

CAYMAN ISLANDS



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

THE DEVELOPMENT AND PLANNING (AMENDMENT) BILL, 2014

MEMORANDUM OF OBJECTS AND REASONS

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

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

Clause 2 amends section 2(1) of the principal Law to extend the definition of the word “Authority” to include the Development Control Board for the purposes of certain sections of the principal Law. The clause would also re-define the word “days” to mean “calendar days unless otherwise specified”. In addition, the clause corrects two clerical errors and deletes the definition of the words “Governor in Cabinet”. Consequential amendments, substituting the word “Cabinet” for the words “Governor in Cabinet”, are provided in several other clauses of the Bill.

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

Clause 4 of the Bill amends section 4 of the principal Law to enable a designate to attend meetings of the Authority on behalf of the Director of Planning.

Clause 5 amends section 5 of the principal Law to ensure that the correct post description is used when the Authority delegates any of its functions.

Clause 6 repeals section 6 of the principal Law to remove the current framework that requires certain criteria to be considered by the Authority or the Board when reviewing applications relating to major developments.

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

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

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

Clause 11 amends section 13 of the principal Law, among other things -

- (a) to increase the maximum allowable height of a fence or wall that is exempt from the planning permission requirement (clause 11(a)(iii)); and
- (b) to remove the requirement for “polling” adjacent land owners for certain types of development applications - the current process requires obtaining written consent from a majority of land owners within a thousand foot radius (clause 10(d)).

Clause 12 amends section 14 of the principal Law to ensure that the Board is able to utilize the enforcement provisions of the principal Law.

Clause 13 of the Bill amends section 15 of the principal Law to make it clear that the purpose of serving notification of applications for planning permission is to invite persons to inspect the application at the Department of Planning.

Clause 14 amends section 17 of the principal Law to enable the Authority to modify permission to develop land, at any time, even after building operations have been completed.

Clause 15 amends section 24 of the principal Law to specify the circumstances in which compensation is not payable for loss due to the issue of a stop notice.

Clause 16 of the Bill inserts into the principal Law a new section 24A to enable the grant of an injunction to restrain a breach of planning control.

Clause 17 amends section 26 of the principal Law to make provision for the preservation of mangrove buffer.

Clause 19 amends section 29B of the principal Law to include references to Commercial zones, in the penalties for non-compliance with maintenance of land requirements.

Clause 21 repeals Part VI of the principal Law to delete the provisions relating to the Infrastructure Fund.

Clause 22 amends section 39 of the principal Law to make further provision in respect of entry upon land by persons authorized by the Authority.

Clause 23 amends section 40 of the principal Law to simplify the method by which notices may be served.

Clause 25 amends section 43 of the principal Law to increase the membership of a Development Plan Tribunal so that a quorum can be more easily established.

Clauses 26, 28 and 29 amend sections 46, 48 and 49 of the principal Law to rectify incorrect references to the tribunals of appeal. The amendments would make it clear that appeals against decisions of the Board are to be referred to an 'Appeals Tribunal' while appeals against decisions of the Authority are to be referred to 'the Tribunal'. The terms 'Appeals Tribunal' and 'Tribunal' are defined in section 2(1) of the principal Law.

Clause 30 repeals and substitutes section 50 to revise the date on which the Authority's Annual Report is due, in order to reflect the fiscal year instead of the calendar year.

Clause 31 of the Bill amends section 51 of the principal Law to update the list of Laws from which the principal Law does not derogate.

Clause 32 repeals and substitutes section 53 of the principal Law to empower the Cabinet to waive Planning Fees and to delegate this power to a Minister.

Clause 33 effects an amendment to Schedule 1 as a consequence of the addition of a Deputy Chairman to the Central Planning Authority and the Development Control Board.

Clause 34 contains savings and transitional provisions.

THE DEVELOPMENT AND PLANNING (AMENDMENT) BILL, 2014

ARRANGEMENT OF CLAUSES

1. Short title
2. Amendment of section 2 of the Development and Planning Law (2011 Revision) - definitions
3. Amendment of section 3 - establishment and constitution of Central Planning Authority
4. Amendment of section 4 - appointment of Staff
5. Amendment of section 5 - duties of Authority
6. Repeal of section 6 - applications to carry out major developments
7. Repeal of section 8 - notification of decisions relating to major developments
8. Amendment of section 9 - preparation of development plans
9. Amendment of section 11 - approval of development plans
10. Amendment of section 12 - deposit of development plans
11. Amendment of section 13 - provisions for development
12. Amendment of section 14 - functions of the Board
13. Amendment of section 15 - application for planning permission
14. Amendment of section 17 - revocation and modification of planning permission
15. Amendment of section 24 - compensation for loss due to stop notice
16. Insertion of section 24A - grant of injunction
17. Amendment of section 26 - storm belts
18. Amendment of section 28 - taking ballast from shoreline an offence
19. Amendment of section 29B - penalty for non-compliance with notice under section 29A
20. Amendment of section 36 - acquisition of land
21. Repeal of Part VI - Infrastructure Fund
22. Amendment of section 39 - powers of entry
23. Amendment of section 40 - service of notices
24. Amendment of section 42 - regulations
25. Amendment of section 43 - Development Plan Tribunals
26. Amendment of section 46 - Appeals Tribunal
27. Amendment of section 47 - Cayman Brac and Little Cayman Appeals Tribunal
28. Amendment of section 48 - appeals against decisions of Authority
29. Amendment of section 49 - appeals against decisions of Board
30. Repeal and substitution of section 50 - annual report
31. Amendment of section 51 - saving of existing laws
32. Repeal and substitution of section 53 - application
33. Amendment of Schedule 1 - constitution and procedure of Authority and Board

34. Savings and transitional provisions

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ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Development and Planning (Amendment) Law, 2014. Short title
2. The Development and Planning Law (2011 Revision), in this Law referred to as the “principal Law”, is amended in section 2(1) as follows - Amendment of section 2
of the Development and
Planning Law (2011
Revision) - definitions
 - (a) in the definition of the word “Authority” by inserting after the words “under section 3(1)” the words “and, for the purposes of sections 18 to 24 and sections 29A to 29E, “Authority” includes the Board”;
 - (b) by deleting the definition of the word “days” and substituting the following definition -
“ “days” means calendar days unless otherwise specified;”;
 - (c) in the definition of the word “development” by deleting the words “section 13(2) and” and substituting the words “section 13(3) and”;
 - (d) by deleting the definition of the word “Governor”;

- (e) in the definition of the word “owner” by deleting the words “in sections 13, 15, 48 and 49” and substituting the words “in section 13”; and
- (f) in the definition of the words “recovery period” by deleting the words “Governor in Cabinet” and substituting the word “Cabinet”.

Amendment of section 3
- establishment and
constitution of Central
Planning Authority

3. The principal Law is amended in section 3 as follows -

- (a) by repealing subsections (2) and (3) and substituting the following subsections -
 - “ (2) The Authority shall consist of a Chairman, a Deputy Chairman and eleven other members (one of whom shall be a member of the Board) appointed by the Cabinet.
 - (3) A Development Control Board is established for the Islands of Cayman Brac and Little Cayman consisting of a Chairman, a Deputy Chairman and five other members who shall be appointed by the Cabinet.”; and
- (b) in subsection (4) by deleting the word “Governor” and substituting the word “Cabinet”.

Amendment of section 4
- appointment of Staff

4. The principal Law is amended in section 4 as follows -

- (a) in subsection (1) by deleting the word “Governor” and substituting the word “Cabinet”; and
- (b) by repealing subsection (2) and substituting the following subsection -
 - “ (2) All meetings of the Authority shall be attended by either the Director or a person designated by him for the purpose; and the Director shall make to the Authority and the Board such recommendations as may appear to the Director to be necessary for the implementation of this Law.”.

Amendment of section 5
- duties of Authority

5. The principal Law is amended in section 5 as follows -

- (a) in subsection (1) by deleting the words “Executive Cabinet” and substituting the word “Cabinet”;
- (b) in subsection (3) by deleting the word “Governor” and substituting the word “Cabinet”;
- (c) in subsection (3)(b) by deleting the words “Assistant Directors” and substituting the words “Deputy Directors”;
- (d) in subsection (3)(d) by deleting the words “an Assistant Director” and substituting the words “a Deputy Director”; and

- (e) in subsection (4) by deleting the words “an Assistant Director” wherever they appear and substituting the words “a Deputy Director”.
- 6. The principal Law is amended by repealing section 6. Repeal of section 6 - applications to carry out major developments
- 7. The principal Law is amended by repealing section 8. Repeal of section 8 - notification of decisions relating to major developments
- 8. The principal Law is amended in section 9 as follows - Amendment of section 9 - preparation of development plans
 - (a) by repealing subsection (1)(c) and substituting the following paragraph -
 - “(c) designate, as land subject to acquisition by the Government -
 - (i) land allocated by the plan for purposes of any of the functions of the Government or a statutory undertaker or a highway authority; and
 - (ii) other land that, in the opinion of the Government, ought to be subject to acquisition by the Government for the purpose of securing its use in the manner proposed by the plan.”;
 - (b) in subsection (2) by deleting the word “Authority” and substituting the word “Government”; and
 - (c) by repealing subsection (3) and substituting the following subsection -
 - “(3) Where any land is designated by a development plan, or amendment of a development plan, as subject to acquisition by the Government, it shall be acquired within one year of the date on which the plan, or the amendment, came into operation; and, if the land is not acquired within that year, any owner of an interest in the land to be acquired may serve on the Government a notice to acquire the land within six months after the service of the notice, or such longer period as may be agreed between the owner and the Government; and, if at the end of that period the land has not been acquired, the land shall be deemed to be designated as provided in the development plan in effect at the time as approved by the Legislative Assembly.”.
- 9. The principal Law is amended in section 11 as follows - Amendment of section 11 - approval of development plans

- (a) in subsection (3)(a) by deleting the word “Governor” and substituting the words “Minister charged with responsibility for planning”; and
 - (b) in subsection (4) by deleting the word “Governor” and substituting the word “Cabinet”.
- Amendment of section 12 - deposit of development plans 10. The principal Law is amended in section 12 by deleting the word “Governor” and substituting the word “Cabinet”.
- Amendment of section 13 - provisions for development 11. The principal Law is amended in section 13 as follows -
 - (a) in subsection (3), in the definition of the word “development” -
 - (i) in paragraph (c) by deleting the words “Chief Engineer” and substituting the words “Managing Director of the National Roads Authority”;
 - (ii) in paragraph (e) by deleting the words “three feet six inches in height and not constructed of sheet metal;” and substituting the words “four feet in height and not constructed of sheet metal; or”; and
 - (iii) by repealing paragraph (f);
 - (b) by repealing subsection (4);
 - (c) in subsection (5) by deleting the word “will” and substituting the word “may”; and
 - (d) by repealing subsections (6) and (7).
- Amendment of section 14 - functions of the Board 12. The principal Law is amended in section 14(1) by deleting “27, 28,” and substituting “28, 29A, 29B, 29C, 29D, 29E.”.
- Amendment of section 15 - application for planning permission 13. The principal Law is amended in section 15 by repealing subsection (4) and substituting the following subsections -
 - “ (4) Notice of an application for planning permission having been made to the Authority (other than an application for permission having relation to a detached house, semi-detached house, duplex or any temporary development) shall contain an invitation for the person receiving the notice to inspect the application for planning permission (including the application form, requisite drawings, Land Register, and registry extract map) in person at the Department of Planning and shall be served in accordance with any regulations made under this Law; and the Authority shall not consider an application in the absence of evidence of service or publication, as the case may be, of such notice and unless twenty-one days have elapsed since the service or publication, as the case may be, of the last of such required notice.

(4A) Subsection (4) does not authorize any person to obtain copies of any documents or drawings associated with the application for planning permission without the written authorization of the applicant.”.

14. The principal Law is amended in section 17(2) as follows -

Amendment of section
17 - revocation and
modification of planning
permission

- (a) by deleting the words “or modify”;
- (b) by deleting the colon appearing at the end of paragraph (b) and substituting a semi colon; and
- (c) by deleting the words “Provided that” and substituting the words “and the power conferred by this section to modify permission to develop land may be exercised at any time; but”.

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

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

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

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

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

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

Insertion of section 24A
- grant of injunction

“Grant
injunction

of 24A.(1) Where the Authority considers it necessary or expedient for any actual or apprehended breach of planning control to be restrained by injunction, the Authority may apply to the Grand Court for an injunction, whether or not the Authority has exercised or is proposing to exercise any of its other powers under this Law.

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

Amendment of section 26 - storm belts	17. The principal Law is amended in section 26 by deleting the words “Storm belts” where they appear in the marginal note and in the section and substituting the words “Mangrove buffer”.
Amendment of section 28 - taking ballast from shoreline an offence	18. The principal Law is amended in the proviso to section 28(1) by deleting the word “from” and substituting the word “for”.
Amendment of section 29B - penalty for non-compliance with notice under section 29A	19. The principal Law is amended in section 29B(2) as follows - <ul style="list-style-type: none">(a) in paragraph (a) by deleting the words “as defined in the Development and Planning Regulations (2011 Revision)” and substituting the words “or a Commercial zone as defined in the Development and Planning Regulations (2013 Revision)”;(b) in paragraph (b) by inserting, after the words “Hotel/Tourism zone” the words “or a Commercial zone”.
Amendment of section 36 - acquisition of land	20. The principal Law is amended in section 36(1) and (2) by deleting the word “Governor” wherever it appears and substituting the word “Cabinet”.
Repeal of Part VI - Infrastructure Fund	21. The principal Law is amended by repealing Part VI.
Amendment of section 39 - powers of entry	22. The principal Law is amended in section 39 as follows - <ul style="list-style-type: none">(a) by repealing subsection (1) and substituting the following subsections -<ul style="list-style-type: none">“ (1) Any person duly authorised in writing by the Authority may, at any reasonable time, enter upon any land -<ul style="list-style-type: none">(a) for the purpose of examining it to determine if there has been any contravention of Part III;(b) to determine whether any of the powers conferred on the Authority or the Board should be exercised in relation to any land and, if so, the manner in which such power should be exercised;(c) to ascertain whether there has been compliance with any requirement imposed as a result of the exercise of any such power in relation to any land; or(d) for the purpose of surveying it or estimating its value in connection with -<ul style="list-style-type: none">(i) the preparation, approval, making or amendment of a development plan relating to the land under Part II, including the carrying out of any survey under that Part;

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

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

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

23. The principal Law is amended in section 40 as follows -

Amendment of section
40 - service of notices

- (a) in subsection (1) -
 - (i) in paragraph (c) by inserting the word “or” after the semi colon;
 - (ii) in paragraph (d) by deleting “; or” and substituting a full stop; and
 - (iii) by repealing paragraph (e); and
- (b) in subsection (2) by deleting the words “to be served” and substituting the words “to be served”.

24. The principal Law is amended in section 42 as follows -

Amendment of section
42 - regulations

- (a) in subsection (1) by deleting the word “Governor” and substituting the word “Cabinet”; and
- (b) in subsection (1)(h) by deleting the words “review or decisions” and substituting the words “review of decisions”.

25. The principal Law is amended in section 43 as follows -

Amendment of section
43 - Development Plan
Tribunals

- (a) in subsection (1) by deleting the word “Governor” and substituting the word “Cabinet”; and
- (b) in subsection (2) -

- (i) by deleting the word “two” and substituting the word “three”; and
- (ii) by deleting the word “Governor” and substituting the word “Cabinet”.

Amendment of section
46 - Appeals Tribunal

26. The principal Law is amended in section 46 as follows -

- (a) in the marginal note and in subsection (1) by deleting the words “Appeals Tribunal” and substituting the words “Appeal Tribunal”; and
- (b) in subsection (1) by deleting the word “Governor” and substituting the word “Cabinet”.

Amendment of section
47 - Cayman Brac and
Little Cayman Appeals
Tribunal

27. The principal Law is amended in section 47(1) by deleting the words “Governor. The Chairman” and substituting the words “Cabinet; and the Chairman”.

Amendment of section
48 - appeals against
decisions of Authority

28. The principal Law is amended in section 48(1) by deleting the words “Appeals Tribunal” wherever they appear and substituting the word “Tribunal”.

Amendment of section
49 - appeals against
decisions of Board

29. The principal Law is amended in section 49(1) by deleting the words “the Tribunal” and substituting the words “the Appeals Tribunal”.

Repeal and substitution
of section 50 - annual
report

30. The principal Law is amended by repealing section 50 and substituting the following section -

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

Amendment of section
51 - saving of existing
laws

31. The principal Law is amended in section 51 as follows -

- (a) in subsection (1) by inserting in the appropriate alphabetical sequence the following paragraphs -
 - “(aa) Electricity Law (2008 Revision);
 - (ab) Electricity Regulatory Authority Law (2010 Revision);
 - (da) Marine Conservation Law (2013 Revision) or any Law repealing and replacing the Marine Conservation Law (2013 Revision);”;
- (b) in subsection (2) by deleting the word “Governor” and substituting the word “Cabinet”.

32. The principal Law is amended by repealing section 53 and substituting the following section -

Repeal and substitution
of section 53 -
application

“Application

53. (1) This Law binds the Crown but where the Cabinet decides that the public interest requires, the Cabinet may, by Order published in the Gazette, waive the requirement to obtain permission pursuant to section 13; but nothing in this subsection shall be construed so as to allow the Cabinet to waive any other requirement of this Law or any regulations made under this Law.

(2) The Cabinet may, in any particular case, waive or order the refund of any fee prescribed in Schedule 1 to the Development and Planning Regulations (2013 Revision); but nothing in this subsection shall be construed so as to allow the Cabinet to waive or order the refund of any other fee prescribed by this Law or any regulations made under this Law.

(3) The Cabinet may, by written instrument, delegate any of its powers under subsection (2) to a Minister; but a delegation under this subsection is revocable at will and does not prevent the exercise by the Cabinet of any power so delegated.

(4) In subsection (3), “Minister” means a member of the Cabinet who is appointed under the Cayman Islands Constitution Order 2009, S.I. 2009 No. 1379, as the Premier or other Minister.”.

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

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

(a) by repealing paragraphs 2, 3 and 4 and substituting the following paragraphs -

“2. The Cabinet may appoint any person to act temporarily in the place of the Chairman, Deputy Chairman or a member of the Authority or Board in the case of the absence or inability to act of the Chairman, Deputy Chairman or of such member, as the case may be.

3. The Chairman, Deputy Chairman or any member may, at any time, resign his office by instrument in writing addressed to

the Cabinet and such resignation shall take effect as from the date of receipt of such instrument by the Cabinet.

4. The Cabinet may, at any time, revoke the appointment of any member, including the Chairman or the Deputy Chairman.”; and

(b) in paragraph 13 by deleting the word “Governor” and substituting the word “Cabinet”.

Savings and transitional provisions

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

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

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

(4) In the case of an appeal against -

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

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

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

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

(6) In this section -

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

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

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

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

Passed by the Legislative Assembly the day of , 2014.

Speaker.

Clerk of the Legislative Assembly.