

BERMUDA PLAN 2016 – A REVIEW OF THE CURRENT PLANNING STATEMENTS

As they prepare to update the 2008 Bermuda Development Plan, the Department of Planning invited BEST to provide input. The following points represent our recommendations for additions or changes to existing policies of the Planning Statements:

We suggest adding a new section to speak to the following points:-

Enforcement:

- (a) Further to the articles that appeared in the press in late 2015/early 2016 how can penalties for serial offenders of retroactive applications be enacted? See Royal Gazette on November 21, 2015 (“Developers could be hit with civil penalties”) and on January 9, 2016 (“Team to crack down on planning breaches”).
- (b) What happens when retroactive applications are turned down or withdrawn – the work having already been done? We have a list we asked about in 2014 still without answers.
- (c) Active complaints... we understand that if nothing is resolved within 6(?) years it is basically dropped. In light of the weak enforcement section is it more convenient to let the time lapse?
- (d) What is the resolution path for persons aggrieved with the Planning process/ decision? Can there be a Tribunal route for complainants or identify that the route is through the Office of the Ombudsman?
- (e) **Applications for retroactive permission should not be included in an application for proposed new development as it makes it difficult if permission is considered appropriate for one part of the application and not the other.**

Chapter 2

Planning Strategy for the Future (STY):

We request consideration of the following point:-

- (a) Bermuda needs a Marine Development Plan (for land reclamation, marinas, building of docks in the presence of caves, dredging and beach development) – a spatial plan that was being done by Dr. Kevin Mayall now has no funding for it to continue. In the meantime, the Bermuda Tourism Authority has been sanctioned to ‘develop’ the beaches for an enhanced tourism experience.

GENERAL PROVISIONS:

Chapter 4

Development Applications Board and Advisory Boards (DAB):

We request consideration of the following points:-

- (a) Input/recommendations given by Technical Officers – where it isn’t followed, reasons should be given to substantiate not following the recommendations. This includes instances where Ministerial discretion goes against the recommendations of Technical Officers or Independent Inspectors.
- (b) How has the work and philosophical goals of the prior Sustainable Development Unit been incorporated into policy?

Chapter 5

Planning Application Considerations (APC):

We request consideration of the following points:-

- (a) Section 34 Agreements – according to the Act, “The Minister may enter into an agreement... either permanently or during such period as may be specified in the agreement...”.

Is there actually any such thing as a permanent Section 34 agreement? We refer to the case of the Bermuda National Trust and the Chaplin Estate:

<http://www.royalgazette.com/article/20060228/NEWS/302289977>

How does the Government intend to give confidence to the community that such a permanent agreement is inviolable?

- (b) We think it is reasonable that photographic evidence should accompany retroactive applications, as well as a statement outlining why permission was not applied for first. This might highlight the need for better communications re Planning regulations.
- (c) We believe there would be benefit from the inclusion of a section that cross-references all policies where (i) written grounds for support are required for the Board's discretion and (ii) acknowledgement and/or consent from neighbours is required.

GENERAL POLICIES:

Chapter 6

Environmental Analysis (ENV):

We request consideration of the following points:-

- (a) Increase strength of requirement for EIA/EIS.
- (b) Decommissioning plan and conditions needed in the process for structures like the Boaz Island sewerage tank (RG on Aug 9).
- (c) Property standards are needed especially as related to derelict buildings throughout the island (including in the City) which seem not to be addressed. In our submission for the City of Hamilton Plan 2015 we suggested:

“BEST would like the City of Hamilton Plan to consider introducing/establishing Property Standards in respect of unused or derelict buildings within the city limits. Derelict and vacant buildings that are not maintained can contribute to the decline of neighbourhoods and have a negative effect on property values. This detracts from further investment in the area. Additionally, it is a reasonable assumption that other property owners would be less inclined to invest in the quality of their own property if neighbouring derelict properties dictate a deteriorating value to their own.”

Is it true that they pay no land tax if unoccupied? This seems an incentive to keep it unoccupied.

What about setting a standard to which it must be kept if left unoccupied?

Chapter 8

Design (DSN):

We request consideration of the following points:-

- (a) Given the increase in the number of proposals using shipping containers, we feel that a Guidance Note is needed for best practice points to be followed.
- (b) Objective DSN(6) – Is there a specific set of best practice sustainability development principles being looked to (for incorporation into site planning, building design and layout)?
- (c) DSN.4 - Bermuda Image – how did the Grand Atlantic meet the criteria of the Bermuda Image?

Chapter 9

Landscaping (LSG):

Questions:-

- (a) LSG.2 - Where could we get a copy of the Department of Planning's Landscape Guide?
- (b) Can the guide include a landscaping mandate to include bee-friendly plantings?
- (c) What happened at Grand Atlantic in terms of the standard for landscaping?

Chapter 10

Coastal Development (COA):

Question:-

- (a) Objective COA(3): Risk of erosion means development must be regulated to ensure its appropriateness. Are there parameters for what is appropriate?

Chapter 11

Transportation and Parking (TPT):

Question:-

- (a) Objective TPT(1) – how are alternative, more sustainable modes of transport and the location of new development within easy access to public transport being further applied or achieved?

Chapter 12

Utility Services (UTL):

Questions:-

- (a) Telecommunications Towers (generally):
 - Which agency is responsible for measuring and monitoring installations, and with what frequency, especially due to increased coverage by competing providers?
 - Has Planning got up-to-date lists of all equipment already erected/ installed? The last one we could find was from 2009.
 - Has a Guidance Note re over-intensification been issued? (KS to check on this)
- (b) Public Transport and Port Facilities:
 - Has the National Transportation Management Report 2002 been updated?

Chapter 13

Quarrying (ORY):

We request consideration of the following point:

- (a) QRY.6: Environmental Impact Statement... “... major operations or major quarry development may require the submission of an EIS...”. Can that be strengthened from ‘may’ to ‘shall’ or ‘will’ or ‘must’?

CONSERVATION BASE ZONE POLICIES:

Chapter 15

Park (PAR):

Question:-

- (a) PAR.4(2)(e) What does the National Parks Commission rely on that would inform their consideration around development restrictions?

Chapter 16

Coastal Reserve (COR):

Questions:-

- (a) Why are cesspits allowed in Coastal Reserve?

CONSERVATION AREA POLICIES:

Chapter 20

Agricultural Reserve (AGR):

Questions:-

- (a) What is the best way to heighten/strengthen this zone's protection given the scarcity?
- (b) Status of the Agricultural Strategy for Bermuda?

PROTECTION AREA POLICIES:

Chapter 24

Airport Control (AL):

We request consideration of the following points:-

- (a) ACL.4(1) – suggest written grounds for support be specified for Board discretion for ACL.4(2)
- (b) ACL.6 (1) suggest written grounds for support be specified for Board discretion for ACL.6(2)

DEVELOPMENT BASE ZONES:

Chapter 25

Rural (RUR):

- (a) RUR.7(1) suggest written grounds for support be specified for Board discretion for RUR.7(2)

Chapter 26

Residential (RSD):

Question: Industrial activity in a residential area – how can expansion be confined/ curtailed?

- (a) Industrial development:
 - RSD.43(1): Suggest adding the need for written grounds for support be provided for the discretion of the Board.
- (b) Coastal development:
 - RSD.48: Coastal Development, marinas and boat maintenance facilities may be permitted at the discretion of the Board – suggest adding the need an EIA/EIS and written grounds for support for a Marine Development Plan.

Chapter 27

Tourism (TOU):

- (a) Residential development:
 - TOU.6(1)(a):
What guides the Minister for Tourism on matters requiring his support?
 - TOU.6(1)(c):
Thinking that density common to tourism is why the provisions of Residential 1 apply, but are there any of the Res 1 provisions that wouldn't apply?
- (b) Subdivision:
 - TOU.8(a):
What guides the Minister for Tourism on matters requiring his support?

Chapter 28

Institutional (ITN):

- (a) ITN.2(3):
 - Absence of a Marine Development Plan to support consideration of marinas and boat maintenance facilities.
- (b) ITN.3(d):
 - Why Residential 1 provisions? Are there any of the Res 1 provisions that wouldn't apply?

Chapter 29

Commercial (COM):

- (a) Introduction: 2nd paragraph:
 - List of commercial centres includes Riddell's Bay (p177) – where are the specifics that describe these commercial centres?
- (b) COM.2(2):
 - Marinas and boat maintenance facilities may be permitted at the discretion of the Board... needs support of a Marine Development Plan.

Chapter 30

Mixed Use (MXD):

- (a) MXD.2(2):
 - Marinas may be permitted at the discretion of the Board... needs support of a Marine Development Plan.

Chapter 31

Industrial (IND):

- (a) IND.2(3):
 - Marinas may be permitted at the discretion of the Board... needs support of a Marine Development Plan.

(b) IND.3:

- List of light industrial zones doesn't include Quarry Hill, why not?

(c) IND.5(2):

- What are provisions if (a) and (b) does not satisfy or are not achieved?

Chapter 32

Airport (APT):

Question: What is likely to change due to the new airport?

SPECIAL STUDY AREAS:

Chapter 33

Special Study Areas (SSA):

Questions:-

- (a) This section names Morgan's Point and Tudor Hill. What/when will new zonings be considered? What will determine those zonings? Who/what can influence those decisions? Will they invite suggestions?
- (b) SSA Redevelopment to be based on special studies/plans. Where are these special studies/plans and are they available for review?

Reference Documents:

Where might we get the following documents?

- (a) Government Environmental Charter
- (b) Sustainable Development Strategy
- (c) Implementation Plan
- (d) Bio Diversity Strategy and Action Plan
- (e) National Transportation Management Report 2002 (or later)
- (f) Policy re derelict buildings

