

BILL NO. 35 OF 2017

A BILL

FOR AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A COMMITTEE TO COORDINATE AND FACILITATE THE PROCESS FOR OBTAINING A BUILDING PERMIT AND FOR RELATED MATTERS

ENACTED by the Parliament of the Republic of Fiji—

PART 1—PRELIMINARY

Short title and commencement

- 1.—(1) This Act may be cited as the Regulation of Building Permits Act 2017.
- (2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires—

“applicant” means a person who submits an application to the Committee under section 9(1);

“approval” includes an authorisation in the form of a consent or the issuance of a permit, certificate, licence or report in respect of an application for a building permit;

“approval agency”, unless otherwise defined by regulations, means any ministry, department, agency, body or office, whether or not established by a written law, which may grant an approval that is necessary for a building permit to be issued;

“authority” means a local authority responsible for authorising in writing any construction, removal, re-erection, restoration, alteration or repair of a building under the Public Health Act 1935 and its subsidiary laws;

“building” does not include a building to the extent that it is used for a residential purpose where the owner of the building is not in the business of owning or leasing real property;

“building permit” means a building permit referred to in the Public Health Act 1935 and its subsidiary laws;

“Committee” means the Building Permits Evaluation Committee established under section 4(1);

“independent person” means a person who is qualified, experienced and competent to carry out an assessment for the purposes of section 9(7);

“Minister” means the Minister responsible for industry and trade; and

“person” includes a company or association or body of persons, corporate or unincorporate.

Act to bind the State

3. This Act binds the State.

PART 2—BUILDING PERMITS EVALUATION COMMITTEE

Building Permits Evaluation Committee

4.—(1) This section establishes the Building Permits Evaluation Committee within the ministry responsible for industry and trade.

(2) The Committee consists of the permanent secretary responsible for industry and trade as the chairperson and such other members to be appointed by the Minister on such terms and conditions as the Minister considers necessary.

(3) Every member of the Committee, except in the case of a civil servant, is entitled to such remuneration and allowances as may be fixed by the Minister.

(4) Any member of the Committee may resign from his or her office at any time by giving notice in writing to the Minister.

(5) Any member of the Committee may be removed from office at any time by the Minister for any reason, including on the grounds of inability to perform the functions of office, bankruptcy, neglect of duty or misconduct, proved to the satisfaction of the Minister.

Meetings of the Committee

5.—(1) Meetings of the Committee must be held at such times and places as the chairperson appoints.

(2) Subject to subsection (3), the chairperson must preside at each meeting of the Committee.

(3) In the event of the absence of the chairperson from any meeting of the Committee, the meeting must be presided over by a member who is nominated by the chairperson and failing any such nomination, the meeting must be presided over by a member appointed by the members present.

(4) At all meetings of the Committee, the quorum necessary for the transaction of business of the Committee is half of the total number of members of the Committee.

(5) All questions arising at any meeting of the Committee must be decided by a majority of votes of the members of the Committee present at the meeting.

(6) At a meeting of the Committee, the chairperson and all members of the Committee present have the right to vote, and in the case of an equality of votes, the chairperson, or in the absence of the chairperson the member presiding, has a casting vote.

(7) A resolution of the Committee in writing signed, or assented to by letter, facsimile, e-mail or such other electronic means as approved by the Committee, by a majority of the members of the Committee, is as valid and effectual as if it had been passed at a meeting of the Committee duly called and constituted.

(8) Subject to this Act, the Committee may regulate its own proceedings.

Functions of the Committee

6. The functions of the Committee are to—

- (a) receive and consider applications for building permits;
- (b) expedite the process for obtaining building permits;
- (c) coordinate with approval agencies to ensure that the relevant approvals in relation to the issuance of a building permit are granted within the prescribed time;
- (d) coordinate with an independent person to ensure that an assessment is carried out where an approval agency has failed to provide a response within the prescribed time;
- (e) coordinate with the authority to issue the building permit within the prescribed time; and
- (f) carry out such other functions conferred upon the Committee by this Act or any other written law.

Powers of the Committee

7. The Committee has the power to do all things necessary to perform the functions conferred upon the Committee, including the power to—

- (a) direct approval agencies to consider and identify the necessary approvals required to issue a building permit within the prescribed time;
- (b) engage an independent person to carry out an assessment and provide a recommendation to the Committee;
- (c) where an independent person has completed an assessment, and has recommended an approval, direct the approval agency to grant the approval;
- (d) direct an authority to issue a building permit within the prescribed time; and
- (e) appoint officers to assist the Committee to carry out its functions.

Protection from liability

8.—(1) No civil or criminal proceedings lie against the Committee nor any member, officer, employee, agent or consultant of the Committee for anything he or she or it may do or fail to do in the course of the exercise or purported exercise of his or her or its powers or performance of his or her or its functions, unless it is shown that he or she or it did not act in good faith or with reasonable care.

(2) No civil or criminal proceedings lie personally against any member, officer, employee, agent or consultant of the Committee or other person acting under the direction of the Committee for anything which is done in good faith, or done or intended to be done in the execution or purported exercise of his or her powers or performance of his or her functions under this Act or any other written law.

PART 3—APPLICATION

Application

9.—(1) Notwithstanding any other written law, any person seeking to obtain a building permit for a building may apply to the Committee for a building permit.

(2) An application must be—

- (a) made in the prescribed form and completed in all applicable parts; and
- (b) accompanied by the prescribed fee.

(3) The Committee must, within the prescribed time following the receipt of an application—

- (a) consider the application to identify the relevant approval agencies;
- (b) send the application to each relevant approval agency; and

(c) coordinate with each approval agency for—

- (i) an approval of the application; or
- (ii) the refusal to grant an approval of the application.

(4) Subject to section 11, an approval agency must, within the prescribed time following the receipt of an application, consider and determine the outcome of the application and notify the Committee and the applicant in writing of its decision.

(5) The Committee must, no later than 5 working days following the receipt of written notifications for approvals granted by all the relevant approval agencies in respect of an application, send the application to the authority and notify the authority of all the approvals.

(6) Subject to section 11, an authority must, no later than 5 working days following the receipt of an application from the Committee, consider and determine the outcome of an application and notify the Committee and the applicant in writing of its decision and if applicable, issue the building permit to the applicant.

(7) Where the approval agency has failed to provide a response to the Committee within the prescribed time as required under subsection (4), the Committee may engage an independent person to—

- (a) conduct an assessment of the requirements for obtaining the approval from the relevant approval agency in respect of the application; and
- (b) following such assessment, provide its recommendation to the Committee on whether the approval is to be granted.

(8) Notwithstanding the provisions of this section, an applicant whose application has been refused by an approval agency or an authority may amend the application and resubmit it to the Committee or submit a new application.

Meetings for consideration of applications

10.—(1) The Committee may invite an approval agency or authority to attend a meeting of the Committee to consider an application.

(2) Pursuant to subsection (1), a representative of an approval agency or authority must attend the meeting of the Committee which the approval agency or authority has been invited to attend.

(3) If a representative from an approval agency or authority fails to attend the meeting of the Committee under subsection (2), the approval agency or authority commits an offence and is liable upon conviction to a fine not exceeding \$20,000 or imprisonment for a term not exceeding 5 years or both.

(4) For the purpose of this section, “representative” means a person who is authorised to make a decision on behalf of the approval agency or authority during a meeting of the Committee that binds the approval agency or authority.

Compliance with written laws and applicable standards

11. All approval agencies, authorities and independent persons must comply with all written laws and standards that are relevant to the consideration of an application made under this Act.

PART 4—DIRECTIVES

Directives to approval agencies and authorities

12.—(1) If an independent person recommends under section 9(7) that an approval is to be granted by an approval agency, the Committee must direct the approval agency to grant an approval and the approval agency must grant the approval no later than 5 working days from the date of receipt of the directive.

(2) The Committee may issue such other directives to the approval agency and authority in respect of an application made under this Act and the approval agency and authority must comply with the directive.

(3) If an approval agency or authority contravenes subsection (1) or (2), the approval agency or authority is liable upon conviction to a fine not exceeding \$20,000 or imprisonment for a term not exceeding 5 years or both.

PART 5—MISCELLANEOUS

Offences

13. Notwithstanding any limitation of liability in any written law or the constituting document of the approval agency or authority, if an approval agency or authority contravenes any of the provisions of this Act—

- (a) the office responsible under the written law for granting the relevant approval is liable upon conviction to a fine not exceeding the prescribed amount; and
- (b) the person or group of persons who hold such office is personally liable upon conviction to a fine not exceeding the prescribed amount or imprisonment for a term not exceeding the prescribed term.

Act to prevail

14. This Act has effect notwithstanding any provision of any other written law, and accordingly, to the extent that there is any inconsistency between this Act and any other written law, this Act prevails.

Regulations

15.—(1) The Minister may make regulations prescribing matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and generally for achieving the purposes of this Act.

(2) Without limiting the generality of subsection (1), the Minister may make regulations prescribing penalties for any offence in any regulations made under this Act to a fine not exceeding \$20,000 or imprisonment for a term not exceeding 5 years or both.

July 2017

REGULATION OF BUILDING PERMITS BILL 2017

EXPLANATORY NOTE

(This note is not part of the Bill and is intended only to indicate its general effect)

1.0 BACKGROUND

- 1.1 The Regulation of Building Permits Bill 2017 (**‘Bill’**) aims to establish the Building Permits Evaluation Committee (**‘Committee’**) to coordinate and facilitate the process for obtaining a building permit for any building other than a building that is used for a residential purpose where the owner of the building is not in the business of owning or leasing real property.

2.0 CLAUSES

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the Bill will become an Act (**‘Act’**) and will come into force on a date or dates appointed by the Minister by notice in the Gazette.
- 2.2 Clause 2 of the Bill outlines the interpretation of certain terms used in the Bill.
- 2.3 Clause 3 of the Bill stipulates that the Act binds the State.
- 2.4 Clause 4 of the Bill provides for the establishment of the Committee within the ministry responsible for industry and trade consisting of the permanent secretary responsible for industry and trade as the chairperson and any other member as appointed by the Minister.
- 2.5 Clause 5 of the Bill sets out the procedures governing the meetings of the Committee.
- 2.6 Clause 6 of the Bill sets out the functions of the Committee.
- 2.7 Clause 7 of the Bill sets out the powers of the Committee.
- 2.8 Clause 8 of the Bill stipulates that the Committee or any member, officer, employee, agent or consultant of the Committee or other person acting under the direction of the Committee is protected from civil or criminal liability if

they were acting in good faith while exercising the functions and powers of the Committee.

- 2.9 Clause 9 of the Bill outlines the application process for a building permit.
- 2.10 Clause 10 of the Bill enables the Committee to invite any approval agency or authority to attend a meeting of the Committee to consider applications for building permits.
- 2.11 Clause 11 of the Bill stipulates that all approval agencies, authorities and independent persons must comply with all written laws and standards that are relevant to the consideration of an application for a building permit.
- 2.12 Clause 12 of the Bill provides that the Committee has the power to issue a directive to any approval agency or authority. If the approval agency or authority does not comply with the directive, the approval agency or the authority is liable to a prescribed fine or imprisonment or both.
- 2.13 Clause 13 of the Bill stipulates that notwithstanding any limitation of liability in any written law or the constituting documents of an approval agency or authority, if an office responsible under written law for granting the relevant approval is liable for an offence under the Act, the office is liable to a prescribed fine and the person who holds the office is liable to a prescribed fine or imprisonment or both.
- 2.14 Clause 14 of the Bill provides that where there is inconsistency between the Act and any other written law, the Act will prevail to the extent of the inconsistency.
- 2.15 Clause 15 of the Bill empowers the Minister to make regulations necessary for carrying out or giving effect to and generally for achieving the purposes of the Act. Clause 15(2) of the Bill further empowers the Minister to prescribe penalties not exceeding \$20,000 or imprisonment for 5 years or both for any offence.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The Act comes under the responsibility of the Minister responsible for industry and trade.

A. SAYED-KHAIYUM
Attorney-General