

Commencement: 17 September 1976



## CHAPTER 90

# FORESHORE DEVELOPMENT

JR 31 of 1975  
Act 17 of 2013

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## FORESHORE DEVELOPMENT

**To regulate the carrying out of works on the foreshore.**

### **1. Interpretation**

For the purpose of this Act:

“development” means the carrying out of any building, engineering, mining or other operations in, on, over or under the land, or the making of any material change in the use of buildings or other land whether or not such land is covered by water;

“Director” means the Director of the Department responsible for Physical Planning;

“enforcement officer” means an officer of the physical planning unit of a Local Authority and any other person appointed in writing by the Director from time to time;

“foreshore” means the land below mean high water mark and the bed of the sea within the territorial waters of Vanuatu (including the ports and harbours thereof) and includes land below mean high water mark in any lagoon having direct access to the open sea;

“Local Authority” means the relevant Local Government Council established under the Decentralization Act [CAP 230] or a Municipal Council established under the Municipalities Act [CAP 126];

“Minister” means the Minister responsible for town and country planning.

### **2. Consent of Minister required for foreshore development**

- (1) A person must not undertake, cause or permit to undertake any development on the foreshore of the coast of any island in Vanuatu without the written consent of the Minister.
- (2) A consent granted by the Minister under subsection (1) is also subject to any requirements set out in any other Act in relation to any development.

### **3. Application for consent**

- (1) An application for the consent of the Minister to the undertaking of such development shall be in the form set out in the Regulation and the applicant shall supply all particulars required to be given in such form with the prescribed application fee.
- (2) The applicant shall deliver a copy of his application to the relevant Local Authority in which the development is to take place who shall arrange for the same to be publicly displayed for a period of not less than 14 days following the day that the application is received.
- (3) The applicant must advertise publicly, sufficient particulars of the proposed development in a manner determined by the relevant Local Authority.
- (4) An advertisement required under subsection (3) must state that an application is available for inspection at the office of the Local Authority.

### **4. Decision of the Minister**

- (1) Upon receiving an application under subsection 3(1), the Minister acting on the advice of the Director may:
  - (a) grant the consent; or
  - (b) refuse to grant the consent; or
  - (c) grant the consent subject to such other conditions.

- (2) The Minister must not grant his or her consent under this section if the prescribed fee is not paid.

**5. Lapse of consent**

- (1) A consent granted by the Minister under section 4 has no effect if:
- (a) a development has not commenced within 1 year from the date on which the consent is granted; or
  - (b) a development has not been completed within 2 years from the date on which the consent is granted; or
  - (c) a development has not been completed within such period as specified by the Minister.
- (2) A consent granted by the Minister under section 4 expires after a period of 10 years from the date on which the consent is granted.
- (3) A person must pay a prescribed occupation charge for each 10 years period after consent has expired as provided for under subsection (2) on any foreshore development.

**6. Powers of an enforcement officer**

- (1) For the purposes of implementing, enforcing or ensuring compliance with the provisions of this Act and its regulation, an enforcement officer has the following powers:
- (a) to enter any land; and
  - (b) to enter private premises after notifying the owner of his or her intention to do so; and
  - (c) to examine any plant, facility or construction activity; and
  - (d) to take pictures, photographs or measurements or make sketches or recordings in any form; and
  - (e) to require the production of records and information relevant to the requirements of this Act and its Regulation, and to make and take copies of such records and information; and
  - (f) to order that the construction activity to be stopped for reason of breaching a condition of the consent or for not obtaining consent for the development; and
  - (g) to interview any person for the purposes of inspection; and
  - (h) to exercise any other powers conferred upon him or her under this Act or any other Act.
- (2) Any document or information collected under paragraph (1)(d) or (e) must not be disclosed unless the document or information is disclosed:
- (a) for official purposes; or
  - (b) with the consent of the person who provided the document or information or to whom the information relates; or
  - (c) in a court or tribunal; or
  - (d) in the public interest.
- (3) A civil or criminal action must not be taken against an enforcement officer in respect of anything done or omitted to be done by the officer in good faith in the execution or purported execution of his or her powers under this section.
- (4) A person must:

- (a) give the enforcement officer any assistance to enable the enforcement officer to exercise his or her powers under this Act; and
- (b) provide any document or information required by the enforcement officer for the purposes of implementing, enforcing or ensuring compliance with the provisions of this Act and its Regulation.

(5) In this section:

“facility” includes a building or place that provides a service or is used for a particular industry;

“plant” includes any machinery, equipment, tool or any of its components.

#### **7. Minister’s power to make reinstatement or removal of unsafe abandoned developments**

The Minister may, on the advice of the Director, make an order:

- (a) to reinstate or remove unsafe abandoned developments; and
- (b) to require the leaseholder of the adjacent land title to undertake such reinstatement or removal in accordance with the order.

#### **8. Registration of existing developments**

A person who has not obtained consent of the Minister for an existing development on the foreshore must apply for registration of their existing development within 2 years from the commencement of this Act.

#### **9. Offences**

- (1) A person who undertakes, causes or permits any development for which the consent of the Minister is required under this Act, if such consent has:
  - (a) not been obtained; or
  - (b) lapsed; or
  - (c) imposed conditions that have been breached,commits an offence and is liable on conviction to a fine not exceeding VT 5,000,000 or a term of imprisonment of 5 years.
- (2) A person who knowingly or deliberately, conceals the location or existence of any machinery, document or information from an enforcement officer, commits an offence and is liable on conviction to a fine not exceeding VT 2,000,000 or a term of imprisonment of 2 years.
- (3) A person who fails to comply with a request of an enforcement officer under section 6 commits an offence and is liable on conviction to a fine not exceeding VT 1,000,000 or a term of imprisonment of 1 year.
- (4) A person who fails to cease any development activity under paragraph 6(1)(f) commits an offence and is liable on conviction to a fine not exceeding VT 5,000,000 or a term of imprisonment of 5 years.

#### **10. Minister’s power to make Regulations**

- (1) The Minister may make Regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed.
- (2) Without limiting subsection (1), the Minister may make Regulations to provide for:
  - (a) fees or other charges to be payable with respect to any matter done or required to be done under this Act;

- (b) forms and the application process to be used for the purposes of the Act;
- (c) particulars to be included in the prescribed forms;
- (d) institutional arrangements required to administer the Act including the establishment of an Ad Hoc Advisory Panel to make recommendations to the Director who will submit the recommendation to the Minister;
- (e) the design and standards to be used to assess applications including the assessment of risks in relation to a development.

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**Table of Amendments (since the Revised Edition 1988)**

1	<i>Amended by Act 17 of 2013</i>
2	<i>Substituted by Act 17 of 2013</i>
3(1)	<i>Amended by Act 17 of 2013</i>
3(2)	<i>Amended by Act 17 of 2013</i>
3(3)	<i>Amended by Act 17 of 2013</i>
4 – 6	<i>Substituted by Act 17 of 2013</i>
7 – 10	<i>Inserted by Act 17 of 2013</i>