

A BILL

entitled

DEVELOPMENT AND PLANNING AMENDMENT ACT 2021

TABLE OF CONTENTS

| | |
|---|-------------------------|
| 1 | Citation |
| 2 | Amends section 1 |
| 3 | Inserts section 14A |
| 4 | Amends section 15 |
| 5 | Inserts section 15A |
| 6 | Inserts Part IVA |
| 7 | Inserts Fifth Schedule |
| 8 | Consequential Amendment |
| 9 | Commencement |

WHEREAS it is expedient to amend the Development and Planning Act 1974 to give the Minister the power during a national emergency to implement procedures to allow the Director of Planning to expedite the planning application and permission process; to provide for public consultation of an environmental impact assessment for a proposed development prior to the making of a special development order; to provide for development orders to be made by the negative resolution procedure rather than the affirmative resolution procedure; to provide for the publication of procedures for emergency development orders and development orders; to provide for the designation of privately owned land as a protected conservation area on written agreement with the owner of the land and to include a list of the protected conservation areas; 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 2021.

Amends section 1

2 Section 1 of the principal Act is amended by inserting the following in its proper alphabetic place—

DEVELOPMENT AND PLANNING AMENDMENT ACT 2021

“protected conservation area” means an area of privately owned land designated as a protected conservation area under section 25A;”.

Inserts section 14A

3 The principal Act is amended by inserting the following after section 14—

“Emergency Development Order

14A (1) Where it appears to the Minister to be expedient during a national emergency, the Minister may, after consultation with the Director and after taking into account and having due regard to such representations as the Director may make to him, by order (in this Act referred to as an “emergency development order”) published in the Gazette provide for the emergency procedures to be followed in the granting of planning permission for one year from the date of the order.

(2) Planning permission granted under emergency development order procedures shall either grant planning permission unconditionally or subject to such conditions, directions, reservations and restrictions as may be specified in the order.

(3) An order may either grant planning permission for development specified in the order or for development of any class so specified.

(4) An order made under subsection (3) relating to a class of development shall be taken to be a separate planning permission for each development carried out under the order.

(5) Orders made under this section are subject to the negative resolution procedure.

(6) In this section—

“national emergency” means—

- (a) a natural disaster such as a hurricane, flood, earthquake or similar natural disaster or force majeure event;
- (b) a public health emergency declared by the Minister responsible for health under section 107A of the Public Health Act 1949;
- (c) a proclamation of emergency made by the Governor under section 14 of the Bermuda Constitution Order 1968.”.

Amends section 15

4 Section 15 of the principal Act is amended—

(a) by inserting the following after subsection (2)—

“(2A) Prior to making a development order, the Minister shall cause the conduct of a public consultation of any environmental impact assessment of a proposed development.

DEVELOPMENT AND PLANNING AMENDMENT ACT 2021

(2B) The Director and the Board shall determine the manner in which public consultation is conducted under subsection (2A) with the period of public consultation being no less than 21 days.”;

(b) in subsection (7) by deleting “affirmative” and substituting “negative”.

Inserts section 15A

5 The principal Act is amended by inserting the following after section 15—

“Procedures; development orders

15A The Director shall prepare and the Minister shall publish procedures for sections 14A and 15 (emergency development order and development order) and any procedure issued under this section is subject to the negative resolution procedure.”.

Inserts Part IVA

6 The principal Act is amended by inserting the following after section 25—

“PART IVA

PROTECTED CONSERVATION AREAS

Protected conservation area

25A (1) The Minister may, on written agreement with the owner of the land, by order designate an area as a protected conservation area for one or more of the following purposes—

- (a) to safeguard and maintain plants and animals as well as geological, marine and other natural features where protection is required with human use generally limited to scientific research and educational purposes in order to protect and preserve the natural resources;
- (b) to provide for the use of the area in its natural state with a minimum of commercial and mechanized activity to provide open space for use by the public for educational, social or recreational purposes;
- (c) to protect and maintain natural or historic monuments or features (including forts) and sites of particular historic, archaeological or aesthetic value—
 - (i) to so maintain them to protect their integrity;
 - (ii) to so manage them to protect them from deterioration; and
 - (iii) to provide for public enjoyment, research and educational opportunities;

- (d) to protect and maintain arable land to ensure the integrity of the land for cultivation.
- (2) An order made under subsection (1)—
 - (a) may restrict or regulate the development or use of the area of land designated as a protected conservation area and the Minister may enforce the agreement against the owner of the land and his successors in title as a restrictive covenant;
 - (b) shall amend the Fifth Schedule to include a description of the land the purposes for which it is protected;
 - (c) is subject to the affirmative resolution procedure.
- (3) The Minister may, on written agreement with the owner of the land, by order amend the Fifth Schedule—
 - (a) by adding to an area or part of an area specified in the Fifth Schedule;
 - (b) by changing an area or part of an area specified in the Fifth Schedule;
 - (c) by removing an area or part of an area specified in the Fifth Schedule.
- (4) An order—
 - (a) under subsection (3)(a) or (b) is subject to the negative resolution procedure;
 - (b) under subsection (3)(c) is subject to the affirmative resolution procedure.
- (5) On written agreement with the owner of the land, the Minister may, by notice published in the Gazette, amend the Fifth Schedule by renaming an area or part of an area specified in the Fifth Schedule.
- (6) The Minister shall cause a map of each area specified in the Fifth Schedule to be prepared and shall publish a notice in the Gazette of the place or places and hours where copies may be inspected.
- (7) A notice under subsection (5) or (6) is not a statutory instrument and shall not be subject to the Statutory Instruments Act 1977.

Notification; construction or change of use

25B (1) The Minister shall by notice published in the Gazette announce any proposal by the owner of the land for the construction of any road or building, the change of use or the change of boundary with respect to a protected conservation area and shall give opportunity for and shall take into account public comments before acting on the proposal.

- (2) A notice under subsection (1)—

DEVELOPMENT AND PLANNING AMENDMENT ACT 2021

- (a) shall specify the nature of and the reason for the proposed action, and the time within which and manner by which public comments will be received;
- (b) is subject to the negative resolution procedure.”.

Inserts Fifth Schedule

7 The principal Act is amended by inserting the following after the Fourth Schedule—

“FIFTH SCHEDULE

(section 25A)

PROTECTED CONSERVATION AREAS

The following areas are hereby designated as protected conservation areas—”.

Consequential Amendment

8 The Protected Species Act 2003 is amended in section 6(1) by deleting “section 28” and substituting “sections 25A, 25B or 28”.

Commencement

9 This Act shall come into operation on such day as the Minister may appoint by notice in the Gazette.

DEVELOPMENT AND PLANNING AMENDMENT BILL 2021

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Development and Planning Act 1974 (“the principal Act”) to give the Minister the power during a national emergency to implement procedures to allow the Director of Planning to expedite the planning application and permission process, to provide for public consultation of an environmental impact assessment for a proposed development prior to the making of a special development order, to provide for development orders to be made by the negative resolution procedure rather than the affirmative resolution procedure, to provide for the publication of procedures for emergency development orders and development orders, to provide for the designation of privately owned land as a protected conservation area on written agreement with the owner of the land and to include a list of the protected conservation areas and for related matters.

Clause 1 provides the title of the Bill.

Clause 2 amends section 1 of the principal Act to provide the meaning of “protected conservation area” as an area of land that is privately owned and designated as a protected conservation area under the new section 25A.

Clause 3 inserts section 14A into the principal Act to provide for the making of an emergency development order during times of national emergency. The Minister, after consultation and consideration of such representations made by the Director of Planning, may provide for the publication of emergency procedures to be followed in the granting of planning permission for one year from the date an emergency development order comes into operation. An emergency development order will be subject to the negative resolution procedure.

Clause 4 amends section 15 of the principal Act to provide that, before making a development order, the Minister shall cause the conduct of public consultation of an environmental impact assessment of a proposed development with the Director of Planning and the Development Applications Board determining the manner of public consultation with a consultation period of no less than 21 days. It also changes the procedure for making a development order from the affirmative resolution procedure to the negative resolution procedure.

Clause 5 inserts section 15A into the principal Act to provide that the Director of Planning shall prepare and the Minister shall publish procedures for emergency development orders and development orders and for such procedures to be subject to the negative resolution procedure.

Clause 6 inserts PART IVA, sections 25A and 25B, into the principal Act to provide for the designation of protected conservation areas on privately owned land. On written agreement with the landowner, the Minister may publish an order in the Gazette to designate an area as a protected conservation area with that order being subject to the affirmative resolution procedure. A list of the protected conservation areas will be provided in the new Fifth Schedule. The Minister may also make an order, on written agreement with

DEVELOPMENT AND PLANNING AMENDMENT BILL 2021

the landowner, to add, change or remove an area within a protected conservation area listed in the new Fifth Schedule. An order to add or change an area will be subject to the negative resolution procedure and an order to remove an area will be subject to the affirmative resolution procedure. A map of each area listed in the Fifth Schedule as protected conservation areas shall be prepared by the Minister and made accessible for public view at a named place during reasonable hours.

Clause 7 inserts the Fifth Schedule to the principal Act which will contain a list of protected conservation areas.

Clause 8 provides a consequential amendment to the Protected Species Act 2003 to make clear the distinction between an area designated as a protected conservation area under the principal Act and an area designated as a protected area for critical terrestrial or marine habitat for the protection of a specified protected species under the Protected Species Act 2003.

Clause 9 provides the Bill will come into operation on a day appointed by the Minister in the Gazette.