



GOVERNMENT OF BERMUDA
Ministry of Home Affairs

Draft Bermuda Plan 2018 Tribunal

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Public Circulation

Draft Bermuda Plan 2018 Tribunal Procedures

Purpose:

This document provides additional information to assist the public regarding the Draft Bermuda Plan 2018 Tribunal process. There are four sections as follows:

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Section One: Background

i) Legislative Framework

The Development and Planning Act 1974 (“the Act”), section 11 (1), states that as part of the process for approving any development plans, the Minister must provide an opportunity for interested persons or bodies to make objections, representations or recommendations with respect to any such development plans. Section 11 (3) states that if any objections or representations are made, the Minister must appoint a tribunal to hold a public inquiry into the objections. The Draft Bermuda Plan 2018 Tribunal (“the Tribunal”) is such a tribunal to hear and review the objections to the [Draft Bermuda Plan 2018](#). The Tribunal must follow the [Development and Planning \(Tribunal Procedure\) Rules 1992](#) (“the Rules”).

For the avoidance of doubt, please note that an inquiry of an objection by the Tribunal is referred to herein as a ‘Tribunal inquiry’.

ii) Tribunal Membership and Staff

The Tribunal members are appointed by the Minister responsible for the Department of Planning to hear and review objections to the [Draft Bermuda Plan 2018](#) and to make recommendations on the Plan.

In January 2020, the Minister of Home Affairs [appointed](#) the following members to form the Tribunal:

- Mr. John Payne, Chairman,
- Mr. Carlos Amaral
- Ms. Jennifer Haworth

Three (3) alternate members were also appointed:

- Mr. Jonathan Starling
- Ms. Quinell Francis
- Mrs. Vanessa Turner

The Tribunal prepares procedural rules for the inquiry to ensure that the proceedings are carried out in a fair and orderly manner.

The Tribunal has a Tribunal Advisor, Mrs. Tamsyn Doran. The Tribunal Advisor is an impartial advisor to the Tribunal who does not represent either the views of the Department of Planning or the objectors and counter objectors.

The primary role of the Tribunal Advisor is to advise the Tribunal on technical matters that may arise during the inquiry proceedings. The Tribunal Advisor will also act as

administrator for the Tribunal and perform various administrative tasks such as organizing inquiries and site visits, preparing advertisements and agendas, notifying objectors or counter objectors and any other matters as required. In addition, the Tribunal Advisor will accompany the Tribunal on site visits if and when requested.

Section Two: Types of Objections

There are two types of objections; objections and counter objections.

All objections are required to be advertised in the Government of Bermuda's [Official Gazette](#).

Objections

Upon the release of the [Draft Bermuda Plan 2018](#) on December 3rd, 2018, in accordance with the statutory public consultation period, the Department of Planning invited members of the public to submit objections and comments by March 15th, 2019.

Counter objections

Members of the public were able to submit counter objections in response to an individual objection which was lodged against the [Draft Bermuda Plan 2018](#) during the statutory public consultation period. The deadline for counter objections was April 15th, 2019.

Rebuttals to the Department's Position Report

Objectors for unresolved objections shall have a right to file a rebuttal to the Department's Position Report, however, it must be submitted **in writing prior to the inquiry**. Verbal rebuttals at the inquiry will only be permitted if the details of said rebuttal have been submitted in writing prior to the inquiry. Such written rebuttals shall form part of the Objection. Counter objectors are not permitted to file a rebuttal.

The objections received during the statutory public consultation period are categorized accordingly:

i) Resolved Objections Without Counter Objections

These are objections whereby a resolution has been reached between the Director and the objector. This category of objection does not require a Tribunal inquiry. Notwithstanding, the objection is advertised on the [Official Gazette](#) and on the Department of Planning [website](#).

Resolved zoning and policy objections will be forwarded to the Minister responsible for Planning at the conclusion of the Tribunal process in the form of a Draft Tribunal Report.

ii) Resolved Objections With Counter Objections

These are objections whereby a resolution has been reached between the Director and the objector, however, the objection has a counter objection. This category of objection *may* be subject of a Tribunal inquiry at the discretion of the Chairman. The objection and counter objection are advertised on the [Official Gazette](#) and on the Department of Planning [website](#).

Resolved objections (with counter objections), which may or may not have been subject of a Tribunal inquiry, will be forwarded to the Minister responsible for Planning at the conclusion of the Tribunal process in the form of a Draft Tribunal Report.

iii) Unresolved Objections With/ Without Counter Objections

These are objections whereby the Director and the objector have not reached a resolution. This category of objection is subject of a Tribunal inquiry. Further opportunities, to submit written rebuttals to the Department's Position Report prior to the inquiry, are also invited by the Tribunal. The objection and counter objection (if any) are advertised in the [Official Gazette](#) and posted on the Department of Planning [website](#) as being presented to the Tribunal.

At the inquiry, the objector will present his/her case first which may include a verbal rebuttal provided the details of said rebuttal have been submitted in writing prior to the inquiry. Thereafter, the Department of Planning for the Director may present. At the discretion of the Chairman, the counter objector(s) may be permitted to make a representation.

Following, the inquiry, the Tribunal will make written recommendations which will be forwarded to the Minister responsible for Planning at the conclusion of the Tribunal process in the form of a Draft Tribunal Report.

Section Three: Procedures for Tribunal Inquiries

Public Access to Virtual Meetings

The following steps have been taken to ensure the public has virtual access to all information as well as a live stream of each Tribunal inquiry.

- Notice of each Tribunal Inquiry will be published on the Government's [Official Gazette](#) and posted on the Department of Planning's [website](#) at least 7 days before the inquiry.
- All documents (e.g. objector's case, Department's Position Report, any subsequent written rebuttal submitted prior to the inquiry etc.) will be made available online through the [Citizen Self Service Portal \(CSS\)](#) which can be accessed via the Department of Planning's website.

- The inquiry can be viewed live on the Department of Planning’s [website](#) under the ‘Online Meetings’ tab.

i) Notification of Tribunal Inquiry

Objections and counter objections, subject of a Tribunal Inquiry, will be published on the Government’s [Official Gazette](#) website and posted on the Department of Planning’s [website](#) at least 7 days before the inquiry.

All objectors and counter objectors will be notified of the scheduled inquiry date a minimum of seven (7) days in advance. The Tribunal will have access to the objection record.

ii) Inquiry Proceedings

As per the Rules, the Tribunal may regulate its own proceedings wherein it provides an opportunity for both the objector, counter objectors (at the discretion of the Chairman) and the Department of Planning to present their cases to the Tribunal.

- All inquiries will be recorded i.e. audio and video recording.
- Each party presenting to the Tribunal will be responsible for providing their respective material (hard copy or electronic presentation material).
- Each Tribunal inquiry should take no longer than fifteen (15) minutes. Additional time may be permitted at the discretion of the Chairman.
- The objector will present their position first which may include a verbal rebuttal provided the details of said rebuttal have been submitted in writing prior to the inquiry. Thereafter, the Department of Planning for the Director may present. Any other representations for either party (e.g. government consultees or other relevant witnesses) may also be called upon at the discretion of the Chairman to make further representation if the Chairman determines that said representative has an expertise in the nature of the objection. Counter objections may also be invited to make a presentation at the discretion of the Chairman. Each presentation to the Tribunal should be limited to five (5) minutes.
- The Tribunal may also, at the request of the objector or the Minister by notice, summon any person to appear before the Tribunal to be examined.

Presentation Options for Tribunal Inquiries

Due to the current health precautions associated with the novel coronavirus, SARS-CoV-2, the Draft Bermuda Plan 2018 Tribunal (‘the Tribunal’) is offering the following three methods for presentation:

1. Written Representation

Objectors and counter objectors who cannot or do not wish to attend the Tribunal in person or virtually can consent to having their objection heard *in*

absentia whereby they stand on their written representation, originally submitted to the Department through the objection period of the Draft Bermuda Plan 2018. The Tribunal, at their discretion, may request the Department to present their position. The Tribunal will review both cases and make a recommendation.

2. In person

Objectors, counter objectors and technical officers for the Department for Planning can present in person and will be conducted in adherence to recommendations made by the Department of Health. For a list of Health recommendations please contact the Tribunal Advisor at tndoran@gov.bm. Please note, however, that due to physical distancing requirements and the limitations in the size of the Tribunal Inquiry location, a maximum of 2 people only are permitted to represent the objector's case and a maximum of 2 people only are permitted to represent the Department's case. Additional members of any party on either side can attend the meeting virtually via Webex. Verbal rebuttals are only permitted where the objector has submitted the details of the rebuttal in writing prior to the inquiry.

3. Virtual

Objectors, counter objectors and technical officers for the Department of Planning can present virtually via a secure Government of Bermuda hosted platform [CISCO Webex](#). An invite will be sent to the objector/ counter objector/technical officer for the Department of Planning prior to the meeting with a meeting code and password enabling them access to the virtual meeting. Virtual attendees will be required to have a camera and microphone during the live virtual meeting. Attendees will have the ability to share their screen/presentation over Webex during the Inquiry. Please note these meetings are being live streamed via YouTube on the Department of Planning website and as such, all content will be public. Verbal rebuttals are only permitted where the objector has submitted a rebuttal in writing prior to the inquiry.

N.B. No new information shall be introduced orally or in writing at the Tribunal.

Presentations must only be based on information presented in the original objection/counter objection submitted to the Department of Planning through the objection period of the Draft Bermuda Plan 2018 and any subsequent rebuttals to the Department's Position Report submitted in writing prior to the scheduled inquiry.

After the Inquiry

Following the inquiries, the Tribunal may wish to conduct a site visit for the purposes of observing the conditions of the objection site as it relates to the current/proposed zonings. Site visits can be conducted in three ways at the discretion of the Chairman:

- 1) informally with Tribunal members unaccompanied (individually or as a group);
- 2) informally with Tribunal members and the Tribunal Advisor in attendance; or
- 3) formally with Tribunal members, Tribunal Advisor, Department of Planning officers and objector(s) and/or counter objector(s) present.

Where it is determined that a site visit is not warranted, the Tribunal will make recommendations to the Minister responsible for Planning after the inquiries have been deliberated upon.

Upon the culmination of all Tribunal inquiries, a Report is prepared by the Tribunal and submitted to the Minister responsible for Planning.

Following the Minister's review and decision of all objections, the policy document and zonings will be amended accordingly.

The final Bermuda Plan 2018 Development Plan together with the Tribunal report will be introduced to the Legislature for consideration and approval. Once approved by the Legislature, notice of the approval of the Bermuda Plan 2018 will be published in the Official Gazette.

It will subsequently be posted on the Department of Planning [website](#) for the general public.