisions of the new Law are to apply accordingly.

(4) In the case of an appeal against -

- (a) any decision of the Authority or the Board; or
- (b) any decision or order of the Tribunal or the Appeals Tribunal,

that has been commenced but not finally determined before the new Law comes into force, the appeal is to continue to be dealt with as if the new Law had not come into force; and when the appeal is finally determined, the former Law is to apply subject to any necessary modifications as if the appeal had been finally determined before the new Law came into force.

(5) Any permission to develop land, granted under the former Law and in force immediately before the date of commencement of this Law -

- (a) shall have effect from that date, as if granted under the new Law; and
- (b) in the case of permission granted for a limited period only, shall remain in force, subject to the provisions of the new Law, for so much of that period as falls after that date.

(6) In this section -

“Appeals Tribunal”, “Authority”, “Board” and “Tribunal” have the respective meanings assigned to those expressions by section 2(1) of the principal Law;

“former Law” means the principal Law in force immediately before the date of commencement of this Law;

“new Law” means the principal Law as amended by this Law; and

“permission granted for a limited period only” has the meaning assigned to that expression by section 15(2) of the principal Law.

Passed by the Legislative Assembly the day of , 2013.

Speaker.

Clerk of the Legislative Assembly.