



**CAYMAN ISLANDS
LEGISLATIVE ASSEMBLY**

**OFFICIAL HANSARD REPORT
ELECTRONIC VERSION**

2014/15 SESSION

30 October 2014

Third Sitting of the Third Meeting

(pages 627-656)

**Hon Juliana O'Connor-Connolly, JP, MLA
Speaker**

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PRESENT WERE:

SPEAKER

Hon Juliana Y O'Connor- Connolly
Speaker of the Legislative Assembly

MINISTERS OF THE CABINET

Hon Alden McLaughlin, MBE, JP, MLA	<i>The Premier</i> , Minister of Home and Community Affairs
Hon Moses I Kirkconnell, JP, MLA	<i>Deputy Premier</i> , Minister of District Administration, Tourism and Transport
Hon D Kurt Tibbetts, OBE, JP, MLA	Minister of Planning, Lands, Agriculture, Housing and Infrastructure
Hon Marco S Archer, MLA	Minister of Finance and Economic Development
Hon Osbourne V Bodden, MLA	Minister of Health, Sports, Youth and Culture

EX OFFICIO MEMBERS OF THE CABINET

Hon Franz I Manderson, Cert. Hon., JP	Deputy Governor, ex officio Member responsible for the Civil Service
Hon Samuel W Bulgin, QC, JP	Attorney General, ex officio Member responsible for Legal Affairs

ELECTED MEMBERS

GOVERNMENT BACKBENCHERS

Hon Anthony S Eden, OBE, JP, MLA	<i>Deputy Speaker</i> , First Elected Member for Bodden Town
Mr Alva H Suckoo, MLA	Fourth Elected Member for Bodden Town
Mr Winston C Connolly, Jr, MLA	Fifth Elected Member for George Town
Mr Joseph X Hew, MLA	Sixth Elected Member for George Town

OPPOSITION MEMBERS

Hon. W. McKeever Bush, OBE, JP, MLA	<i>Leader of the Opposition</i> , First Elected Member for West Bay
Mr Bernie A Bush, MLA	Third Elected Member for West Bay

INDEPENDENT MEMBERS

Mr D Ezzard Miller, JP, MLA	Elected Member for North Side
Mr V Arden McLean, JP, MLA	Elected Member for East End

APOLOGIES

Hon G Wayne Pantou, MLA	Financial Services, Commerce and Environment
Hon Tara A Rivers, MLA	Minister of Education, Employment and Gender Affairs
Mr Roy McTaggart, MLA	Second Elected Member for George Town
Capt A Eugene Ebanks, JP, MLA	Fourth Elected Member for West Bay

**OFFICIAL HANSARD REPORT
THIRD MEETING 2014/15 SESSION
THURSDAY
30 OCTOBER 2014
11:12 AM
Third Sitting**

The Speaker: I will ask the Fourth Elected Member for Bodden Town to say Prayers.

PRAYERS

Mr. Alva H. Suckoo, Jr., Fourth Elected Member for Bodden Town: Let us pray.

Almighty God, from whom all wisdom and power are derived: We beseech Thee so to direct and prosper the deliberations of the Legislative Assembly now assembled, that all things may be ordered upon the best and surest foundations for the glory of Thy Name and for the safety, honour and welfare of the people of these Islands.

Bless our Sovereign Lady, Queen Elizabeth II; Philip, Duke of Edinburgh; Charles, Prince of Wales; and all the Royal Family. Give grace to all who exercise authority in our Commonwealth, that peace and happiness, truth and justice, religion and piety may be established among us. Especially we pray for the Governor of our Islands, the Speaker of the Legislative Assembly, Official Members and Ministers of Cabinet and Members of the Legislative Assembly, that we may be enabled faithfully to perform the responsible duties of our high office. All this we ask for Thy great Name's sake.

Let us say The Lord's Prayer together: *Our Father, who art in Heaven, Hallowed be Thy Name. Thy Kingdom come, Thy will be done on earth as it is in Heaven. Give us this day our daily bread, and forgive us our trespasses, as we forgive those who trespass against us. Lead us not into temptation, but deliver us from evil. For Thine is the Kingdom, the power and the glory, forever and ever. Amen.*

The Lord bless us and keep us. The Lord make His face shine upon us and be gracious unto us. The Lord lift up the light of His countenance upon us and give us peace, now and always. Amen.

The Speaker: Please be seated.
Proceedings are resumed.

READING BY THE HONOURABLE SPEAKER OF MESSAGES AND ANNOUNCEMENTS

The Speaker: I have received apologies for the Minister of Tourism, Minister of Education, and the Minister of Financial Services, as well as the Fourth Elected Member for the district of West Bay.

I have also received apologies for the late arrival of the Minister of Finance.

STATEMENTS BY HONOURABLE MEMBERS AND MINISTERS OF THE CABINET

The Speaker: I have not received notice of statements for this morning.

I ask the indulgence of the House for one minute please.

[Short pause]

The Speaker: Thank you.

GOVERNMENT BUSINESS

BILLS

COMMITTEE ON BILLS

The Speaker: The House will now go into Committee to consider the two Bills.

House in Committee at 11.17 am

The Chairman: Please be seated.

The House is now in Committee and with leave of the House, may I assume, as usual, we authorise the Honourable Attorney General to correct minor errors as such the like in these two Bills?

Would the Clerk state each Bill and read the clauses?

Conditional Release Bill, 2014

The Clerk: The Conditional Release Bill, 2014.

Clause 1	Short title and commencement
Clause 2	Interpretation
Clause 3	Application

The Chairman: The question is that clauses 1 through 3 stand part of the Bill.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Clauses 1 through 3 passed.

The Clerk: Clause 4 Establishment and procedure of Board

The Chairman: There is an amendment.
I recognise the Honourable Premier for clause 4.

Amendment to clause 4

The Premier, Hon. Alden McLaughlin: Madam Chair, I move that the Bill be amended in clause 4 by deleting sub-clause (13).

The Chairman: The amendment has been duly moved. Does the Member wish to speak to it?

The Premier, Hon. Alden McLaughlin: Madam Chair, clause 4, sub-clause (13) reads: **“Where the board is considering issues relating to a licensing, no decision shall be taken until legal advice has been obtained from (a) a member of the Board who is an attorney; or (b) an attorney who is not a member but who would qualify for appointment under this section.”**

It is proposed that that sub-clause be deleted in its entirety.

The Chairman: Does any other Member wish to speak to it?
The Member for North Side.

Mr. D. Ezzard Miller: Just for clarity: Where do they turn for legal advice? Is it the Attorney General Chambers if legal advice is needed before a decision can be made?

The Premier, Hon. Alden McLaughlin: Yes, Madam Chair, this is addressing the concerns raised by the other side about a member of the board actually acting as an attorney to the board. We have looked to the Attorney General or some other independent attorney for legal advice.

The Chairman: If there are no other questions I will put the question that the amendment stands part of the clause.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Amendment to clause 4 passed.

The Chairman: I now put the question that clause 4, as amended, stands part of the Bill.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it..

Agreed: Clause 4, as amended, passed.

The Clerk: Clause 5 Immunity of members of board
Clause 6 Functions of board

The Chairman: The question is that clauses 5 and 6 stand part of the Bill.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Clauses 5 and 6 passed.

The Clerk: Clause 7 Minimum period of incarceration

The Chairman: Honourable Premier there is an amendment to clause 7.

Amendment to clause 7

The Premier, Hon. Alden McLaughlin: Thank you, Madam Chair.

I move that the Bill be amended in clause 7, sub-clause 2 by deleting the words “earliest date of release” and substituting therefor the words “conditional release date”.

The Chairman: The amendment has been duly moved, does any Member wish to speak to it?

If not, does the mover wish to add anything to it?

The Premier, Hon. Alden McLaughlin: No, Madam Chair.

The Chairman: The question is that the amendment stands part of the clause.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Amendment to clause 7 passed.

The Chairman: I now put the question that clause 7, as amended, stands part of the Bill.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Clause 7, as amended, passed.

The Clerk: Clause 8 Procedures for conditional release
 Clause 9 Factors to be considered by board

The Chairman: The question is that clauses 8 and 9 stand part of the Bill.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Clauses 8 and 9 passed.

The Clerk: Clause 10 Reports and representations

The Premier, Hon. Alden McLaughlin: Madam Chair.

The Chairman: Honourable Premier, there is an amendment.

Amendments to clause 10

The Premier, Hon. Alden McLaughlin: Madam Chair, I move that the Bill be amended in clause 10, sub-clause 1 by deleting "section 7(2)" and substituting "section 8(2)".

In sub-clause (2)(a) by deleting "section 7(3)" and substituting "section 8(2)". And in sub-clause (2) by inserting after paragraph (h) the following: "(i) a report from the chief immigration officer where the prisoner has no right of abode in the Islands;"

The Chairman: The amendments have been duly moved, does any Member wish to speak?

If no Member wishes to speak, I will put the question that the amendments stand part of the clause.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Amendments to clause 10 passed.

The Chairman: I will now put the question that the clause, as amended, stands part of the Bill.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Clause 10, as amended, passed.

The Clerk: Clause 11 Duties of director of the department of rehabilitation
 Clause 12 Release of prisoners in general
 Clause 13 Electronic monitoring
 Clause 14 Release of life prisoners
 Clause 15 Revocation of licence for breach of condition
 Clause 16 Revocation of licence for commission of further offence
 Clause 17 Variation of licence and grounds of incapacity or medical deterioration

The Chairman: The question is that clauses 11 through 17 stand part of the Bill.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Clauses 11 through 17 passed.

The Clerk: Clause 18 Emergency recall procedure
 Clause 19 Reports on operations of board
 Clause 20 Expenses of board
 Clause 21 Regulations
 Clause 22 Judicial review of board decisions

The Chairman: The question is that clause 18 through 22 stand part of the Bill.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Clauses 18 through 22 passed.

The Clerk: Clause 23 Transitional provisions

The Chairman: Honourable Premier, there is an amendment.

Amendments to clause 23

The Premier, Hon. Alden McLaughlin: Madam Chair, I move that the Bill be amended in clause 23,

sub-clause 1, by deleting “Director of Prisons” and substituting therefor “Director of Public Prosecutions”.

Madam Chair, I also move that the Bill be amended in the same clause by adding the following sub-clause (6): “Where at the commencement of this Law a prisoner is serving a fixed term and the earliest date of release which would have been determined under section 29 of the Prisons Law (Law 14 of 1975) is earlier than the earliest date on which he would have been eligible for release on licence under this Law, the prisoner shall be released on the earlier date and without conditions.”

The Chairman: The amendments have been duly moved, does any Member wish to speak to it?

If no Member wishes to speak, the question is that the amendments stand part of the clause.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Amendments to clause 23 passed.

The Chairman: The question now is that clause 23, as amended, stands part of the Bill.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Clause 23, as amended, passed.

The Clerk: Clause 24 Repeal

The Chairman: Honourable Premier.

Amendment to clause 24

The Premier, Hon. Alden McLaughlin: Thank you, Madam Chair.

I move that the [clause] be amended by adding the following: “Clause 24” which reads, “Sections 29 (Remission) and 31A (Release on licence by the Governor) of the Prisons Law (Law 14 of 1975) are repealed.”

The Chairman: The amendment has been duly moved, does any Member wish to speak to it?

If not, I put the question that the amendment stands part of the clause.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: the Ayes have it.

Agreed: Amendment to clause 24 passed.

The Chairman: The question now is that the clause, as amended, stands part of the Bill.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Clause 24, as amended, passed.

The Clerk: A Bill for a law to provide for the creation of a conditional release board charged with the duty of making decisions regarding conditional release of prisoners on licence; provide for the post-release supervision of prisoners released on licence, and for revocation of licences; for incidental and connected purposes.

The Chairman: The question is that the Title stands part of the Bill.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Title passed.

Development and Planning (Amendment) Bill, 2014

The Clerk: The Development and Planning Amendment Bill, 2014.

Clause 1 Short title

The Chairman: Honourable Minister of Planning, there is an amendment to clause 1.

Amendment to clause 1

Hon. D. Kurt Tibbetts, Minister of Planning, Agriculture, Housing and Infrastructure: Madam Chair, just before I start, if you would give me permission, when I now state the provisions which I am moving the amendments under, if I could do so once, instead of every time—please.

The Chairman: Yes, certainly.

Hon. D. Kurt Tibbetts: Thanks very much.

Madam Chair, in accordance with the provisions of Standing Order 52(1) and (2), I, the Minister of Planning wish to move the following amendment to the Development and Planning (Amendment) Bill,

2014, that the Bill be amended as follows in clause 1 by renumbering the clause as clause 1(1); and by inserting after clause 1(1) as renumbered, the following sub-clause- "(2) This law shall come into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Law and in relation to different matters.";

The Chairman: The amendment has been duly moved, does any Member wish to speak to it?

If not, the question is that the amendment stands part of the clause.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Amendment to clause 1 passed.

The Chairman: The question now is that the clause, as amended, stands part of the Bill. All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Clause 1, as amended, passed.

The Clerk: Clause 2 Amendment of section 2 of the Development and Planning Law (2011 Revision) – definitions

The Chairman: Honourable Minister, there is an amendment to clause 2?

Amendment to clause 2

Hon. D. Kurt Tibbetts: Yes, Madam Chair. Thank you.

I move that clause 2 of the Bill be amended in clause 2 subsection (a) by deleting the words "sections 18 to 24 and sections" and substituting the words "sections 18, 19, 20 and".

The Chairman: The amendment has been moved, does any Member wish to speak to it?

If no Member wishes to speak, the question is that the amendment stands part of the clause.

All those in favour, please say Aye. Those against, No.

Ayes.

Agreed: Amendment to clause 2 passed.

The Chairman: The question now is that clause 2, as amended, stands part of the Bill.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Clause 2, as amended, passed.

The Clerk: Clause 3 Amendment of section 3 – establishment and constitution of Central Planning Authority

The Chairman: The question is that clause 3 stands part of the Bill.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Clause 3 passed.

The Clerk: Clause 4 Amendment of Section 4 – appointment of Staff

The Chairman: Honourable Minister, there is an amendment?

Amendment to clause 4

Hon. D. Kurt Tibbetts: Yes, Madam Chair. Thank you.

Madam Chair, I move that the Bill be amended in clause 4 by deleting paragraph (a).

Madam Speaker, while the Honourable Attorney General has the authority to . . . I think we omitted to say what is now paragraph (b).

No, I may be wrong.

Yes, in the Bill itself, what is now paragraph (b) should be renumbered to paragraph (a). Since (a) is being deleted in the Bill itself, (b) then becomes (a).

The Chairman: Okay.

Hon. D. Kurt Tibbetts: Thank you.

The Chairman: The amendment has been duly moved, does any other Member wish to speak?

If no Member wishes to speak I will put the question that the amendment stands part of the clause.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Amendment to clause 4 passed.

The Chairman: The question now is that the clause, as amended, stands part of the Bill. All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Clause 4, as amended, passed.

The Clerk: Clause 5 Amendment of section 5 – duties of Authority.

The Chairman: I recognise the Member for East End. I think you have an amendment to clause 5.

Amendments to clause 5

Mr. V. Arden McLean: Thank you, Madam Chair. Madam Chair, is there not another amendment to . . .

The Chairman: To clause 5?

Mr. V. Arden McLean: Yes.

The Chairman: By yourself?

Mr. V. Arden McLean: I thought there was one circulated. Maybe I am wrong.

Hon. D. Kurt Tibbetts: By you?

Mr. V. Arden McLean: No, by the Government.

[Inaudible interjection]

Mr. V. Arden McLean: No? Okay.

Madam Chair, in accordance with the provisions of Standing Order 52(1) and (2), I, the elected Member for East End move the following amendment to the Development and Planning (Amendment) Bill, 2014; that the Bill be amended as follows:

- (i) By deleting clause 5(1) and (2) of the principal law and substituting the following:

(1) “It shall be the duty of the Authority to secure consistency, continuity in accordance with this Law and any regulations made hereunder and to exercise its functions in accordance with the Development Plan and the Planning Statement made in accordance with Part II of this Law as amended from time to time. The Authority shall have regard to the Development Plan and Planning Statement and, subject to any

provisions in any regulations made hereunder, to grant permission in accordance therewith, unless such permission will cause harm to some material planning interest.”

- (2) “It shall be the duty of the Board to secure consistency and continuity in the framing of a comprehensive policy approved by the Cabinet, with respect to the use and development of any land in the Islands of Cayman Brac and Little Cayman, until such time as a Development Plan and Planning Statement is made in accordance with Part II or by operation thereof. The Board shall have regard to such comprehensive policy and, subject to any provisions in any regulations made hereunder, to grant permission in accordance therewith, unless such permission will cause harm to some material planning interest.

- (ii) By renumbering sub-sections 5 (2) to (5) as sub-sections (3) to (6) accordingly.

The Chairman: The amendment has been moved. Does the Member wish to speak further to it?

Mr. V. Arden McLean: Madam Chair, just to say that one of the problems with this request in Planning permission is that everybody tends to have their own pet peeves and they object and it holds the entire process up, and then the board gets itself involved in a number of issues. It should be presumed that if you have a piece of property and it is zoned a particular way, then the presumption is that you are going to get Planning permission to develop that piece of property, unless it harms some Planning interest (i.e. aesthetics and the likes) that it does not fit in within that area. But if you have property for zoning a house, then, it must be presumed that the board will issue you permission to build on that.

What we are getting is a number of people who do not want a house set back there because it is going to spoil their view. It is going to do this or it is going to do that. And that is highly unfair to the person who owns that property, and I believe this will correct that and stop all of these where I know the Government is making provisions for frivolous objections. But certainly, this will enhance that and give the board the authority to issue that permission without having to worry about those objectors.

Yesterday, I believe the Attorney General called them “busy bodies” eh? And, Madam Chair, I must tell you that the majority of this just happens to be people who come to this country and invest based on speculation and they have their property there, and then, as soon as they see somebody next door going to develop their property, they object to it because it is not what they think it should be. And I believe the board’s authority would be enhanced in this regard.

And, of course, the onus would be on the person who says that it is harmful to them, to prove that it is harmful. It would not be the board to try to decide whether or not it is harmful. Those who object would have to prove that it is going to be harmful to their interest.

The Chairman: Honourable Minister.

Hon. D. Kurt Tibbetts: Thank you, Madam Chair.

Madam Chair, this committee stage amendment that has come from the honourable Member for East End, we have not had a chance to look at it extensively. I do understand what the Member is hoping to achieve. The technical team in their first *look-see* at it, and, of course, because of all the other amendments, we haven't had a chance to really look at it in depth.

There is no definition in our law for material planning interest. So, we have looked at what is called the planning aid out of the UK—communities and local government to see what are material planning considerations and what are considered non-material planning considerations. And I do, as I said, very well understand what the honourable Member is trying to achieve. What I am hoping will satisfy the Member is that we would undertake along with the other things that we have looked at, to look very carefully at this proposed committee stage amendment, and perhaps we will have another discussion with the Member, because the technical team is worried that the way this is worded might hogtie (to use that term) “the Central Planning Authority” from specific considerations.

When we look at what the Planning aid out of the UK considers material planning considerations and non-material planning considerations, I use the example and want to be careful here, but it just so happens that I think it is a good example. An Ostrich [SOUNDS LIKE] rearing farm was proposed on land not so long ago in the district of East End (thus coincidentally), and where it was proposed to be done, the land was actually zoned agriculture/residential. So, by way of the zoning, there is absolutely no reason on its own merit why that should not have been approved, but it so happens that there were several homes in the immediate area. People thought it was going to devalue property and that kind of stuff. So, in the original consideration, the CPA took all of those factors into consideration and they actually did not approve the request, or rather they declined the application. And when we looked at these things the considerations that were given then were non-material planning considerations. And I have to admit that material planning considerations and non-material planning considerations, I am no expert on at this point in time.

All I am asking of the Member is if he would allow us to not have to proceed with this proposed amendment presently, but I give the undertaking that along with the others that I have already committed to, we will look at that, try to achieve what he wants to achieve, but just to make sure that we do not move

ahead with this and then it causes the CPA difficulty in their decision making once the law comes into force, as we do not want for that to happen.

The Chairman: Member for East End.

Mr. V. Arden McLean: Thank you, Madam Chair.

Madam Chair, what the Minister just explained is precisely what I am trying to arrive at. If it is going to cause harm, the CPA cannot give it. In this case, the Ostrich farm was going to cause harm to that environment. And they cannot give it. So, we reverse that now and they were mindful to give it and the residents objected, and they proved that it was going to cause harm to their homes, therefore the CPA could not give it. So, that is precisely the objective here.

Material planning harm is that you have given me permission to build a house here; planning, zoning, and now you are going to give permission for Ostrich, whatever they are, against my fence. You are going to cause harm to that planning approval that you have already given; that I should live in my single family house here without the stench, the possibility of my children getting harm because I have an inalienable right to live here. But, if there is another house that they have applied for next door and the people say that they are already there and it is going to block their view of the sea, then, that is no harm to your planning permission to live here in a home and it is frivolous. So, the Authority would be free from any liability (so to speak).

The Chairman: Honourable Minister.

Hon. D. Kurt Tibbetts: Thank you.

Madam Chair, I heard exactly what the Member was saying. My point is not to differ from that. My point is how the amendment is worded, and it speaks to harm as to some material planning interest and it says that in both of the proposed amendments, and that is the difficulty. It is not the concept that we have any difficulty with at all.

You see, depending on whom the applicant is, Madam Chair. If something like this is in the law and it speaks to some material planning interest saying that it has to be a material planning interest, and some bright lawyer (there is no definition in the law because it has not been thought about that there should be a definition in the law saying what material planning considerations are and what non-material is), for instance, were to refer to other jurisdictions, such as what we have found that exist in the UK, then, it is very possible that a case could be argued that the same thing that the Member for East End wants to achieve is considered a non-material planning interest. And, as a result, it could be said that the CPA can't take those things into consideration because these amendments speak to material planning interest. That's the only difficulty that we have.

That is why I am asking him to give us some time to see if we can get some wording which does not cause that type of restriction for the CPA because that can be harmful to an applicant or an objector, depending on which side of the fence they find themselves. And we do not want to do it with the best of intentions and end up with the kind of language which may cause legal arguments that would put the CPA in difficulty. And I hope the Member understands. I am not trying to prevent him achieving what he wants to achieve. I am just asking him to give us an opportunity to ensure that the wording is not one that we regret after a while, because in specific instances it causes the result not to be the one that should be the right result. That is all I am saying.

The Chairman: Does the Member wish to reply?

Mr. V. Arden McLean: Sure. Thank you, Madam Chair.

Madam Chair, here is a scenario that has come about more often than not. And maybe the director can advise his Minister. There are requirements, advertisements when you are going to do a particular thing and everybody knows about it. It is within the right zoning, right setbacks, all of that kind of stuff. When it goes to the CPA someone objects to it. They come with their objections and the CPA needs to uphold or reject those objections.

Hon. D. Kurt Tibbetts: Mm-hmm.

Mr. V. Arden McLean: The CPA does not know where to go. But because they have not proven the objectors that this is going to materially harm their interest in that area, it is just that they don't think it should go there. For instance, there are many places in George Town now where residential is mixed with commercial. Commercial says that a person can build right on the boundary but they try to set it back six feet. And someone who has a house there, enjoying the benefit of living in a commercial area with the increase value on their property does not want that four-storey building next to them. And they say, *Well, you know this building is going to be too close to my house.*

There must be presumption on the part of the person who wants to build that building that they can build it. But here we are, the board sits and says, *What are we going to do there now?* And that holds that building [process] up, 6 months, 8 months, a year, two years. We have seen it before. In the meantime, the man loses his financing; he loses everything and just gives up and walks away from it. But in the meantime, if the board was free from any obligations to consider such rubbish and they were acting on the presumption that that building proposed is within the Planning requirements, setback and what-have-you, then it must be that that board can say that permission is granted. And that is what I am trying to get at.

The presumption is that unless the building was encroaching on the setbacks or they were proposing a brothel in that commercial building or something, it is going to probably affect some planning interest next door. But if it is within the requirements of that zoning, then, the presumption must be that Planning permission will be granted. That's all I am trying to do, Madam Speaker, to avoid these . . . you know . . . if there is neighbourhood commercial, and I can give an example.

The thing in Savannah—the shopping plaza . . .

Hon. Osbourne V. Bodden: Countryside.

Hon. D. Kurt Tibbetts: Countryside.

Mr. V. Arden McLean: Countryside.

I reside in Savannah just down the road. And when this commercial was being planned, a neighbourhood commercial, some of the people in that area got together and wanted a petition and I refused to sign it. I built my residence in that area knowing that there is neighbourhood commercial there and these things can happen and I refused to sign it. The presumption is that they are going to get it if it does not aesthetically or otherwise upset that neighbourhood, and that is where Planning has the authority to say how it should look, how it should be designed. But it should not be that it is stopped for two to three years and then the neighbourhood commercial just sits there.

Hon. Samuel W. Bulgin, Attorney General: Madam Chair, through you.

The Speaker: Honourable Attorney General, that was the mover's reply but I am sure you are going to elucidate the matter, so please go ahead.

Hon. Samuel W. Bulgin, Attorney General: Yes, just strictly to say that my understanding is, and has always been, that the common law position is that there is a presumption in favour of Planning permission once the planning application meets all of the other statutory requirements. The issue of what is a material planning consideration is something that is extremely difficult to define in law because it is going to depend on the individual case. So, it is not something that you can sort of be overly prescriptive about in law, and hence care would have to be taken about any attempt at all to prescribe that. But to the Member's position, there is already a presumption in favour of Planning permission, provided that the application itself meets all the other statutory requirements.

Hon. D. Kurt Tibbetts: Madam Chair, just before the Member speaks, if I may just add to that, because I want to ensure, but don't want to sound too repetitious, that I understand exactly what the Member is trying to achieve. But the way this thing is worded and

it says some material planning interest, we need to be able to step out of the box and look on both sides of the coin depending on who faces what situation.

What I am saying is that there are several planning interests which are not material planning interest, which can be very valid reasons for the CPA to take into consideration when they are making a decision. And if we were to take these amendments as they are, where they both say at the end of each one of them, they speak to some material planning interest, then non-material planning interest, such as, loss of property value, opposition to business competition, factual misrepresentation of the proposal, I am saying to you that the way this is worded it could well limit the CPA from taking matters such as that into consideration. That is all I am saying. I am not trying to argue what the Member is saying and what he wants to achieve; not for a second.

Now, the Honourable Attorney General has said that the common law position has been the same thing. If we want to deal with belt and braces, which is what I think I understand the Member trying to do, I am saying, let's make sure that we do not in our attempt to achieve that, the way this is worded, as is worded, it could possibly lead to difficulties arising on the other side of the fence where the CPA can't take some matters into consideration because this says they must only take material planning interest. And I think—

[Inaudible interjection]

Hon. D. Kurt Tibbetts: Right. I mean, because this will be very prescriptive. I am thinking that what the Member is terming a material planning interest in many instances, is not considered material planning interest but rather a non-material interest. And I do not want for us to get confused by using that terminology. That is all I am saying. So, I am just asking for the Member to allow us to make sure we have the wording right and it will be a matter of weeks before the other stuff is brought back and we will ensure that it happens. But I do not want to do this as is now, leave it alone, and in short order find out that all the good intentions were not able to be achieved because of the limitations it set when the CPA was making their considerations. That is the only rationale. That is all it is, nothing else.

The Chairman: Member for East End.

Mr. V. Arden McLean: Madam Chair, I hear the Attorney General. Madam Chair, the word "some" was not put in there to define an amount as the Minister talked about and the Attorney General, about it being prescriptive. The objective here is the preceding paragraph to grant permission in accordance therewith; the agreement, the development plan and what-have-you. That is the key.

Hon. D. Kurt Tibbetts: "Unless".

Mr. V. Arden McLean: "Unless".

Hon. D. Kurt Tibbetts: That's what it says; "unless".

Mr. V. Arden McLean: Yes, but "some" . . . we are focusing on the word "some" as if it is a number.

Hon. D. Kurt Tibbetts: No.

Mr. V. Arden McLean: It is a numerical amount. But I don't want the word "some"—

Hon. D. Kurt Tibbetts: Madam Chair, if I may just interrupt. Absolutely not, Madam Chair, it is the material planning interest, not some. It is material planning interest and what can be non-material planning interest. If I did not fully understand I might take a chance, but I have listened, I've looked at it, I've seen the comparisons and I fully understand it. And, Madam Chair, in good conscience, understanding full well the Member's intention, I can't do this. And I will simply ask the Member if he will allow me a chance for us to make sure the wording is right, that he is happy, we are happy and that we know it is going to make it all happen right. I can't explain it any better than that.

Mr. V. Arden McLean: Madam Chair, all I am asking is to then, and I will let them put it to the vote and kill it.

The Chairman: Rather than to withdraw?

Mr. V. Arden McLean: Are we saying . . . no, because I have my position on it, Madam Chair.

The Speaker: No, I just—

Mr. V. Arden McLean: Yeah, yeah.

Are we saying that material is not nuisance? And all of those things listed, are not those material and you have to prove that it is going to cause some harm to that? I don't understand. If you're going to cause harm it has to be to something material. It can't be to a vacuum which has no material value. I don't know.

The Chairman: I believe the Minister is saying that "material" has two dimensions. It can be material or it can be non-material and because it is not fully persuaded of the consequences direct or indirect of non-material, the interpretation is that some could take non-material to mean material and vice versa. He wants to further consider it to make sure that he gets it abundantly clear.

So, I now put the question that the amendments—

Mr. V. Arden McLean: Madam Chair.

The Chairman: Member for East End.

Mr. V. Arden McLean: What kind of commitment the Minister is giving on this?

The Speaker: That he will look at it, as I understand. But he can say it for himself. I understood him saying that he would review it because he understands your concept but wants to make sure that the words and the effect means what the intent is at this stage. He will review it and will bring further amendments in the matter of weeks and, at that time he will come forward with it, as per my understanding. If that is not correct, you can correct it.

Hon. D. Kurt Tibbetts: That's what I am saying.

Mr. V. Arden McLean: Does that mean it is about—

The Speaker: That's why I asked if you wanted to withdraw.

Mr. V. Arden McLean: Is it the word "material" that has the problem?

Hon. D. Kurt Tibbetts: It is not just the word "material" but it is the terminology- "some material planning interest".

Madam Chair, I would once again ask the Member because I am not going to do it. And that is not because I don't want to do it, but I cannot justify to myself with all of the persuasion that I have heard, that having this amendment put in at this time without us . . . here are we, back and forth on it, that in itself proves the point. Because, while I understand what the Member is saying, I am not . . . the Member thinks that it is done. I have already said and will say once more, I have given the commitment to speak to the Member more about it. I will get the technical team together and see what we can come up with that will satisfy everybody to make sure that it is there. It's not, not wanting to do it. But that is the position, Madam Chair.

The Chairman: I will put the question that amendment stands part of the clause.

All those in favour, please say Aye. Those against, No.

Ayes and Noes.

The Chairman: I believe the Noes have it.

Negatived: Amendment to clause 5 failed.

The Chairman: The question is that clause 5 stands part of the Bill.

All those in favour, please say Aye. Those against, No.

Ayes.

The Speaker: I believe the Ayes have it.

Agreed: Clause 5 passed.

The Clerk: Clause 6	Repeal of section 6 - applications to carry out major developments
Clause 7	Repeal of section 8 - notification of decisions relating to major developments

The Chairman: The question is that clauses 6 and 7 stand part of the Bill.

All those in favour, please say Aye. Those against, No.

Ayes.

The Speaker: The Ayes have it.

Agreed: Clauses 6 and 7 passed.

The Clerk: Clause 8	Amendment of section 9 – preparation of development plans
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The Chairman: There's an amendment, Honourable Minister.

Amendment to clause 8

Hon. D. Kurt Tibbetts: Madam Chair, I move an amendment to clause 8 by way of deleting paragraph (a) and substituting the following paragraph: "(a) by repealing subsection (1)(c) and substituting the following paragraph – "(c) designate, as public open space for the purpose of 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.".

The Chairman: The amendment has been duly moved. Does the Member wish to speak further to it?

Hon. D. Kurt Tibbetts: No, Madam Speaker, we went through the debate on that.

The Chairman: Honourable Leader of the Opposition?

Hon. W. McKeeva Bush, Leader of the Opposition: Other than what the Member said, and I don't recall, Madam Chair, how much he talked about it, but does the Member have something that he can add to clarify what this is all about?

The Chairman: Honourable Minister.

Hon. D. Kurt Tibbetts: Just one second, Madam Chair, let me make sure.

[Short pause]

Hon. D. Kurt Tibbetts: Madam Chair, sorry about that but I just wanted to make sure that I had a very clear understanding.

Madam Chair, land that is zoned public open space, the way it is now, there are two reasons why land is zoned public open space: 1) it is land zoned public open space to be acquired by the Government or 2) land that is zoned public open space which the Government has no intention of actually acquiring but it is protected because it is in the public interest for it to remain public open space.

This is simply intended to clarify the issue so that people are not of the opinion that any land that is zoned public open space is expected to be acquired by the Government.

Hon. W. McKeewa Bush, Leader of the Opposition: So, as it stands now, land that is in a subdivision that subdivision owners have left as was required, are you saying that is not owned by government?

Hon. D. Kurt Tibbetts: No. It is not owned by government because—

Hon. W. McKeewa Bush, Leader of the Opposition: But they left it for public use?

Hon. D. Kurt Tibbetts: And it is part of their planning condition.

Hon. W. McKeewa Bush, Leader of the Opposition: That they leave a certain amount of space open—

Hon. D. Kurt Tibbetts: That's right.

Hon. W. McKeewa Bush, Leader of the Opposition:—for public use?

Hon. D. Kurt Tibbetts: That's right.

Hon. W. McKeewa Bush, Leader of the Opposition: And who says what happens to that land?

Hon. D. Kurt Tibbetts: When you say who says, what do you mean?

Hon. W. McKeewa Bush, Leader of the Opposition: Yeah, I mean the land is—

Hon. D. Kurt Tibbetts: It is zoned that and that is exactly what it means, so you can't go and use it for other purposes. No one can. But in many instances it is

still in the name of the development company or the individual or whatever.

Hon. W. McKeewa Bush, Leader of the Opposition: Government really does not have an interest in it, although it says public open space? And so there is no meaning by law that government has any right over it?

Hon. D. Kurt Tibbetts: Right.

Hon. W. McKeewa Bush, Leader of the Opposition: That's what you're saying?

Hon. D. Kurt Tibbetts: And the thing about it is that we want to make sure these parcels that are deemed for the public use, that there is not an expectation because there is a name attached to the title where they can say government has to pay them to acquire it. That is so the onus is clarifying that; that no one has that expectation. Let me make sure of that.

Hon. W. McKeewa Bush, Leader of the Opposition: An expectation from anybody?

[Inaudible interjection]

Hon. D. Kurt Tibbetts: Hold on, let me make sure.

[Short pause]

Hon. D. Kurt Tibbetts: What I said was correct. But, Madam Chair, through you to the Leader of the Opposition, what you are talking about is not POS [public open space] designated land, it is LPP which is a difference.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: Yes, land for public purposes [LPP], which is a different designation. This has no bearing on LPP.

Hon. W. McKeewa Bush, Leader of the Opposition: But the public open space . . . this has no bearing on—

Hon. D. Kurt Tibbetts: LPP.

Hon. W. McKeewa Bush, Leader of the Opposition: LPP.

Hon. D. Kurt Tibbetts: No. You see, LPP, for instance, in a subdivision where you have zoned, it is zoned LPP, not POS, because the interpretation of that is, the land for public purposes there, is for that subdivision, that community. The POS is for the wider public and that can be in different areas.

Hon. W. McKeeva Bush, Leader of the Opposition: But most subdivisions are required . . . I think all subdivisions are required to leave land—

Hon. D. Kurt Tibbetts: And that's LPP, not POS.

Hon. W. McKeeva Bush, Leader of the Opposition: LPP and not POS.

Hon. D. Kurt Tibbetts: Right, LPP, land for public purposes. And that land is for the use of the community.

Hon. W. McKeeva Bush, Leader of the Opposition: Of the immediate residents?

Hon. D. Kurt Tibbetts: Exactly.

Hon. W. McKeeva Bush, Leader of the Opposition: In that subdivision?

Hon. D. Kurt Tibbetts: That's right.

Hon. W. McKeeva Bush, Leader of the Opposition: And not government owned either?

Hon. D. Kurt Tibbetts: That's right.

Hon. W. McKeeva Bush, Leader of the Opposition: Public open space on the other hand, are you saying that has no designation to government?

[Short pause]

Mr. D. Ezzard Miller: Madam Chair, would it be a convenient time to break because I need to deal with an urgent matter for my constituency with the Acting Minister of Tourism? And if I leave it won't be a quorum and I do not want to do that.

Hon. D. Kurt Tibbetts: That's fine.

Mr. D. Ezzard Miller: If we could take a break now so I could deal with that matter, I would appreciate it.

The Chairman: Okay.

What we will do is to take the luncheon break and we will come back at 1.30 or 1.00?

[Inaudible interjection]

The Chairman: One-thirty. All right, we will take the luncheon break and come back at 1.30.

Proceedings suspended at 12.15 pm

Proceedings resumed at 2.01 pm

GOVERNMENT BUSINESS

BILLS

COMMITTEE ON BILLS

[Continuation of Committee thereon]

The Chairman: Please be seated.
The Committee has resumed.

Re-committal of Clause 8

Hon. D. Kurt Tibbetts: Madam Chair.

The Chairman: Honourable Minister.

Hon. D. Kurt Tibbetts: I'm craving your indulgence here, Madam Chair, because we have not had time. That same amendment to section 8 of the . . . was it section 8, Madam Chair, I think?

The Chairman: That's correct.

Hon. D. Kurt Tibbetts: Okay.

Subsection (c) that is being proposed, if you could just follow me carefully. I am asking if I could tell you this amendment which solves the problem and if you would allow us to just ensure that the change is made. What needs to happen, as it reads now, and I will go with it: Subsection (c) begins "designate, as public open space." Delete the rest of that sentence please. So, we will be deleting "for the purpose of acquisition by the Government —". So, (c) will read: "designate, as public open space" and roman numerals (i) and (ii) will remain as is, except when we reach the last word in roman numeral (ii) "plan", instead of a full stop it will be a semi-colon and then right below that will read: "and for the Government to acquire such public open space as it deems necessary."

[Inaudible interjection]

Hon. D. Kurt Tibbetts: Forgive me, that last line, Madam Chair. . .

[Addressing inaudible interjection] I will explain it. I just wanted them to get it. I am going to explain it.

Madam Chair, the last line will read: ". . . and the Government . . ." (forgive me, "for the Government to acquire", I am told that it does not sound right; that is Kurt's language and that is not good). ". . . and the Government shall acquire such public open space as it deems necessary." What that is doing, Madam Chair, and the whole intention of this amendment, the way the entire section read initially, it makes it sound without this change as if the expectation should be of all landowners that once land is zoned to be public open space, that the owners have the expectation of the Government to acquire it and that is not the case.

Public open space, as I explained earlier, is a

different designation from land for public purposes. And public open space can be a park, it can be a roadway, it can be anything. But we do not want, which is the way the law read or reads, as is before this amendment. We want to clarify the situation so that the Government is not faced with the burden of having to purchase public open space land which they do not have any desire to do. Because it could even mean that a public open space which is a park, if it is in the name of an individual or an entity, that they could come and say, *Well, this is the value I have, come, acquire this.* And that is all we are trying to prevent in this thing. And that is why . . . but unfortunately, the amendment did not actually capture that, hence the addition, especially of the line “. . . and the Government shall acquire such public open space as it deems necessary.”

[Inaudible interjection]

Hon. D. Kurt Tibbetts: That's right. Exactly!
Yes, Madam Chair.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: Madam Chair, one more time. We are fine. No more Kurt language. I think we have it right now: “. . . and the Government may acquire such public open space as it deems necessary.” And thank you.

The Chairman: Member for East End.

Mr. V. Arden McLean: Under what circumstances would government buy public open space?

The Chairman: Honourable Minister.

Hon. D. Kurt Tibbetts: Thank you, Madam Chair, for your patience.

One example would be for instance if there is a right-of-way to a beach. The land is actually in private ownership but there is a public right-of-way on one end of it and the Government intends to zone that property as public open space because there may not be a beach anywhere else that is available. It would not then be reasonable for a landowner if the Government simply zoned it public open space and left it like that and the landowner was left not having the ability to use it or to develop it or anything like that. In an instance like that, one could justify the Government saying, *Well, we need to acquire this to ensure perpetuity for use of the public and not get into a court battle just because the Development and Planning Law states that if you go through the process and something is zoned, then so be it. It is all about fairness.*

How the law reads now, it almost creates the expectation for any landowner where the land has been zoned public open space, that the Government should acquire and pay for it and the amendment itself

is simply saying that in instances where the Government should acquire, they so will. But in instances where they need not acquire, they won't, and they won't have to pay for it. It might be a park that is created because of whatever.

The Chairman: Member for East End, do you have a follow-up?

Mr. V. Arden McLean: Yes, I am totally confused because I thought the creation of public open space was zoned that does not allow any kind of development thereon.

Hon. D. Kurt Tibbetts: I'm not saying that. I hear you and remember now, let's not mix up LPP with public open space. Okay? I'm just saying let's make—

Mr. V. Arden McLean: How was POS created?

Hon. D. Kurt Tibbetts: It's a zoning, and in many instances . . . let me use another example. The ponds, there are several different ponds in different locations and there is one especially like the one in Bodden Town, Meagre Bay [Pond]. Many years ago there was a 300 foot buffer zone that was created around the perimeter to protect that pond. In fact, I think that is the only one that has been declared a Ramsar site.

Mr. V. Arden McLean: No, no, the one in Colliers too.

Hon. D. Kurt Tibbetts: Declared a Ramsar site also?

Mr. V. Arden McLean: Long time. That was the first one; '61 or so.

Hon. D. Kurt Tibbetts: Okay. Right.

Well, in instances like that, that land is in private ownership, but this ensures that there is no expectation. This amendment ensures that there is no expectation for the landowners to expect that the Government has to buy the land because it has been zoned like that.

Let's not think of how it should be. Let's look at the law as it reads today. And the way the law reads today makes that unclear about whether the expectation is there or not. That is what we need to look at. This amendment is simply to make it very clear. But you do not want to say that none of the public open space zoning, the Government does not want to acquire any of it because there may well be instances that the Government would wish to acquire it and to use it for other purposes. But we do not want there to be the expectation that every parcel zoned public open space the Government has to acquire it. That's all this is saying.

Mr. V. Arden McLean: Madam Chair, when I saw this, at first I just did not understand what it was and I

still do not, even though the Minister has tried his best to explain it. That is like mangrove buffer. You are prohibited from building therein.

Hon. D. Kurt Tibbetts: But that is not zoned public open space.

Mr. V. Arden McLean: No, no. What I am saying is that once you are prohibited from building within a particular zone (public open space is one), Planning cannot allow them to build there. So, why do we have to buy it? The Minister knows that when we were involved in Planning, that was how he and I advocated for the Botanic Park. The Planning board before us had given the Matalons permission to destroy some mangroves with the caveat that they would purchase other mangroves. And he and I successfully argued that we did not need to purchase it. Do you remember that?

Hon. D. Kurt Tibbetts: Mm-hmm.

Mr. V. Arden McLean: Let's let them go and buy this piece of land for the Botanic Park. You remember that?

Hon. D. Kurt Tibbetts: Thirty acres.

Mr. V. Arden McLean: That's right.

And so the Government already has the authority over public open space. There's no need to purchase it.

Hon. D. Kurt Tibbetts: No. And that is exactly the point.

The way the law reads at the beginning without this change could lead expectations to purchase. But while the Member for East End has made his point, I think what he is saying is that at no point in time would the Government have to purchase any land that is zoned public open space. That is really what he is saying. And we are saying that we do not know of a specific instance when this might be the case, so we simply want to leave the Government the option that if and whenever that happens, the Government has the ability to acquire it. That's all that is. It's not geared at anything else.

The way laws are written, as I understand it—

[Inaudible interjection]

Hon. D. Kurt Tibbetts: Six months with what?

[Inaudible interjection]

Hon. D. Kurt Tibbetts: What are you talking about? Which sections?

Forgive me.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: To do what?

[Inaudible interjections]

Hon. D. Kurt Tibbetts: That's not the same clause.

[Inaudible interjection]

The Chairman: Section 9(3).

Hon. D. Kurt Tibbetts: The very next amendment. Sub-section (3) that is, isn't it?

[Inaudible interjection]

Hon. D. Kurt Tibbetts: That's the law that exists.

[Short pause]

Mr. V. Arden McLean: May I just ask, Madam Chair.

The Chairman: Member for East End.

Mr. V. Arden McLean: Is it also true that public open space can be created by the development of large tracks of property? And the amount you have to leave, what is that called, the LPP?

The Chairman: That's where the confusion is.

Hon. D. Kurt Tibbetts: That's LPP.

Mr. V. Arden McLean: That's LPP?

Hon. D. Kurt Tibbetts: [INAUDIBLE]

Mr. V. Arden McLean: Public open space also includes mangrove buffer, does it not?

[Inaudible interjection]

Mr. V. Arden McLean: It's a mangrove buffer and open spaces interchangeable? No? We don't consider them interchangeable?

The Chairman: No.

Mr. D. Ezzard Miller: [INAUDIBLE]

The Chairman: Honourable Minister.

Hon. D. Kurt Tibbetts: Perhaps, Madam Chair, this might bring some clarity. This is section 17 [Development and Planning Regulations (2013 Revision)]: **“Public open space zones comprise predominantly undeveloped areas of land vested, or intended to be vested, in the Government or over which the public have rights and which is available to members of the public generally (whether subject to fulfilling in lawful condition or not) for purposes of**

sport, recreation, or the enjoyment or study of nature. Such areas include, but are not limited to parks, reserves, beaches, playgrounds, sports grounds and playing fields, plazas, public access ways and land set aside for public purposes development and subdivisions under regulations 28 and 32.”

Mr. V. Arden McLean: This is [section] 17 of the law?

Hon. D. Kurt Tibbetts: Regulations, forgive me. That is not new; it is what exists in the regs now.

Mr. V. Arden McLean: So, are we saying that if the Government does not buy it, it will revert to what it was?

[Inaudible interjection]

Mr. V. Arden McLean: Madam Chair, or will that original developer whose name it was in, be able to develop it?

Hon. D. Kurt Tibbetts: No. It goes back to its original thing and that’s it.

Mr. D. Ezzard Miller: But the developer can develop it?

Mr. V. Arden McLean: You see, that is what I don’t understand.

The Chairman: Member for North Side.

Mr. D. Ezzard Miller: We changed the [INAUDIBLE] in 2010 where land that was designated. Or was that land for public purposes as part of a housing scheme?

Hon. D. Kurt Tibbetts: LPP.

Mr. D. Ezzard Miller: The original developer, if government did not take over the land it would revert back . . . the person could come back to government and purchase it—

Hon. D. Kurt Tibbetts: That’s right.

Mr. D. Ezzard Miller: —to develop it. But that is not allowed in a POS?

Hon. D. Kurt Tibbetts: No.

Mr. D. Ezzard Miller: For example?

Hon. D. Kurt Tibbetts: No it is not.

Mr. D. Ezzard Miller: Okay.

Hon. D. Kurt Tibbetts: And that is LPP and the one that requires 51 per cent agreement.

Mr. D. Ezzard Miller: In the ForCayman Investment Alliance with Dart and the West Bay Public Beach—

Hon. D. Kurt Tibbetts: FCIA.

Mr. D. Ezzard Miller: Right. The additional land that Dart bought to add to the Public Beach—

Hon. D. Kurt Tibbetts: Where the play area is.

Mr. D. Ezzard Miller: —has that been designated POS?

Hon. D. Kurt Tibbetts: No. The whole thing is still as the Premier said, in the middle of negotiation.

Mr. D. Ezzard Miller: And up Barkers it is the—

Hon. D. Kurt Tibbetts: Which one in Barkers?

Mr. D. Ezzard Miller: The Heritage Park in Barkers, there were some exchange of land party too. Is that intended to be POS or not?

Hon. D. Kurt Tibbetts: I am being totally truthful; I don’t know where it is going to end up. I don’t know that. I have not been given or have had any need to consider that at this point in time.

Mr. D. Ezzard Miller: But in this case, if he was to come back, depending on whenever the negotiations are finished or whatever stage they are at, if he decides not to give that additional land onto the West Bay Public Beach, is there a possibility that government could designate it public open space and it would remain in his name but he could not develop it, so he would continue to use it to the park? And what you are saying is that with this amendment he could not force government to buy it or to give him some alternate trade and compensation for it?

Hon. D. Kurt Tibbetts: Right. That is, we were not contemplating that specific piece of property, but you are using that as an example.

Mr. D. Ezzard Miller: I was looking at the—

Hon. D. Kurt Tibbetts: I understand what you are saying. What you are saying is always possible.

Through you, Madam Chair, forgive me. What you are saying is always possible but at all times the Government would want to be fair in whatever considerations they have. But this amendment says that what you are saying is possible once the due process is carried out. But—

[Inaudible interjection]

Mr. V. Arden McLean: [INAUDIBLE] confused Minister.

The Chairman: Member for East End.

Mr. V. Arden McLean: You asked me the other day if a gentleman had come to me and I told you 'yes'. Now, what that gentleman wants to do is to divert the road and pass that same thing over to National Trust; the same Ramsar site, because it is still registered in . . . and I don't want to go too far, you know?

Hon. D. Kurt Tibbetts: Mm-hmm.

Mr. V. Arden McLean: Because there is no development possible on it, you see?

Hon. D. Kurt Tibbetts: But if it is a Ramsar site, not POS . . . it's a Ramsar . . . no, no, I lie, forgive me.

Mr. V. Arden McLean: That is public.

Hon. D. Kurt Tibbetts: It's POS, yes.

Mr. V. Arden McLean: You understand, Madam Chair? And that is what has me confused.

We have total control over it. They can't use it. No one can use it. I mean, we are going to some extraordinary lengths that are unnecessary. That's all I am saying. That development does not hinge on using that. It is removed from the hundreds of acres.

Hon. D. Kurt Tibbetts: But they can't develop it anyhow.

Mr. V. Arden McLean: Right.

Hon. D. Kurt Tibbetts: Mm-hmm.

So, having regulated that, Madam Chair, I don't think there is an argument about the amendment. I think perhaps it might be considered by some to be too much belt and braces, but I don't think so.

Madam Chair, one second.

[Short pause]

Hon. D. Kurt Tibbetts: Madam Chair, forgive me.

The Chairman: Honourable Minister.

Hon. D. Kurt Tibbetts: Do you also have in section 9 of the actual law a subsection (3) amendment?

I got it. This is not a committee stage amendment; this is in the Bill now to be amended. So, that is fine. Please continue.

The Chairman: Honourable Minister, can you read the amendment as you wish, because you just kind of went through and did it incrementally for the record?

Hon. D. Kurt Tibbetts: Thank you.
Madam Chair, I beg to move—

The Chairman: Amendment to clause 8.

Hon. D. Kurt Tibbetts: Yes, I know, but I just want to say to you now, that before we took the break I had moved the amendment. When I came back I just told you the changes that I wanted to that. Do you want me to just read the whole thing to be clear?

The Chairman: Yes, just for the record to be clear to make sure we get it right.

Hon. D. Kurt Tibbetts: To be clear, the amendment we are seeking is in subsection (c), to now read: "(c) designate, as public open space- (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; and the Government may acquire such public open space as it deems necessary."

The Chairman: The amendment has been duly moved. If there is no further debate to it or a reply, I will put the question that the amendment stands part of the clause.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Amendment to clause 8 passed.

The Chairman: The question now is that the clause, as amended, stands part of the Bill.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Clause 8, as amended, passed.

The Clerk: Clause 9	Amendment of section 11 – approval of development plans
Clause 10	Amendment of section 12 – deposit of development plans

The Chairman: The question is that clauses 9 and 10 stand part of the Bill.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Clauses 9 and 10 passed.

The Clerk: Clause 11 Amendment of section 13 – provisions for development

The Chairman: There is an amendment, Honourable Minister.

Amendment to clause 11

Hon. D. Kurt Tibbetts: Thank you, Madam Chair.

Madam Chair, I move that the Bill be amended in clause 11 subsection (a) by inserting after paragraph (iii) the following paragraph: “(iv) by repealing paragraph (g) and substituting the following paragraph – (g) the display of such advertisements or signs as may be specified by the Authority.”

The Chairman: The amendment has been moved. Does the Member wish to speak to it?

Hon. D. Kurt Tibbetts: Madam Chair, I went through that in earlier deliberations.

The Chairman: If no other Member wishes to speak I will put the question that the amendment stands part of the clause.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Amendment to clause 11 passed.

The Chairman: The question now is that the clause, as amended, stands part of the Bill.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Clause 11, as amended, passed.

The Clerk: Clause 12 Amendment of section 14 – functions of the Board

The Chairman: There is an amendment, Honourable Minister.

Amendment to clause 12

Hon. D. Kurt Tibbetts: Just a second please, Madam Chair.

[Short pause]

Hon. D. Kurt Tibbetts: Madam Chair, I move the amendment in clause 12 by deleting clause 12 and substituting the following clause:

Should I read the marginal notes?

[No audible reply]

Hon. D. Kurt Tibbetts: [Clause] 12. The principal Law is amended in section 14(1) by deleting “21, 22, 23, 24, 25, 27, 28,” and substituting “25, 28, 29A, 29B, 29C, 29D, 29E.”

The Chairman: The amendment has been moved. Does the Member wish to speak to it?

If not, I will put the question that the amendment stands part of the clause.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Amendment to clause 12 passed.

The Chairman: The question now is that the clause, as amended, stands part of the Bill.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Clause 12, as amended, passed.

The Clerk: Clause 13 Amendment of section 15 – application for planning permission

Clause 14 Amendment of section 17 – revocation and modification of planning permission

Hon. D. Kurt Tibbetts: Is there an amendment in clause 14, Madam Chair?

[No audible reply]

The Chairman: The question is that clauses 13 and 14 . . .

Hon. D. Kurt Tibbetts: Madam Chair, I think there is an amendment to 14.

The Chairman: That is what I was trying to clarify, Honourable Minister. But because it is a new clause, then it comes at the end of all of the amendments.

Hon. D. Kurt Tibbetts: Forgive me. Sorry, forgive me.

The Chairman: That's okay.

The Chairman: The question is that clauses 13 and 14 stand part of the Bill.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Clauses 13 and 14 passed.

The Clerk: Clause 15 Amendment of section 24 – compensation for loss due to stop notice

Hon. D. Kurt Tibbetts: Madam Chair.

The Chairman: Honourable Minister.

Hon. D. Kurt Tibbetts: Madam Chair, forgive me if I am mistaking here, but after clause 14, isn't there an amendment adding the following clauses 14A, 14B?

[Inaudible interjection]

Hon. D. Kurt Tibbetts: Sorry. Okay. I'm with it now.

The Chairman: There is an amendment to clause 15. Do you have an amendment to clause 15, Honourable Minister?

Amendment to clause 15

Hon. D. Kurt Tibbetts: Madam Chair, I am sure you understand that this can get a bit confusing. But we will get through it.

Madam Chair, I move the amendment to clause 15 which seeks to delete clause 15 and substitute the following clause: "15. The principal law is amended by repealing section 24."

I think the next one is in clause 16.

[Pause]

The Chairman: The amendment to the clause has been moved. Does any Member wish to speak to it?

If not, I will put the question that the amendment stands part of the clause.

All those in favour, please say Aye—

Hon. D. Kurt Tibbetts: Madam Chair, please, I am not sure about something.

[Pause]

The Chairman: I will put the question that the amendment stands part of the clause.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Amendment to clause 15 passed.

The Chairman: The question now is that the clause, as amended, stands part of the Bill.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Clause 15, as amended, passed.

The Clerk: Clause 16 Insertion of section 24A – grant of injunction

The Chairman: Honourable Minister.

Amendment to clause 16

Hon. D. Kurt Tibbetts: Madam Chair, I move in clause 16 in the Bill for an amendment which is proposed for insertion in the principal Law (i) in the new section 24A(1) by deleting the word "Authority" wherever it appears and substituting the word "Director". And (ii) by deleting the words "its other powers" and substituting the words "his other powers".

The Chairman: The amendment has been duly moved. I trust some Member wishes to speak because I am short one person.

[Inaudible interjections]

Hon. D. Kurt Tibbetts: Madam Chair, is it possible to go ahead with a few other amendments and speak to all of them and just vote on them at one time? Or is that not possible?

[No audible reply]

Hon. D. Kurt Tibbetts: So, we are stuck on [clause] 16?

[Clause] 16 . . . Sorry, Madam Chair.

Madam Chair, (b) in clause 16, in that same new section 24A proposed for insertion in the principal Law by deleting all of the words appearing after the words "an injunction". And (c) in clause . . . that one is 24 so I stop there.

The Chairman: I will put the question that the amendments stand part of the clause.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Amendment to clause 16 passed.

The Chairman: The question now is that the clause, as amended, stands part of the Bill.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Clause 16, as amended, passed.

The Clerk: Clause 17 Amendment of section 26 – storm belts
 Clause 18 Amendment of section 28 – taking ballast from shoreline an offence
 Clause 19 Amendment of section 29B – penalty for non-compliance with notice under section 29A
 Clause 20 Amendment of section 36 – acquisition of land
 Clause 21 Repeal of Part VI - Infrastructure Fund
 Clause 22 Amendment of section 39 – powers of entry

The Chairman: The question is that clauses 17 through 22 stand part of the Bill.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Clauses 17 through 22 passed.

The Clerk: Clause 23 Amendment of section 40 – service of notices

The Chairman: Honourable Minister, there is an amendment.

Amendment to clause 23

Hon. D. Kurt Tibbetts: Thank you, Madam Chair.

Madam Chair, I move the amendment in clause 23 which seeks to delete paragraph (a) and to substitute the following paragraph: - "(a) in subsection (1) by repealing paragraph (e) and substituting the following paragraph – (e) by sending it via facsimile or electronic mail; and".

The Chairman: The amendment has been duly moved, does any Member wish to speak to it?

If not, I put the question that the amendment stands part of the clause.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Amendment to clause 23 passed.

The Chairman: The question now is that the clause, as amended, stands part of the Bill.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Clause 23, as amended, passed.

The Clerk: Clause 24 Amendment of section 42 - regulations

The Chairman: Honourable Minister, there is an amendment to clause 24.

Amendment to clause 24

Hon. D. Kurt Tibbetts: Yes, Madam Chair, in clause 24, by inserting after paragraph (b) the following paragraph – "(c) by inserting after subsection (2) the following subsection – (3) No regulations shall be made pursuant to this Law unless a draft thereof has been laid before the Legislative Assembly and a resolution approving the draft has been passed by the Legislative Assembly."

The Chairman: The amendment has been moved, does any Member wish to speak to it?

If not, I put the question that the amendment stands part of the clause. All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Amendment to clause 24 passed.

The Chairman: The question now is that the clause, as amended, stands part of the Bill.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Clause 24, as amended, passed

The Clerk: Clause 25 Amendment of section 43 – Development Plan Tribunals
 Clause 26 Amendment of section 46 – Appeals Tribunal
 Clause 27 Amendment of section 47 – Cayman Brac and Little Cayman Appeals Tribunal

The Chairman: The question is that clauses 25 through 27 stand part of the Bill.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Clauses 25 through 27 passed.

The Clerk: Clause 28 Amendment of section 48 – appeals against decisions of Authority

The Chairman: Honourable Minister.

Amendment to clause 28

Hon. D. Kurt Tibbetts: Madam Chair, just to make sure: is this where we are deleting clause 28 and substituting the following clause?

The Chairman: Mm-hmm.

Hon. D. Kurt Tibbetts: [Clause] 28. “The principal Law is amended in section 48 by repealing subsection (1) and substituting the following subsection – (1) Any person who has applied for planning permission, or who has objected to an application for planning permission after being notified of the application in accordance with regulations made under this Law, and who is aggrieved by a decision of the Authority in respect of the application, may, within fourteen days of notification of that decision under section 40, or within such longer period as the Tribunal may in any particular case allow for good cause, appeal against that decision to the Tribunal on the ground that it is – (a) erroneous in law; (b) unreasonable; (c) contrary to the principles of natural justice; or (d) at variance with any development plan having effect in relation thereto, but not otherwise; and such appeal shall be heard by the Tribunal within six months of such appeal being lodged, and such appeal shall be heard and determined based on the record of the hearing to which it relates in accordance with any rules made hereunder.”

The Chairman: The amendment has been duly moved, does any Member wish to speak?

If not, the question is that the amendment stands part of the clause.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Amendment to clause 28 passed.

The Chairman: The question now is that the clause, as amended, stands part of the Bill.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Clause 28, as amended, passed

The Clerk: Clause 29 Amendment of section 49 – appeals against decisions of Board

The Chairman: Honourable Minister, there is an amendment.

Amendment to Clause 29

Hon. D. Kurt Tibbetts: Yes. Madam Chair. We are seeking to delete clause 29 and to substitute the following clause: “29. The principal Law is amended in section 49 by repealing subsection (1) and substituting the following subsection – (1) Any person who has applied for planning permission, or who has objected to an application for planning permission after being notified of the application in accordance with regulations made under this Law, and who is aggrieved by a decision of the Board in respect of the application, may, within fourteen days of notification of that decision under section 40, or within such longer period as the Appeals Tribunal may in any particular case allow for good cause, appeal against that decision to the Appeals Tribunal on the ground that it is – (a) erroneous in law; (b) unreasonable; (c) contrary to the principles of natural justice; or (d) at variance with any development plan having effect in relation thereto, but not otherwise; and such appeal shall be heard by the Appeals Tribunal within six months of such appeal being lodged, and such appeal shall be heard and determined based on the record of the hearing to which it relates in accordance with any rules made hereunder.”

The Chairman: The amendment has been duly moved, does any Member wish to speak?

Member for East End and next to follow is the Member for North Side.

Mr. V. Arden McLean: Thank you, Madam Chair.

Madam Chair, I appreciate the Minister bringing this amendment and saying that it shall be heard by the Appeals Tribunal within six months of such appeal being lodged. I believe the more important provision we need in here is that they must write their ruling within a reasonable time, because there are many that are still outstanding for five, ten years that has not been written.

Hon. D. Kurt Tibbetts: So, there's nothing that speaks to that now?

[Inaudible interjections]

Mr. D. Ezzard Miller: Madam Chair, not specifically about this clause but just—

The Chairman: Member for East End.
Sorry.

Mr. D. Ezzard Miller: You going with Alden—

The Chairman: Member from the eastern part of Grand Cayman but known as North Side. Sorry.

Mr. D. Ezzard Miller: Just to confirm, Madam Chair, whether we approved the amendment which the Government moved to clause 24 to bring the regulations back here. Has that been approved? Because, having used their numerical majority to override the absolute minority, I will later withdraw my proposed amendment.

The Chairman: The Chair did not actually see it that way. The Chair saw it as the minority bringing forth something that the Government thought was sensible and logical and they acquiesce to that.

[Inaudible interjection]

Mr. D. Ezzard Miller: We are all entitled to our own opinion, Madam Chair, and I respect yours.

The Chairman: Honourable Minister of Planning.

Mr. V. Arden McLean: And it is not often that we are placated to, so thank you.

Hon. D. Kurt Tibbetts: Madam—

Mr. V. Arden McLean: Madam Chair.

The Chairman: Sorry, Member for East End, do you have a follow-up?

Mr. V. Arden McLean: I'm waiting on the—

Hon. D. Kurt Tibbetts: Yes, that's what I was answering.

Madam Chair, I have discussed with the technical team and also had a short conversation with the Attorney General, and certainly, we take on board the point the Member for East End is raising. Right at this precise moment I do not have a solution to bring into these amendments, but I certainly will add that one and take on board the point to see whatever we can move forward, because I do take his point. If there is a hearing and there is ruling issued, then all was for naught. So, we will see how we can deal with that.

Mr. V. Arden McLean: Madam Chair.

The Chairman: Member for East End.

Mr. V. Arden McLean: I can't agree with the Minister that all was for naught because the development still goes on, even though the ruling has not been written. And that is not to disagree with him. What I am saying is, you know, it is not fair to the complainant or whatever we call them in those arenas. And not only that, it is not fair for future cases that written rulings cannot be referred to and are only considered to be a verbal ruling that was given that day. And how that was arrived at, the rationale is not in writing. And some of these things are outstanding five or six years.

The Chairman: With that being said, I will now put the question that the amendment stands part of the clause.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Amendment to clause 28 passed.

The Chairman: The question now is that the clause, as amended, stands part of the Bill.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Clause 29, as amended, passed

The Clerk: Clause 30 Repeal and substitution of section 50 – annual report
Clause 31 Amendment of section 51 – saving of existing laws
Clause 32 Repeal and substitution of section 53 – application
Clause 33 Amendment of Schedule 1 – constitution and procedure of Authority and Board

Clause 34 Savings and transitional provisions

The Chairman: The question is that—

Mr. V. Arden McLean: Madam

The Chairman: Sorry.
Member for East End.

Mr. V. Arden McLean: Madam Chair, I just wanted to ask the Minister about clause 30. Why are we going back to June when the Government has announced that the fiscal year is going to be changing back to the calendar year, which is what the Authority has now?

The Chairman: Honourable Minister.

Hon. D. Kurt Tibbetts: Madam Chair, we are not 100 per cent sure exactly when that is going to actually take place. So, it certainly won't be before 2016. But this does not affect the budget cycle or anything like that. It is simply a terminology of the fiscal year, and if we so desire at a later date to change it, if the fiscal year and calendar year coincide, then at some other later point in time we will do so. But this is not going to happen immediately for now. So, we would prefer to leave it in, rather than to continue until such time as to how the law presently obtains.

The Chairman: Member for East End.

Mr. V. Arden McLean: Thank you.

Hon. D. Kurt Tibbetts: It creates a problem with the timing right now because of how it reads.

Mr. V. Arden McLean: If that is the wishes of the Government, then fine. I was just trying to see if I could find out when they were changing this fiscal year.

Madam Chair, you called 34 too, didn't you?

The Chairman: I did.

Mr. V. Arden McLean: Okay. May I?

The Chairman: Certainly.

Mr. V. Arden McLean: Okay.
In my debate I wondered about 34(1) and (3). Can somebody explain them to me?

The Chairman: Honourable Minister.

Hon. D. Kurt Tibbetts: So I do not get confused, Madam Chair, let me deal with 34(1) first.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: Yes.

Madam Chair, let me just quickly read it. [Clause] 34(1) reads: "**Every application for permission to develop land made under the former Law. . .**"— that is the law that obtains presently and whether it has been completely dealt with or it is in the process of being dealt with by the Authority or the Board ("Board" meaning "DCB"), when the new law comes into force, if everything is in train with it— "**. . . is to be continued and dealt with in all respects as if the new Law had not come into force.**"

So, it simply means that whatever the regime is under which an application is being dealt with, is the regime with which it will be dealt with. It means that you will not get an application coming in that was applied under the conditions of the law that obtains now, and whatever changes may be to a new law, apply to that application because that would not be fair to the applicant.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: Yes. That's what I'm saying.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: Forgive me if that is not what I said.

Let me make clear what I said: If an application has already begun the process of being dealt with, then, whatever the law was at the time that that process began, is the law under which it is dealt with.

[Clause] 34(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.**"

That means if there has been no start of the process to deal with that application, it will be dealt with under the conditions of the new Law, once it has not begun to be dealt with by the time the new Law comes into force.

Mr. V. Arden McLean: Madam Chair.

The Chairman: Member for East End.

Mr. V. Arden McLean: Madam Chair, what do we consider "application made"?

The Chairman: Honourable Minister?

Hon. D. Kurt Tibbetts: Madam Chair, here is the attempt: [Clause] 34(1) - (and I think it is probably best to use examples to make the point). If an application has been put in and it has gone beyond the point where there are 21 days for it to get to the CPA or the DCB and it is being worked on, I think that is some

internal thing. All right, forget I said that. But the application is physically being worked on, either by the department itself preparing it to get to the CPA by giving the comments or anything, then, 34(1) is the condition under which it operates, meaning that if during all of that is happening the new law comes into effect, then the application is dealt with completely under the old law.

[Inaudible interjections]

Hon. D. Kurt Tibbetts: Madam Chair, next attempt which is much simpler: The reason for the two subsections (1) and (3) is that subsection (1) contemplates . . . the first thing that happens when an application is made and received is that it is stamped the date of receipt. Therefore, if an application is received any point in time (meaning stamped) before the new law comes into effect, then that application is dealt with under the old law or the one that obtains now. And, any application that comes in any time after the new law comes into effect and is stamped any day after that, whether it is one day or two or two hundred, until such time as that law changes again, it will be dealt with under the new law.

Mr. V. Arden McLean: Why do we have three then?

An Hon. Member: We don't need three.

[Inaudible interjections]

Hon. Samuel W. Bulgin, Attorney General: Madam Chair, let me just attend this.

The Chairman: Honourable Attorney General.

Hon. Samuel W. Bulgin, Attorney General: Under 34(1), if an application is submitted and it is already in the process of being considered by the board or the authority, the adjudication process has started, then it continues under the law. If application comes in but it is merely receipted and it is there, no adjudication process has started, then, it falls to be dealt with under the new law. It is as simple as that.

Mr. V. Arden McLean: But, Madam Chair—

Hon. Samuel W. Bulgin, Attorney General: No, it is not the same thing. If it is received before the new law comes into effect under the old law and the adjudication process has already begun, it continues under the old law.

[Inaudible interjections]

Mr. V. Arden McLean: But the adjudication—

Hon. Samuel W. Bulgin, Attorney General: The board might have considered it, deferred it, and partly heard it, the process started.

Mr. V. Arden McLean: Come on!

Hon. Samuel W. Bulgin, Attorney General: But if it comes in after the new law . . . sorry, if it comes in before the new law, in other words, it was receipted today and the law changes tomorrow, but all that happened was that it was receipted but no action, no adjudication, nothing, it then falls to be dealt . . . we do that in criminal legislation.

If a person is charged under the old law, the only thing we cannot do is increase a sentence but he can be dealt with under the new law as long as his trial has not started yet. So, there is nothing wrong with the retrospectivity.

The Chairman: But what happens under the Land Registration Law as to date of receipt?

Hon. Samuel W. Bulgin, Attorney General: What happens under it?

The Chairman: Under the Land Registration Law. Is it not from the date that it is stamped? I think that is where the confusion . . . it is not necessarily confusion but it gives more discretion as to—

[Inaudible interjection]

Hon. Samuel W. Bulgin, Attorney General: No.

The Chairman: —what happens.

Hon. Samuel W. Bulgin, Attorney General: I suspect you probably don't want to have a parallel process at the same time. But it is quite in order for the legislation to expressly state that if the application was made under the old law but has not yet been adjudicated on, then, it falls to be dealt with under the new law. That is fine.

There is no issue with the first scenario which is 31(1). If it started under the old law it continues under the old law. That's fine.

Mr. V. Arden McLean: Yes, but, Madam Chair, I hear the Attorney General. Adjudicated—what does it mean? Adjudicated—when does that start? When it is on the agenda for the board? Or, the board has considered and deferred it? Or, the board has considered and approved it? What is the adjudication because adjudication comes from the board? And the director puts it on the agenda today and it is there for 15 minutes and it is approved. So, what is adjudication? What is the length of time of that adjudication? It just does not make sense.

Hon. Samuel W. Bulgin, Attorney General: Madam Chair, through you, I gather that if the application is there under the old law and 1 out of 15 objectors have been invited to speak and the law changes, then, it continues under the old law. But if there is no objector who has been invited to give evidence or anything like that happened yet, then, even though it was received under the old law, it is now going to be dealt with under the new law.

Mr. D. Ezzard Miller: So, if there is a development in my constituency and the person goes to the Planning Board, a receipt is given that it was received on the 1st November, the people in my constituency hear about it and want to object under the old law, they would be allowed to object through polling, but under the new law they cannot object through polling, therefore they have no opportunity to object, although this was put into Planning prior to the new law coming into effect. That is not fair.

Through you, Madam Chairman to the Minister: If I take an application to Planning [Department] now, they have to adjudicate the square footage and everything else to determine what my fee is to give me a receipt, so the process has started. It is not a situation where I can just go there and put in something and it is stamped and sometime in the future the fees will be calculated and all of that. Those have to be submitted with the plan. So, the process has started. I believe we are going to get into trouble down the road, particularly if we are making changes that people have an expectation that they would normally allow it to be.

I have no problem with clause 1 as long as we stick to the date of the receipt, because we are removing certain privileges that people have under the old law from the new law.

Mr. V. Arden McLean: Yes, there are certain . . . I can appreciate if privileges were not being removed, Madam Chair.

The Chairman: Member for East End.

Mr. V. Arden McLean: Thank you.

There are certain privileges that one is afforded under the old law and not under the new law and vice versa.

We have to have a defining period where there is a cutoff. And that is at the date, Madam Chair, when the law was assented to.

The Chairman: Mm-hmm.

Mr. V. Arden McLean: That's when it becomes law. We have always argued in here about when a bill becomes a law.

The Chairman: Mm-hmm.

Mr. V. Arden McLean: And it has been successfully argued by this Attorney General that it is the day it is assented to, not the day that it is gazetted. And that is the day that this new law comes into place. Anything hitherto is under the old law.

[Inaudible crosstalk]

Hon. D. Kurt Tibbetts: Madam Chair.

The Chairman: Honourable Minister.

Hon. D. Kurt Tibbetts: I certainly do not want to call this an impasse, because the technical team is quite clear in their minds of what subsections (1) and (3) means. The lay mind, which includes my mind, and the Members on the other side who have brought the point out, see black and white and whatever is clear the way to be done.

I think what Members on the other side are saying is that subsection (3) is not necessary, and subsection (1) takes care of all of it. I am not getting that response from my technical team. But the way the issue is being dealt with, I would simply ask Members once again to allow us the amendments and if they are . . . I don't want to have to get to the point of going to a vote of 'No' or 'Yes' unless we are forced to. But I want them to understand that I personally take their point. But it is not quite as easy as the Member for East End puts it because that satisfies where he sits and it is over, but it is not over for me because I want to make sure that we are doing the right thing. And I don't think they just dreamt this up. But it is not that I do not understand the logic either, I just have not had a chance to sift through it.

The Honourable Attorney General is . . . sorry

Hon. Samuel W. Bulgin, Attorney General: [INAUDIBLE]

Hon. D. Kurt Tibbetts: I'm not sure; that is my problem.

The Honourable Attorney General is advising that both are relevant and the only question is: When is the trigger pulled? And we see it as whenever the application is stamped; whatever is that date, is when it should be dealt with.

Hon. Samuel W. Bulgin, Attorney General: Can I just clarify that?

Hon. D. Kurt Tibbetts: But I will . . . the Attorney General wants to just clarify—

Hon. Samuel W. Bulgin, Attorney General: I'm not saying that there is no conflict—

Hon. D. Kurt Tibbetts: What the Attorney General is saying is that there is no conflict between [subsections] (1) and (3). But even so, we see [subsection] (3)

actually being subsumed by [subsection] (1) and one being quite sufficient just simply looking at it.

[Inaudible interjections]

Hon. D. Kurt Tibbetts: I know that.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: But the technical team is not convinced.

Madam Chair, this one, I am not going to argue and if . . . the Honourable Attorney General has said that it is not something that is worth arguing over, and if we want to simply delete . . .

Hon. Samuel W. Bulgin, Attorney General: Subsection (3).

Hon. D. Kurt Tibbetts: But just one second now. Yes, [subsection] (4) is a different situation. If we want to simply delete subsection (3) and renumber [subsection] (4), (5) and (6) to {subsection} (3), (4) and (5), then, I am happy to do that, Madam Chair.

Mr. D. Ezzard Miller: Through you, Madam Chair, I just want to ask—

The Chairman: The question . . . can I just put it up to [clause] 33, or are you going to ask on 33?

Mr. D. Ezzard Miller: No, I wanted to ask the AG a question on the advice he gave us, could we have an application that was submitted—

The Chairman: Mr. Miller, just let me do to [clauses] 33.

Mr. D. Ezzard Miller: Okay.

The Chairman: The question is that clauses 30 through 33 stand part of the Bill. All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Clauses 30 through 33 passed.

The Chairman: We can deal now with clause 34 since it will have an amendment.

Mr. D. Ezzard Miller: If we had an application that was receipted on the 1st November with an application that was receipted on the 7th of November, but the law did not come into effect until the 21st November, could those two applications be treated differently if we do not delete [subsection] (3)?

Hon. D. Kurt Tibbetts: No.

The Chairman: They could.

Hon. D. Kurt Tibbetts: No.

[Inaudible interjection]

Mr. V. Arden McLean: Yes, the Adjudication Law would start on the one done on the 7th but if it had started on the one done on the 1st—

Mr. D. Ezzard Miller: That's my problem.

[Inaudible interjections]

The Chairman: The question is that clause 34, as amended, stands part of the clause.

[Inaudible interjection]

Hon. D. Kurt Tibbetts: By deleting [subsection] (3).

The Chairman: Out of an abundance of caution, please move the amendment sir.

Amendment to Clause 34

Hon. D. Kurt Tibbetts: Madam Chair, in my own words, which you can take and do it right, we wish to delete subsection (3) of clause 34 and renumber subsections (4), (5) and (6) to (3), (4) and (5).

The Chairman: The amendment has been moved. Does any Member wish to say anything else on this?

If not, I put the question that the amendment stands part of the clause.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Amendment to clause 34 passed.

The Chairman: The question is that the clause, as amended, stands part of the Bill.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Clause 34, as amended, passed.

The Chairman: Honourable Minister, can you move clause 14 being the new clause?

New Clause 14A

Hon. D. Kurt Tibbetts: Thank you.

Madam Chair, we want to insert after clause 14 the following clauses: 14A—am I on the right track?

The Chairman: Yes, one at a time.

[New Clause] 14A.

Hon. D. Kurt Tibbetts: [New clause] 14A—The principal Law is amended in section 18 as follows: (a) in subsection (1), (2), (6) and (8) by deleting the word “Authority” wherever it appears and substituting the word “Director”; (b) in subsection (1) by deleting the words “if they consider” and substituting the words “if he considers”; and (c) in subsection (7) by deleting the word ‘court’ and substituting the word “Authority”.

Should I continue?

The Clerk: New Clause 14A Amendment of section 18 – enforcement of planning control

The Chairman: The question is that the clause be read a second time.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: New Clause 14A given a second reading.

The Chairman: The question now is this new clause be added to the Bill as clause 14A and that the subsequent clauses be renumbered accordingly.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Clause 14A passed.

The Chairman: Honourable Minister.

New Clause 14B

Hon. D. Kurt Tibbetts: Madam Chair, [clause 14B.] The principal Law is amended in section 19 as follows: (a) by repealing subsection (1) and substituting the following subsection – “(1) a person having an interest in the land which an enforcement notice relates may, within fourteen days of service of the notice, appeal to the Authority against the notice, whether or not a copy of it has been served on him”; (b) in subsection (2)(c) by deleting the word “Authority”

wherever it appears and substituting the word “Director”; (c) by repealing subsection (3) and substituting the following subsection – “(3) On any appeal under this section, the Authority – (a) if satisfied that grounds (a), (b), (c) or (d) of subsection (2) have been proven, shall quash the enforcement notice; (b) if satisfied that a variation of the enforcement notice on grounds (e) or (f) or both of subsection (2) would be appropriate, may vary the notice accordingly; or (c) in any other case, shall dismiss the appeal.”; (d) in subsection (4) by deleting the word “court” and substituting the word “Authority”; and (e) by repealing subsection (5).

The Clerk: New section 14—

Mr. D. Ezzard Miller: Madam Chairman, I want to ask a question on that.

The Clerk: New Section 14B Amendment of section 19 – appeal against enforcement notice

The Chairman: The question now is that the clause be read a second time.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: New clause 14B given a second reading.

Mr. D. Ezzard Miller: Madam Chair.

The Chairman: Member for North Side.

Mr. D. Ezzard Miller: Well I can’t ask you now because they already voted.

Mr. V. Arden McLean: No, no. It’s been given the Second Reading.

The Chairman: This is just the Second Reading.

Mr. D. Ezzard Miller: All right.

I had a discussion with the Minister and his technical team this morning to ensure that “stop” means “stop”. I don’t see it reflected here. And that the “stop” stays in place until the appeal quashes it or the conditions from which the action was taken.

Hon. D. Kurt Tibbetts: Madam Chair.

The Chairman: Honourable Minister.

Hon. D. Kurt Tibbetts: Madam Chair, obviously, there is a slight misunderstanding. Madam Chair, the amount of amendments that we have, we just have

not had time to look this whole thing over. I do understand what the Member has said and the team understands what the Member has said, and I am totally in agreement with the intention of what the Member and we would like to achieve. If there is any situation in the amendments that we have now that needs tightening up, I give the full undertaking that we are going . . . not if, I should not say if. We do recognise, but we will do so in those subsequent amendments which are to follow very, very shortly. We just have not had time to get it done.

The Chairman: The question is that this clause be added to the Bill as clause 14B and that subsequent clauses be renumbered accordingly.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: New Clause 14B passed.

The Chairman: Honourable Minister, 14C.

New Clause 14C

Hon. D. Kurt Tibbetts: Madam Speaker, 14C—The principal law is amended in section 20 as follows – (a) in subsection (1) and (2) by deleting the word “Authority” wherever it appears and substituting the word “Director”; and (b) in subsection (1) by deleting the words “the court” and substituting the words “the Authority”.

Should I stop there, Madam Chair?

The Chairman: Yes, please.

The Clerk: New Clause 14C. Amendment of section 20 – supplementary provisions as to enforcement

The Chairman: The question now is that the clause be read a second time.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: New clause 14C given a second reading.

The Chairman: The question is that this clause be added to the Bill as clause 14C and that subsequent clauses be renumbered accordingly.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: New Clause 14C passed.

New Clause 14D

Hon. D. Kurt Tibbetts: [New clause] 14D, Madam Chair.

The principal Law is amended in section 21(1) and (2) by deleting the word “Authority” wherever it appears and substituting the word “Director”.

The Clerk: New Clause 14D. Amendment of section 21 – penalties for failure to comply with certain enforcement notices

The Chairman: The question now is that the clause be read a second time.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: New clause 14D given a second reading.

The Chairman: The question is that this clause be added to the Bill as clause 14D and that subsequent clauses be renumbered accordingly.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: New Clause 14D passed.

New Clause 14E

Hon. D. Kurt Tibbetts: Madam Chair, I think final amendment. Am I correct?

The Chairman: Very correct.

Hon. D. Kurt Tibbetts: Thank you very much.

Madam Chair, the final amendment is 14E. The principal Law is amended in section 23(1), (4), (5) and (8) by deleting the word “Authority” wherever it appears and substituting the word “Director”.

Madam Chair, I believe where we are saying “The principal Law is amended in section 23(1), (4), (5) and (8),” that . . . oh no, it is one section. The rest are subsections. I was going to say it should add an “s” but I realised no. So as is. Stet!

The Clerk: New Clause 14E. Amendment of section 23 – stop notice

All those in favour, please say Aye. Those against, No.

The Chairman: The question now is that the clause be read a second time.

Ayes.

All those in favour, please say Aye. Those against, No.

The Chairman: The Ayes have it.

Ayes.

Agreed: Amendment to clause 42(3) withdrawn.

The Chairman: The Ayes have it.

Mr. V. Arden McLean: Madam Chair, if I may.

Agreed: New clause 14E given a second reading.

The Chairman: Member for East End, can we do . . . is it on this or . . .

The Chairman: The question is that this clause be added to the Bill as clause 14E and that subsequent clauses be renumbered accordingly.

Mr. V. Arden McLean: No.

All those in favour, please say Aye. Those against, No.

The Chairman: Can we do the Title?

Ayes.

Mr. V. Arden McLean: Yes.

The Chairman: The Ayes have it.

The Clerk: 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.

Agreed: New Clause 14E passed.

[Inaudible interjections]

The Chairman: The question is that the Title do stand part of the Bill.

The Chairman: Mr. Miller, did you have an amendment?

All those in favour, please say Aye. Those against, No.

Mr. D. Ezzard Miller: [INAUDIBLE]

Ayes.

The Chairman: Please.

Is your microphone on sir?

The Chairman: The Ayes have it.

Withdrawal of Amendment

Agreed: Title passed.

Mr. D. Ezzard Miller: Madam Chair, having achieved the objective, I beg leave of the Committee to withdraw the amendment that I filed on the 29th October 2014, to introduce a new clause to the Bill.

The Chairman: Member for East End.

The Chairman: I put the question that a new clause—

Mr. V. Arden McLean: Thank you, Madam Chair.

There are two things that I would like to address with the Minister.

Mr. D. Ezzard Miller: The clause said that there was an amendment to 42(3) **“No regulations shall be made pursuant to this Law unless a draft thereof has been laid before the Legislative Assembly and a resolution approving the draft has been passed by the Legislative Assembly.”**

Madam Chair, now that we have formally recognised the Central Planning Authority as an “Authority”, and there is no such thing as a department of Planning, I trust that that is what these amendments will also do, because we are changing it to “Authority”.

Am I correct in that regard?

I am withdrawing it because the Government has already made that amendment to achieve the same objective earlier.

[Inaudible interjection]

[Inaudible interjection]

Mr. D. Ezzard Miller: Well, that is what we want to clarify; which one it is.

The Chairman: The question is that the amendment brought by the Member for North Side as he so expounded, be hereby withdrawn.

Mr. V. Arden McLean: Which is it? You cannot have an authority and a department.

Hon. D. Kurt Tibbetts: The Central Planning Authority is a board, but it just so happens to be named the Central Planning Authority long before we had the Water Authority or the Cayman Islands Monetary Authority. But that Authority is not like those Authorities.

Mr. V. Arden McLean: Well, that is precisely—

Hon. D. Kurt Tibbetts: But I am just saying that that is just the name. The Planning Department is not like NRA hived off of Public Works and becoming our own authority. So, if that is for clarity, then I hope that clears it up. And there is no intention of doing that now.

Mr. V. Arden McLean: Okay. I just wanted to make sure that it was recorded that it is not really an authority.

Madam Chair, I trust that the Minister will note that the people who voted with him did not stay to help him do his work. It is those who did not vote for this amendment that made up the quorum to assist you.

The Chairman: The question is that the Bills be reported to the House.

All those in favour, please say Aye. Those against, No.

Ayes.

The Chairman: The Ayes have it.

Agreed: Bills to be reported to the House.

The Chairman: The House will now resume

House Resumed at 3.51 pm

The Speaker: Please be seated. The House is resumed.

Report on Bills.

REPORT ON BILLS

Conditional Release Bill, 2014

The Clerk: The Conditional Release Bill, 2014.

The Speaker: I recognise the Honourable Premier.

The Premier, Hon. Alden McLaughlin: Thank you, Madam Speaker.

Madam Speaker, I am to report that a Bill entitled The Conditional Release Bill, 2014, was considered by a Committee of the whole House and passed with amendments.

The Speaker: The Bill has been duly reported and is set down for third reading.

Development and Planning Amendment Bill, 2014

The Clerk: The Development and Planning Amendment Bill, 2014.

The Speaker: I recognise the Honourable Premier.

The Premier, Hon. Alden McLaughlin: Thank you, Madam Speaker.

Madam Speaker, I am to report that a Bill entitled The Development and Planning Amendment Bill, 2014, was carefully considered by a Committee of the whole House and passed with numerous amendments.

The Speaker: The Bill has been duly reported and is set down for third reading.

THIRD READINGS

Conditional Release Bill, 2014

The Clerk: The Conditional Release Bill, 2014.

The Speaker: Honourable Premier.

The Premier, Hon. Alden McLaughlin: Madam Speaker, I beg to move the Third Reading of a Bill entitled The Conditional Release Bill, 2014.

The Speaker: The question is that The Conditional Release Bill, 2014, be given a third reading and passed.

All those in favour, please say Aye. Those against, No.

Ayes.

The Speaker: The Ayes have it.

Agreed: The Conditional Release Bill, 2014, given a third reading and passed.

Development and Planning Amendment Bill, 2014

The Clerk: The Development and Planning Amendment Bill, 2014.

The Speaker: I recognise the Honourable Minister of Planning.

Hon. D. Kurt Tibbetts: Thank you, Madam Speaker—anxious moments and the final lap.

[Laughter]

The Speaker: It is in sight.

Hon. D. Kurt Tibbetts: Madam Speaker, I beg to move the Third Reading of a Bill entitled The Development and Planning Amendment Bill, 2014.

At 4.58 pm the House adjourned sine die.

The Speaker: The question is that The Development and Planning Amendment Bill, 2014, be given a third reading and passed.

All those in favour, please say Aye. Those against, No.

Ayes and one audible No.

The Speaker: The Ayes have it.

Agreed: The Development and Planning Amendment Bill, 2014, given a third reading and passed.

The Speaker: Honourable Premier, can I have a motion for the adjournment?

ADJOURNMENT

The Premier, Hon. Alden McLaughlin: Thank you, Madam Speaker.

Madam Speaker, before I move the adjournment I just want to indicate to Members that the plan is, we will be back towards the end of next month. I don't think we have settled on a precise date but Members and your good-self will be advised in due course, I hope by early next week as to the precise date.

In case Members are wondering about the sort of tentative nature of what I said, it is because the next Meeting of the House would involve the delivery of the Strategic Policy Statement (SPS) which has to be delivered by the 1st December. And so we are trying to determine when that will be ready and to have the House start as near to that point as possible.

So, Madam Speaker, with those few observations, I move the adjournment of this honourable House sine die.

The Speaker: Member for East End.

Mr. V. Arden McLean: Thank you, Madam Speaker.

Madam Speaker, are we to assume then that the 12th of November, which we have been notified six months ago is now no longer valid?

[Inaudible interjection]

The Speaker: The question is that the House do now adjourn sine die.

All those in favour, please say Aye. Those against, No.

Ayes.

The Speaker: The Ayes have it.