

A BILL

entitled

DEVELOPMENT AND PLANNING AMENDMENT ACT 2018

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WHEREAS it is expedient to amend the Development and Planning Act 1974 to better facilitate the enforcement of planning control, and for related matters;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Development and Planning Act 1974 ("the principal Act"), may be cited as the Development and Planning Amendment Act 2018.

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Amends section 1

2 Section 1 of the principal Act is amended by repealing the definition of “enforcement notice”.

Amends section 20

3 Section 20 of the principal Act is amended by inserting after subsection (2)—

“(2A) Notwithstanding the power to grant planning permission in accordance with subsection (2), where development of land has been carried out in breach of planning control and an application for planning permission for the development is subsequently made, the Board shall not grant planning permission—

- (a) for the retention on the land of buildings or works constructed or carried out before the date of the application; or
- (b) for the continuance of a use of the land instituted before the date of the application,

unless the applicant shows to the satisfaction of the Board that he was not responsible for the breach of planning control or that, at the time the development was being so carried out, he did not know, and could not reasonably be expected to have known, that the development was in breach of planning control.

(2B) Subsection (2A) does not apply to an application for planning permission referred to in subsection (1) if, at the time the application is made, enforcement action can no longer be taken in respect of that breach.

(2C) In this section, “breach of planning control” and “enforcement action” have the meanings given in section 61A(2).”.

Inserts sections 61A to 61E

4 The principal Act is amended by inserting at the beginning of Part X, after the heading “Enforcement”—

“Interpretation of Part X

61A (1) In this Part, unless the context otherwise requires—

“activity” means an activity involved in building, engineering or other operations;

“conditions” includes limitations;

“panel” means the panel of members appointed under section 61C(4);

“Tribunal” means the Development and Planning Appeals Tribunal established under section 61C(1).

(2) For the purposes of this Part—

- (a) carrying out development—

- (i) without the required planning permission;
  - (ii) that fails to comply with any condition subject to which planning permission has been granted; or
  - (iii) that is in contravention of any regulations under Part VIII or any regulations or building Code under the Building Act 1988, constitutes a “breach of planning control”; and
- (b) the service of—
- (i) a notice under section 62 (an “enforcement notice”);
  - (ii) a notice under section 62A (a “breach of condition notice”);
  - (iii) a notice under section 63 (a “stop notice”); or
  - (iv) a notice under section 67,
- or taking action to enforce the requirements of such notice, constitutes taking “enforcement action”.

(3) For the avoidance of doubt, in this Part references to a use or an activity on land include a use or an activity in, under or over the land.

#### Time limits for taking enforcement action

- 61B (1) Subject to subsection (3), where there has been a breach of planning control, no enforcement action can be taken after the end of the period—
- (a) of six years beginning with the date of the breach; or
  - (b) of one year beginning with the date on which the Director becomes aware of the breach,

whichever period ends later.

(2) Subsection (1) does not prevent taking further enforcement action in respect of any breach of planning control if, during the period referred to in subsection (1), enforcement action has been taken in respect of that breach.

(3) No enforcement action can be taken in respect of a breach of planning control if the breach occurred before the commencement of the Development and Planning Amendment Act 2018 and, at the time of commencement of that Act, enforcement action could no longer be taken in respect of that breach.

#### Development and Planning Appeals Tribunal

61C (1) There is established a tribunal to be known as the Development and Planning Appeals Tribunal (“the Tribunal”), which shall have jurisdiction to hear and determine appeals under sections 62 and 63 and to perform such other functions as are assigned to it under this Act.

- (2) The members of the Tribunal shall be—

(a) the Chairman and Deputy Chairman appointed under subsection (3); and

(b) a panel of members appointed under subsection (4).

(3) The Minister shall appoint the Chairman and the Deputy Chairman, who shall be barristers and attorneys of at least seven years' standing.

(4) The Minister shall appoint a panel of not more than twelve members ("the panel"), who shall be persons appearing to him to have the appropriate expertise and experience to serve on the Tribunal.

(5) Subject to this section, a member of the Tribunal shall hold office for a term of two years, and may be reappointed from time to time for a like term.

(6) A member of the Tribunal may at any time, except during the course of a hearing before him, resign his appointment by notice in writing given to the Minister.

(7) A member of the Tribunal hearing an appeal shall hold office until the appeal has been determined, notwithstanding that the term of his appointment might otherwise end before the appeal is determined.

(8) During any period of time when a member is absent from Bermuda or is for any other reason unable to act, the Minister may appoint another person to act in his place for the period of his absence or inability to act.

(9) Where a member of the Tribunal dies, is unable to perform his duties or resigns, the Minister may appoint a person to fill the vacancy.

(10) The appointment of a person as a member of the Tribunal to fill the vacancy occurring under subsection (9), shall be for the unexpired portion of the term of the member to whose office that person has been appointed and such a person is eligible for reappointment.

(11) There shall be paid to the members of the Tribunal such remuneration and such allowances as the Minister, with the approval of the Minister of Finance, may determine.

#### Hearings before Tribunal

61D (1) Where an appeal is to be heard before it, the Tribunal shall be constituted in accordance with subsections (2) and (3).

(2) The Chairman shall be the presiding officer unless he thinks it appropriate or expedient to designate the Deputy Chairman as the presiding officer for the appeal.

(3) The presiding officer (being the Chairman or the Deputy Chairman, as the case may be) shall select two members of the panel who, together with him, shall constitute the Tribunal that shall hear and determine the appeal.

(4) Parties to any proceedings before the Tribunal may appear personally or be represented, by counsel or otherwise.

(5) Where a member of the Tribunal has any direct or indirect interest in any matter before it, he shall—

- (a) fully disclose his interest to the Tribunal immediately he is aware of it; and
- (b) not take part in any, or any further, discussion of the matter, and have no vote in relation to the matter, unless the Tribunal has resolved that the interest does not give rise to a conflict of interest.

(6) For the purpose of conducting a hearing, the Tribunal shall have all the powers of a court of summary jurisdiction in relation to the summoning of witnesses, their examination on oath or otherwise and compelling the production of any document or thing relevant to the subject matter of the proceedings.

(7) A decision of the Tribunal may be reached by a majority of the members but any question of law shall be decided by the presiding officer.

(8) Where, in the course of hearing an appeal, one of the members of the Tribunal (other than the presiding officer) is unable to continue to act as a member for any reason, then, if all parties concerned agree, the Tribunal may proceed with the hearing of that appeal in the absence of that member and shall be deemed to be duly constituted in so doing.

(9) In the case of an equality of votes, the presiding officer shall have, in addition to a deliberative vote, a second vote.

(10) The Tribunal shall keep an adequate record of their proceedings, and shall include in such record a statement of the grounds on which the appeal is made and a statement of the reasons for their decision.

(11) Subject to subsection (12), the Tribunal may regulate the practice and procedure to be followed at a hearing as it thinks fit and shall not be bound by the rules of evidence in civil or criminal proceedings.

(12) The Minister may make rules under section 78 regarding the practice and procedure to be followed at hearings before the Tribunal.

Director's power to require information about use or activity on land

61E (1) Where it appears to the Director that there may have been a breach of planning control in respect of any land, he may serve notice to that effect (a "planning contravention notice") on any person who—

- (a) is the owner or occupier of the land or has any other interest in it; or
- (b) is a contractor, or is otherwise carrying out any activity on the land, or is using the land for any purpose.

(2) A planning contravention notice may require the person on whom it is served to give such information as to—

- (a) any use of the land;

- (b) any activity being carried out on the land; or
- (c) any matter relating to the conditions subject to which any planning permission in respect of the land has been granted.

(3) Without prejudice to the generality of subsection (2), the notice may require the person on whom it is served, so far as he is able, to provide the Director with the following information—

- (a) the purpose for which the land is being used;
- (b) which activity is being or has been carried out on the land;
- (c) when any use or activity began;
- (d) the nature of his interest (if any) in the land and the name, address and telephone number of any other person known to him to have an interest in the land;
- (e) the name, address and telephone number of any person known to him to use or have used the land for any purpose, or to be carrying out or have carried out any activity on the land (whether as a contractor or otherwise); and
- (f) any information he holds as to any planning permission for any use or activity or any reason for planning permission not being required for any use or activity.

(4) A planning contravention notice may give notice of a time (not being earlier than seven days, or later than fourteen days, after the day the notice is served on the person) and place at which—

- (a) any offer which the person on whom the notice is served may wish to make to apply for planning permission, to cease any use, to refrain from carrying out any activity or to undertake remedial works; and
- (b) any representations which he may wish to make about the notice,

will be considered by the Director, and the Director shall give him an opportunity to make in person any such offer or representations at that time and place.

(5) A planning contravention notice must inform the person on whom it is served—

- (a) that if, at any time after the end of a period of twenty-one days beginning with the day on which the planning contravention notice is served on him, he has failed to comply with any requirement of the notice, he shall be guilty of an offence;
- (b) of the likely consequences of his failing to respond to the notice and, in particular, that enforcement action may be taken; and

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(c) that no compensation shall be payable in respect of any loss or damage suffered by him which could have been avoided if he had provided the information or had otherwise co-operated with the Director when responding to the notice.

(6) Any requirement of a planning contravention notice shall be complied with by giving, in writing to the Director, the information required to be given.

(7) If, at any time after the end of a period of twenty-one days beginning with the day on which a planning contravention notice has been served on any person, he has failed to comply with any requirement of the notice, he shall be guilty of an offence.

(8) It shall be a defence for a person charged with an offence under subsection (7) to prove that he had a reasonable excuse for failing to comply with the requirement.

(9) A person guilty of an offence under subsection (7) shall be liable on summary conviction to a fine not exceeding \$5,000 for the failure and, in the case of a continuing failure, to a further fine not exceeding \$1,000 for every day after the first day during which the requirements of the notice remain unfulfilled.

(10) If any person—

- (a) makes any statement purporting to comply with a requirement of a planning contravention notice which he knows to be false or misleading in a material particular;
- (b) purporting to comply with a requirement of a planning contravention notice, with intent to deceive, withholds any material information; or
- (c) recklessly makes a statement which is false or misleading in a material particular,

he shall be guilty of an offence.

(11) A person guilty of an offence under subsection (10) shall be liable—

- (a) on summary conviction, to a fine not exceeding \$5,000; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine of \$20,000, or both.

(12) The service of a planning contravention notice does not affect any other power exercisable in respect of any breach of planning control.”.

Repeals and replaces section 62

5 Section 62 of the of the principal Act is repealed and replaced by—

“Enforcement notice

62 (1) The Director may issue a notice (an “enforcement notice”) where it appears to him—

- (a) that there has been a breach of planning control; and
- (b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.

(2) An enforcement notice shall be served—

- (a) on the owner or occupier of the land to which it relates; and
- (b) on any other person who—
  - (i) has an interest in the land, being an interest which, in the opinion of the Director, is materially affected by the notice;
  - (ii) is a person who is using, or has used the land; or
  - (iii) is a contractor or other person who is carrying out, has carried out, or has caused to be carried out, any activity on the land, and on whom, in the opinion of the Director, it is necessary or expedient to serve the notice.

(3) Where a prospective purchaser of any land serves notice on the Director that—

- (a) he intends purchasing land described in the notice; and
- (b) he is unaware of any development having been carried out on that land without the grant of planning permission in that behalf,

then, unless the Director, within twenty-eight days of the receipt of such notice, notifies such prospective purchaser of any development which has been carried out on that land without planning permission granted in that behalf, then all development thereon at the time of the receipt of such notice by the Director shall, for the purposes of any enforcement action thereafter taken, be deemed to have received planning permission.

(4) The notice by the prospective purchaser under subsection (3) shall be in such form as the Director may determine.

(5) An enforcement notice shall specify the development that is alleged to have been carried out without the grant of planning permission or, as the case may be, the matters in respect of which it is alleged that any regulations, building Codes or conditions have not been complied with, and may require such steps as may be specified in the notice to be taken within such period as may be so specified for restoring the land to its condition before the development took place, or for securing compliance with the regulations, building Codes or conditions, as the case may be, and in particular any such notice may, for the purposes aforesaid, require the

demolition or alteration of any building or work, the discontinuance of any use of land, or the carrying out on land of any activity.

(6) Except as otherwise provided in this section, an enforcement notice shall take effect at the expiration of such period, not being less than twenty-eight days after the service thereof, as may be specified therein.

(7) Where, at any time after the end of the period for compliance with an enforcement notice, any step required by the notice to be taken has not been taken or any activity or use required by the notice to cease is being carried on, the person who is then the owner of the land is in breach of the notice.

(8) Where the owner of the land is in breach of an enforcement notice, he shall be guilty of an offence.

(9) In proceedings against any person for an offence under subsection (8), it shall be a defence for him to show that he did everything he could reasonably be expected to do to secure compliance with the notice.

(10) A person who has control of, or an interest in, the land to which an enforcement notice relates (other than the owner) shall not carry on any activity or use which is required by the notice to cease or cause or permit such activity or use to be carried on.

(11) A person who, at any time after the end of the period for compliance with the notice, contravenes subsection (10) shall be guilty of an offence.

(12) Where a person charged with an offence under this section has not been served with a copy of the enforcement notice, it shall be a defence for him to show that he was not aware of the existence of the notice.

(13) When, within the period mentioned in subsection (6), an application is made to the Director for permission—

- (a) for the retention on the land of any building or work to which the enforcement notice relates; or
- (b) for the continuance of any use of the land to which the enforcement notice relates,

the operation of the enforcement notice shall be suspended pending the final determination of the application and if the permission applied for is granted on that application, the enforcement notice shall not take effect.

(14) When, within the period mentioned in subsection (6), an appeal is made to the Tribunal under this section by a person on whom the enforcement notice was served, the operation of the enforcement notice shall be suspended pending the final determination or withdrawal of the appeal.

(15) If any person on whom an enforcement notice is served under this section is aggrieved by the enforcement notice, he may, at any time within the period mentioned in subsection (6), appeal against the enforcement notice to the Tribunal; and on any such appeal the Tribunal—

- (a) if satisfied that planning permission was granted for the development to which the enforcement notice relates, or that no such planning permission was required in respect thereof, or, as the case may be, that the regulations or conditions aforesaid have been complied with, shall quash the enforcement notice to which the appeal relates;
- (b) if satisfied that a variation of the enforcement notice would be appropriate, may vary the enforcement notice accordingly;
- (c) in any other case shall dismiss the appeal,

and may make such order as to costs as the court thinks just.

(16) An appeal under this section shall be in such form as the Tribunal may determine.

(17) Where the enforcement notice is varied or the appeal is dismissed, then the Tribunal may, if it thinks fit, direct that the enforcement notice shall not come into force until such date, not being later than twenty-eight days from the determination of the appeal, as the Tribunal thinks fit.

(18) Where a person is aggrieved by a decision of the Tribunal, he may appeal to the Supreme Court within twenty-eight days after the date of the decision.

(19) Rules of Court made under the Supreme Court Act 1905 regulating the practice and procedure on appeals from a tribunal to the Supreme Court shall apply to appeals under this section.

(20) For the purposes of this section “development” includes the building or erection of any structure in contravention of the provisions of any regulation made under Part VIII of this Act or of the building Regulations or building Codes made under the Building Act 1988, notwithstanding that no planning permission is required therefor.”.

Inserts section 62A

6 The principal Act is amended by inserting after section 62—

“Breach of condition notice

62A (1) Without prejudice to section 62, this section applies where planning permission for carrying out any development of land has been granted subject to conditions.

(2) The Director may, where it appears to him that any of the conditions is not complied with, serve a notice (a “breach of condition notice”) on—

- (a) the owner, occupier or any other person having control of the land;  
or
- (b) a contractor or any other person who is carrying out, has carried out, or has caused to be carried out, the development,

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requiring him (“the person responsible”) to secure compliance with such of the conditions as are specified in the notice.

(3) A breach of condition notice shall specify the steps which the Director considers ought to be taken, or the activity or use which the Director considers ought to cease, to secure compliance with the conditions specified in the notice.

(4) The period allowed for compliance with the notice is—

- (a) such period of not less than twenty-eight days beginning with the date of service of the notice as may be specified in the notice; or
- (b) that period as extended by a further notice served by the Director on the person responsible.

(5) If, at any time after the end of the period allowed for compliance with the notice—

- (a) any of the conditions specified in the notice is not complied with; and
- (b) the steps specified in the notice have not been taken or, as the case may be, the activity or use specified in the notice has not ceased,

the person responsible is in breach of the notice.

(6) If the person responsible is in breach of the notice, he shall be guilty of an offence.

(7) It shall be a defence for a person charged with an offence under subsection (6) to prove—

- (a) that he took all reasonable measures to secure compliance with the conditions specified in the notice; or
- (b) where the notice was served on him by virtue of subsection (2)(a), that he no longer had control of the land.

(8) In this section, references to carrying out any development include causing or permitting another to do so.”.

Repeals and replaces section 63

7 Section 63 of the of the principal Act is repealed and replaced by—

“Stop notice

63 (1) Without prejudice to section 62 or 62A, and notwithstanding that a notice has been served under either section, in any case where it appears to the Director to be necessary in the public interest to require the immediate cessation of any development of land, he may serve a stop notice under this section on the owner of the land or the person in occupation of the land, and on any other person who appears to the Director to have an interest in the land or to be engaged in any relevant activity or use.

(2) In this section, “relevant activity or use” means any activity or use being carried out on the land specified in the stop notice as an activity or use which, in accordance with subsection (1), the Director requires to cease and any activity or use carried out as part of that activity or use, or associated with that activity or use.

(3) A stop notice served under this section shall specify the development that is alleged to have been carried out without the grant of planning permission or, as the case may be, the matters in respect of which it is alleged that any conditions subject to which such permission was granted have not been complied with, and shall require any relevant activity or use to be discontinued.

(4) A stop notice shall take effect immediately or on the expiration of such period as may be specified therein and, notwithstanding any provision of this section relating to appeals, shall continue in operation until the Tribunal or court hearing the appeal relating thereto otherwise orders.

(5) If any person contravenes a stop notice after the stop notice has been served on him, he shall be guilty of an offence.

(6) References in this section to contravening a stop notice include causing or permitting its contravention.

(7) In proceedings for an offence under this section it shall be a defence for the accused to prove—

- (a) that the stop notice was not served on him; and
- (b) that he did not know, and could not reasonably have been expected to know, of its existence.

(8) If any person on whom a stop notice is served under this section is aggrieved by the stop notice, he may, within twenty-eight days after the service thereof, appeal against the stop notice to the Tribunal and on such appeal the Tribunal—

- (a) if satisfied that planning permission was granted for the development to which the special enforcement notice relates, or that no such permission was required in respect thereof, or, as the case may be, that the conditions subject to which such permission was granted have been complied with, shall quash the special enforcement notice to which the appeal relates;
- (b) if satisfied that a variation of the special enforcement notice would be appropriate, may, with the consent of the parties, vary the special enforcement notice accordingly;
- (c) in any other case shall dismiss the appeal,

and make such order as to costs as the court thinks just.

(9) An appeal under this section shall be in such form as the Tribunal may determine.

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(10) Where, under subsection (8)(a), the Tribunal orders that a stop notice be quashed, damages shall, in default of determination by agreement, be recoverable in civil proceedings brought against the Director in respect of any loss sustained by an aggrieved party by virtue of the stop notice having been in force:

Provided that where appeal proceedings against a stop notice are adjourned at the request of an aggrieved party, no account shall be taken, in assessing the damages which may be recovered under this subsection, of any such period of adjournment.

(11) Where a person is aggrieved by a decision of the Tribunal, he may appeal to the Supreme Court within twenty-eight days after the date of the decision.

(12) Rules of Court made under the Supreme Court Act 1905 regulating the practice and procedure on appeals from a tribunal to the Supreme Court shall apply to appeals under this section.”

### Amends section 64

8 Section 64 of the principal Act is amended—

- (a) in subsection (1)—
  - (i) by inserting “(which in this section includes a stop notice and a breach of condition notice)” after “in an enforcement notice”;
  - (ii) by deleting “Minister” each time it occurs and substituting “Director”;
  - and
  - (iii) by deleting “the court” and substituting “the Tribunal”;
- (b) in subsection (2)—
  - (i) by deleting “served under section 62”; and
  - (ii) by deleting “Minister” and substituting “Director”;
- (c) in subsection (3)—
  - (i) by deleting “(which in this section includes a special enforcement notice)”;
  - (ii) by deleting “any operations” and substituting “any activity”;
  - (iii) by deleting “those operations” and substituting “that activity”; and
  - (iv) by deleting everything after “commits an offence” and substituting a full stop.
- (d) in subsection (4), by inserting “, 62A” after “section 62”.

### Repeals and replaces section 65

9 Section 65 of the of the principal Act is repealed and replaced by—

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“Penalties for offences under sections 62, 62A, 63, 64, 66 and 67

65 A person guilty of an offence for a failure to comply with a notice under section 62, 62A, 63, 64, 66 or 67 shall be liable—

- (a) on summary conviction, to a fine not exceeding \$5,000; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine of \$25,000, or both,

and, in the case of a continuing failure, to a further fine not exceeding \$1,000 for every day after the first day during which the failure to comply with the notice is so continued.”.

Amends section 66

10 Section 66 of the principal Act is amended—

- (a) in subsection (1), by inserting “(which in this section includes a stop notice and a breach of condition notice)” after “an enforcement notice”; and
- (b) in subsection (3), by deleting everything after “commits an offence” and substituting a full stop.

Inserts section 66A

11 The principal Act is amended by inserting after section 66—

“Certificate of lawfulness of existing use or development

66A (1) If any person wishes to ascertain whether—

- (a) any existing use of buildings or other land is lawful;
- (b) any activity which has been carried out on land is lawful; or
- (c) any other matter constituting a failure to comply with any condition subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the Director, in such form as the Director may determine, specifying the land and describing the use, activity or other matter.

(2) For the purposes of this Act, a use or activity is lawful at any time if—

- (a) no enforcement action may then be taken in respect of it (whether because it did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- (b) it does not constitute a contravention of any of the requirements of any enforcement notice, stop notice or breach of condition notice then in force.

(3) For the purposes of this Act, any matter constituting a failure to comply with any condition subject to which planning permission has been granted is lawful at any time if—

- (a) the time for taking enforcement action in respect of the failure has then expired; and
- (b) it does not constitute a contravention of any of the requirements of any enforcement notice, stop notice or breach of condition notice then in force.

(4) If, on an application under this section, the Director is provided with information satisfying him of the lawfulness at the time of the application of the use, activity or other matter described in the application, or that description as modified by the Director or a description substituted by him, he shall issue a certificate to that effect.

(5) A certificate under this section shall be in such form as the Director may determine and shall—

- (a) specify the land to which it relates;
- (b) describe the use, activity or other matter in question;
- (c) give the reasons for determining the use, activity or other matter to be lawful;
- (d) if the use, activity or other matter is lawful by reason only that the time for enforcement action has expired, include a caveat that such use, activity or other matter (as the case may be) is lawful only because the time for taking enforcement action has expired, and that this does not imply that the use, activity or other matter is deemed (for any purpose other than for precluding the taking of enforcement action) to have planning permission or to comply with any building Code under the Building Act 1988; and
- (e) specify the date of the application for the certificate.

(6) For the avoidance of doubt, if planning permission is subsequently granted under section 20 (permission to retain buildings or works or continue use of land) in respect of the use, activity or other matter mentioned in a caveat referred to in subsection (5)(d), the Director may on application therefor issue a fresh certificate without the caveat.

(7) If any person, for the purpose of procuring a particular decision on an application (whether by himself or another) for the issue of a certificate under this section—

- (a) knowingly or recklessly makes a statement which is false or misleading in a material particular;
- (b) with intent to deceive, uses any document which is false or misleading in a material particular; or

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(c) with intent to deceive, withholds any material information,  
he shall be guilty of an offence.

(8) A person guilty of an offence under subsection (1) shall be liable—

- (a) on summary conviction, to a fine not exceeding \$5,000; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine of \$10,000, or both.”.

Amends section 67

12 Section 67 of the principal Act is amended—

- (a) in subsection (1), by deleting “Minister” both times it appears and substituting “Director”;
- (b) in subsection (2), by deleting “section 62(4) to (9)” and substituting “section 62(6) to (19)”; and
- (c) by inserting after subsection (2)—

“(3) A person who fails to comply with a notice served under this section shall be guilty of an offence.”.

Amends section 68

13 Section 68 of the principal Act is amended—

- (a) in subsection (1), by deleting “Act.” and substituting “Act, and such development is carried out in accordance with such planning permission and any conditions subject to which such planning permission is granted.”;
- (b) in subsection (2), by deleting “Act.” and substituting “Act, and such development is carried out in accordance with such planning permission and any conditions subject to which such planning permission is granted.”;
- (c) by inserting after subsection (2)—

“(2A) No person shall—

- (a) do any act in an area designated by a development plan as possessing natural features of special environmental value (a “designated area”), being an act regulated by section 28 and the Fourth Schedule; or
- (b) do any act in a historic area, being an act for the doing of which section 31(2) provides that planning permission is required,

unless planning permission for such act has been granted under this Act.”;

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- (d) in subsection (4), by deleting everything after “commits an offence” and substituting a full stop;
- (e) in subsection (5), by deleting everything after “commits an offence” and substituting a full stop;
- (f) by inserting after subsection (5)—

“(5A) Any person who—

- (a) contravenes subsection (2A);
- (b) being the owner or person in occupation of any land, authorizes or acquiesces in the doing by any person of an act which such person is prohibited from doing upon such land under subsection (2A),

commits an offence.

(5B) A person guilty of an offence under subsection (4) or (5) shall be liable—

- (a) on summary conviction, to a fine not exceeding \$25,000; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine of \$50,000, or both.

(5C) A person guilty of an offence under subsection (5A) shall be liable—

- (a) on summary conviction, to a fine not exceeding \$50,000; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine of \$100,000, or both.”;

(g) in subsection (6)—

- (i) by deleting “subsections (4) or (5)” and substituting “subsection (4), (5) or (5A)”; and
- (ii) by deleting “subsections (1) or (2)” and substituting “subsection (1), (2) or (2A)”; and

(h) in subsection (7), by deleting “an enforcement notice served under section 62 or 63” and substituting “a notice served under section 62, 62A or 63”.

Repeals section 69

14 The principal Act is amended by repealing section 69 (site excavation licences).

Inserts sections 69A, 69B and 69C

15 The principal Act is amended by inserting in Part X (Enforcement), after the repealed section 69—

“Power to impose civil penalties

69A (1) Subject to subsection (2), the Director may, in accordance with section 69C, impose on a person who, without reasonable excuse, contravenes or fails to comply with—

- (a) a notice served under section 61E (a “planning contravention notice”)—
  - (i) a civil penalty of not more than \$1,000 for the failure to comply with the requirements of the notice; and
  - (ii) in the case of a continuing failure to comply with the requirements of the notice, a further civil penalty of not more than \$200 for every day after the first day during which the requirements of the notice remain unfulfilled;
- (b) a notice served under section 62 (an “enforcement notice”), a notice served under section 62A (a “breach of condition notice”), a notice served under section 63 (a “stop notice”), or a notice served under section 67 (maintenance of waste land)—
  - (i) a civil penalty of not more than \$20,000 for the failure to comply with the requirements of the notice; and
  - (ii) in the case of a continuing failure to comply with the requirements of the notice, a further civil penalty of not more than \$1,000 for every day after the first day during which the requirements of the notice remain unfulfilled;
- (c) section 64(3) or 66(3), a civil penalty of not more than \$20,000;
- (d) section 68(1) or 68(2) or, being the owner or person in occupation of any land, authorizes or acquiesces in the doing by any person of an act which such person is prohibited from doing upon such land under section 68(1) or 68(2), a civil penalty of not more than \$25,000; and
- (e) section 68(2A) or, being the owner or person in occupation of any land, authorizes or acquiesces in the doing by any person of an act which such person is prohibited from doing upon such land under section 68(2A), a civil penalty of not more than \$50,000.

(2) For the avoidance of doubt, a civil penalty may be imposed on a person who contravenes or fails to comply with a provision of subsection (1) only if the contravention or failure to comply occurred after the commencement of the Development and Planning Amendment Act 2018.

Statement of principles for imposing civil penalties

69B (1) The Director shall, as soon as practicable after the coming into operation of this section, publish in the Gazette a statement of principles in

accordance with which he shall act in exercising his powers to impose a civil penalty and to determine the appropriate amount of the penalty.

(2) If the Director makes a material change to the principles, he shall publish the statement of the change or the revised statement of principles in the Gazette.

(3) For the avoidance of doubt, a statement published under subsection (1) or (2) is not a statutory instrument and the Statutory Instruments Act 1977 shall not apply to it.

Procedure for imposing civil penalties

69C (1) When the Director proposes to impose a civil penalty on a person, he must give the person a notice (a “warning notice”) of—

- (a) the amount of the penalty;
- (b) the reasons for imposing the penalty; and
- (c) the right to make representations within seven days of the date of the warning notice.

(2) After considering any representations, the Director must decide, within seven days of the end of the period specified in subsection (1)(c) whether to impose a penalty.

(3) The Director must give the person a notice (a “decision notice”) of—

- (a) his decision not to impose a penalty; or
- (b) his decision to impose a penalty and—
  - (i) the amount of the penalty;
  - (ii) the reasons for his decision;
  - (iii) the right to appeal to the Supreme Court within twenty-eight days after the date of the decision notice.

(4) A person upon whom a penalty is imposed by decision notice who does not appeal under subsection (3)(b)(iii), shall within twenty-eight days pay the penalty.

(5) The Director—

- (a) shall pay any civil penalties into the Consolidated Fund; and
- (b) may recover any unpaid civil penalty as a debt owing to him in any court of competent jurisdiction.

(6) A person may appeal to the Supreme Court against a decision of the Director to impose a civil penalty.

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(7) Rules of Court made under the Supreme Court Act 1905 regulating the practice and procedure on appeals from a person to the Supreme Court shall apply to appeals under this section.

(8) An appeal must be brought within the period specified in the decision notice.

(9) A decision appealed against under this section shall not have effect—

(a) until the end of the period within which the appeal can be brought; and

(b) if such an appeal is brought, until it is determined or withdrawn.”.

### Amends section 70

16 Section 70 of the principal Act is amended—

(a) in subsection (1)—

(i) in paragraph (c), by deleting “under Part X or”; and

(ii) by inserting after paragraph (c)—

“(ca) any proposal by the Director to serve or make any notice under Part X;”;

(b) in subsection (3), by deleting everything after “commits an offence” and substituting a full stop; and

(c) by inserting after subsection (3)—

“(4) A person guilty of an offence under subsection (3) shall be liable on summary conviction to a fine not exceeding \$10,000.”.

### Amends section 72

17 Section 72 of the principal Act is amended—

(a) by renumbering the section as subsection (1);

(b) in subsection (1), deleting everything after “commits an offence” and substituting a full stop; and

(c) by inserting after subsection (1)—

“(2) A person guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding \$5,000 and, in the case of a continuing failure to give information, to a further fine not exceeding \$1,000 for every day after the first day during which the requirement remains unfulfilled.”.

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Consequential amendment to Government Fees Regulations 1976

18 Head 21 (Development and Planning Act 1974) of the Schedule to the Government Fees Regulations 1976 is amended—

- (a) in paragraph (11), by deleting “Minister” and substituting “Director”; and
- (b) by revoking paragraph (13) and substituting—

“ 

(13)	Application for a certificate of lawfulness of existing use or development under section 66A	\$655
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 ”.

Commencement

19 The provisions of this Act shall come into operation on such date as the Minister may appoint by notice published in the Gazette, and the Minister may appoint different days for the coming into operation of different provisions.

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### EXPLANATORY MEMORANDUM

This Bill would amend Part X (Enforcement) and certain other provisions of the Development and Planning Act 1974 (“the principal Act”) to better facilitate the enforcement of planning control.

Clauses 1 and 2 are self-explanatory.

Clause 3 amends section 20 to disallow the grant of retroactive planning permission where development has been carried out in breach of planning control, unless the applicant shows to the satisfaction of the Board that he was not responsible for the breach of planning control or that, at the time the development was being so carried out, he did not know, and could not reasonably be expected to have known, that the development was in breach of planning control.

Clause 4 inserts sections 61A to 61E at the beginning of Part X of the principal Act.

Section 61A (Interpretation of Part X), inserted by clause 4, gives the meaning of the following new expressions used in Part X: “breach of planning control”, “enforcement action”, “activity”, “panel” and “Tribunal”.

Section 61B (Time limits for taking enforcement action), inserted by clause 4, gives the time limits for taking enforcement action. Where there has been a breach of planning control, no enforcement action may be taken after the end of the period of six years beginning with the date of the breach, or of one year beginning with the date on which the Director becomes aware of the breach, whichever period ends later.

Section 61C (Development and Planning Appeals Tribunal), inserted by clause 4, establishes the Development and Planning Appeals Tribunal (the “Tribunal”). The Tribunal is appointed by the Minister. It consists of a Chairman and Deputy Chairman, who are to be attorneys with at least seven years’ standing, and a panel of not more than twelve members. The members of the Tribunal are to be paid such remuneration and such allowances as the Minister, with the approval of the Minister of Finance, may determine.

Section 61D (Hearings before Tribunal), inserted by clause 4, provides that, where the Tribunal is to hear an appeal against a decision of the Director under this Part, it is to consist of three members, being the presiding officer (the Chairman or Deputy Chairman) and two members of the panel selected by the presiding officer. A decision of the Tribunal may be reached by a majority of these members, but any question of law shall be decided by the presiding officer (the Chairman or the Deputy Chairman, as the case may be).

Section 61E (Director’s power to require information about use or activity on land), inserted by clause 4, provides that, where it appears to the Director that there may have been a breach of planning control in respect of any land, he may serve notice to that effect (a “planning contravention notice”) on any person who is the owner, occupier or user or is carrying out any activity on the land, requesting information about the use or activity on

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the land and requiring such information to be furnished within a specified time not exceeding 21 days.

Clause 5 repeals and replaces section 62. It provides that, if a person is in breach of planning control, the Director may serve an enforcement notice on the owner, occupier or other relevant person. If the person does not comply with the requirements of the enforcement notice within the time-period specified in the notice (not being a period of less than 28 days), the person is in breach of the notice. But, if the person appeals the notice within the time specified in the notice, the operation of the notice shall be suspended pending the final determination or withdrawal of the appeal. At present, the appeal is to a court of summary jurisdiction. The amendment would make the appeal to the Tribunal and, where the person is aggrieved by the decision of the Tribunal, the person can make a further appeal to the Supreme Court.

Clause 6 inserts section 62A (Breach of condition notice). Without prejudice to the Director's ability to serve an enforcement notice under section 62, where it appears to the Director that a person is not complying with a condition subject to which planning permission is granted, he may serve a breach of condition notice on that person requiring him to secure compliance with the conditions specified in the notice. The period for compliance is stated in the notice. If after that period the person has not complied with the notice, that person is in breach of the notice.

Clause 7 repeals and replaces section 63. It renames a "special enforcement notice", more pertinently, a "stop notice". Notwithstanding that an enforcement notice or a breach of condition notice has already been served, in any case where it appears to the Director to be necessary in the public interest to require the immediate cessation of any development of land, he may serve a stop notice on the owner of the land or the person in occupation of the land, and on any other person who appears to the Director to have an interest in the land or to be engaged in any relevant activity or use of the land. A stop notice shall have effect immediately or on the expiration of such period as may be specified therein. Currently, appeals from a stop notice are to a court of summary jurisdiction. The appeal would now be to the Tribunal. Notwithstanding that the stop notice is appealed, the stop notice shall continue in operation until the Tribunal (or on further appeal the Supreme Court) otherwise orders.

Clause 8 amends section 64 (Supplementary provisions as to enforcement) to change reference from the "Minister" to the "Director" (which is being done throughout Part X in relation to the taking of enforcement action). The amendments also make it clear that, in this section, "enforcement notice" includes a breach of condition notice and a stop notice.

Clause 9 repeals and replaces section 65 (Penalties for failure to comply with enforcement notices) to provide the penalties for any offence under sections 62, 62A, 63, 64, 66 and 67. A person guilty of an offence for a failure to comply with a notice under section 62, 62A, 63, 64, 66 or 67 shall be liable: (a) on summary conviction, to a fine not exceeding \$5,000, or (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine of \$25,000, or both, and, in the case of a continuing failure, to a further fine not exceeding \$1,000 for every day after the first day during which the failure to comply with the notice is so continued.

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Clause 10 amends section 66 (Continuing operation of enforcement notices) to make it clear that, in this section, “enforcement notice” includes a breach of condition notice and a stop notice.

Clause 11 inserts section 66A (Certificate of lawfulness of existing use or development). This would enable a person to apply for, and obtain from, the Director a certificate of the lawfulness of an existing development or use of land. If the use, activity or other matter is lawful by reason only that the time for enforcement action has expired, the certificate shall include a caveat that such use, activity or other matter (as the case may be) is lawful only because the time for taking enforcement action has expired, and that this does not imply that the use, activity or other matter is deemed (for any purpose other than for precluding the taking of enforcement action) to have planning permission or to comply with any building Code under the Building Act 1988.

Clause 12 amends section 67 so that, as with an enforcement notice, breach of condition notice or stop notice, it is the Director (rather than the Minister) who is responsible for serving a notice under this section.

Clause 13 amends section 68 to make it clear that, not only must any development be granted planning permission under the principal Act, but the development must also be carried out in accordance with such planning permission and any conditions subject to which such planning permission is granted. It also adds offences in respect of a person who: (a) does any act in an area designated by a development plan as possessing natural features of special environmental value (a “designated area”), being an act regulated by section 28 and the Fourth Schedule, or (b) does any act in a historic area, being an act for the doing of which section 31(2) provides that planning permission is required.

Clause 14 repeals section 69 (Site excavation licences) because site excavation cannot be done without planning permission and site excavation licences are no longer being issued.

Clause 15 inserts sections 69A, 69B and 69C in Part X.

Section 69A (Power to impose civil penalties), inserted by clause 15, provides for the Director to impose civil penalties on persons who are in breach of planning control.

Section 69B (Statement of principles for imposing civil penalties), inserted by clause 15, provides that the Director must, as soon as practicable after the coming into operation of this section, publish in the Gazette a statement of principles in accordance with which he will act in exercising his powers to impose a civil penalty and to determine the appropriate amount of the penalty.

Section 69C (Procedure for imposing civil penalties), inserted by clause 15, provides that when the Director proposes to impose a civil penalty he must give the person a warning notice of the amount of the penalty he proposes to impose, the reason for imposing the penalty, and the right of the person to make representations within seven days of the date of the warning notice. Then the Director must give a decision notice of whether or not he is imposing a civil penalty. If he imposes a penalty, he must state the amount of the penalty, the reasons for the decision and the right to appeal to the decision to the Supreme Court. The Director must cause to be paid any civil penalty into the Consolidated Fund.

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Clause 16 amends section 70 (Powers of entry), the first section in Part XI (Supplemental), to remove the reference in subsection (1) to the Minister proposing to serve or make a notice under Part X, and adding a paragraph referring to the Director proposing to serve or make any notice under Part X.

Clause 17 amends section 72 by increasing the penalty for failing to give requested information, or knowingly making any misstatement to the Minister.

Clause 18 makes a consequential amendment to Government Fees Regulations 1976 to set a fee for an application for a certificate of lawfulness of existing use or development under section 66A.

Clause 19 is self-explanatory.