



Government of Bermuda
Ministry of Environment and Planning
OFFICE OF THE MINISTER

Ministerial Statement
To The House of Assembly

By

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Minister of Environment and Planning

Adoption of a Government Protocol and Procedures for Special Development Orders

Friday, 31st May, 2013

Thank you, Mr. Speaker

Mr. Speaker

I rise today to advise this Honourable House of a promise made, and a promise kept.

Mr. Speaker

You might recall that this OBA Government made a pledge in its election platform to “Review Special Development Orders protocols granted to the Minister responsible for Planning matters to ensure the process is clearly articulated, transparent and fair.” I am pleased to report Mr. Speaker that this is a promise made, and a promise kept.

One of the first priorities the Ministry of Environment and Planning undertook was this promised review. We acknowledge the decision of the previous Government to make legislative changes to ensure that Special Development Orders are now subject to legislative scrutiny. We have now taken the next step of implementing a protocol to guide the request for, consideration of and grant of Special Development Orders, thereby enabling the Minister responsible to be fully informed about all Planning policy, technical and national issues prior to making a decision. When necessary, the Minister will also request that Environmental Impact Studies be

conducted prior to a decision being made.

Mr. Speaker

You might recall that SDOs are a grant of planning permission issued by the Minister responsible for Planning matters under Section 15 of the Development and Planning Act 1974. Typically, SDOs have been granted in the past for projects deemed to have been of national importance but not supportable by the adopted Development Plan. In such a scenario, the Development Applications Board (DAB) could not grant planning permission. Contrary to what is often suggested, the grant of an SDO is not a back door method to grant planning permission. In fact, it is a legitimate method to grant planning approval, anticipated by the legislature in 1974.

Mr. Speaker

This Government is acutely aware of the public disquiet and adverse media publicity that has surrounded the grant of SDOs in recent times. Some of the issues that caused concern include direct approaches to Ministers or members of Cabinet by developers with no input from technical officers or Advisory bodies; the granting of SDOs without supporting studies to identify and address potentially adverse environmental effects; the drafting of SDOs without the input of technical officers; and the approval of SDOs based on inadequate information. We recognize that such processes lead to a lack of public confidence in general, and in the planning system in particular.

It is therefore important that a protocol and set of procedures be put in place. While some decisions regarding SDOs might still be unpopular in certain quarters, the public could be assured that the decision was taken only after full consideration of all relevant issues.

Mr. Speaker

The grant of SDOs will be governed by a set of principles. In general, SDOs will only be made for projects deemed to be of national significance and importance. Secondly, it would not be appropriate to grant an SDO where a proposal could be made to conform to the provisions of the adopted Development Plan, and therefore could be subject to the normal planning application approval process. And thirdly, any potential SDO should follow the normal procedures for a planning application in terms of registration, publicity and consultations.

A key component of the protocol is that any SDO should follow the normal consultation and assessment procedures for a planning application. The critical difference, however, is that the Minister, and subsequently the Legislature, rather than the DAB, would make the decision to grant planning approval or not.

The recommended protocol and procedures will encourage supporting technical studies to be submitted as required, as an integral part of the process. Whilst some developers may be reluctant to do this, fundamentally, it is part of established best practice in other jurisdictions and, arguably, grounded firmly in planning case law. The key is for early engagement in the process by developers, whereas, too often, their first contact with technical officers is when plans are at an advanced stage. Early engagement with technical officers can also assist developers in overcoming potential problems associated with a scheme that might delay it at a later stage, particularly if there are key infrastructure issues to consider.

When considering an SDO, the Department of Planning will prepare a full report on the planning issues of the case and then make a recommendation to the Development Applications Board who in turn will make a recommendation to the Minister. The Minister will then seek the support of his colleagues in Cabinet, before presenting the Order to both Houses of the Legislature for debate.

Mr. Speaker

The adoption of a protocol and set of procedures will require the cooperation of all relevant ministries of Government. It will result in a more open and transparent form of decision-making, consistent with good practice. This does not mean that a development of national importance is rejected where there is the potential for environmental harm to arise. It remains for the decision-makers, the Minister and then the Legislature, to balance all the issues, and attach weight to each in reaching a decision that may or may not be popular. The important factor is that such a decision will be seen to be made in a fully transparent, informed way and thus maintain the credibility of the planning system and of the Government. This procedure will ensure that the decision is made in the best interests of Bermuda.

Thank you, Mr. Speaker