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Act

No. 12 of 2022

I assent

DR. LAZARUS MCCARTHY CHAKWERA
PRESIDENT
12th May, 2022

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An Act to amend the Physical Planning Act

ENACTED by the Parliament of Malawi as follows—

Short title and commencement

1. This Act may be cited as the Physical Planning (Amendment) Act, 2022, and shall come into force on a date appointed by the Minister by notice published in the *Gazette*.

Amendment of s. 2 of Cap. 23:01

2. The Physical Planning Act (hereinafter referred to as the "principal Act") is amended, in section 2, by deleting the definition of the term "responsible authority" and substituting therefor the following new definition—

""responsible authority" includes—

(*a*) the planning committee;

(*b*) the Council;

(*c*) the Commissioner; and

(*d*) the Minister;".

Replacement of s. 4 of the principal Act

3. Section 4 of the principal Act is repealed and replaced with the following new section 4 —

"Commissioner for Physical Planning

4. — (1) There shall be a Commissioner for Physical Planning (in this Act otherwise referred to as the "Commissioner") who shall be a public officer.

(2) A person shall not qualify for appointment as Commissioner unless he—

(*a*) holds a bachelor's degree in physical planning;

(*b*) is licensed as a physical planner under this Act; and

(*c*) has not less than 10 years' experience in physical planning.".

Replacement of s. 20 of the principal Act

4. Section 20 of the principal Act is repealed and replaced with the following new section 20—

"Composition, procedure, functions and powers of a planning committee

20. — (1) A planning committee shall consist of the following members—

(*a*) in the case of a City Council, Municipal Council or Town Council—

(i) the Director of Planning and Development, who shall be the Secretary;

(ii) the Urban Physical Planning Officer;

(iii) the Urban Lands Officer;

(iv) the Urban Engineer;

(v) the Urban Surveyor;

(vi) the Urban Water Engineer;

(vii) the Urban Architect;

(viii) the Director of Social Services of the Council;

(ix) the Urban Environmental Officer;

(x) a member of the Urban Development Committee;

(xi) a member of the Urban Works Committee;

(xii) a registered physical planner in private practice duly appointed by the Commissioner on recommendation from the Physical Planners Board; and

(xiii) a member of the civil society representing the human settlement sector; and

(*b*) in the case of a District Council—

(i) the District Physical Planning Officer, who shall be the Secretary;

(ii) the District Lands Officer;

(iii) the District Engineer;

(iv) the District Surveyor;

(v) the District Agricultural Officer;

(vi) the District Education Officer;

(vii) the District Community Development Officer;

(viii) the District Public Health Officer;

(ix) the District Environmental Officer;

(x) a member of the District Development Committee;

(xi) a member of the District Works Committee;

(xii) a registered physical planner in private practice duly appointed by the Commissioner on recommendation from the Physical Planners Board; and

(xiii) a member of the civil society representing the human settlement sector.

(2) The members shall, at the first meeting of the planning committee, elect a chairperson from amongst their number.

(3) The planning committee shall elect its chairperson by secret ballot and by a simple majority;

(4) An *ex-officio* member of the planning committee shall not be eligible to be elected as chairperson;

(5) A planning committee may appoint such sub-committees as may be required to assist the committee in discharging its functions under the Act.

(6) The planning committee shall be responsible for—

(*a*) the review and determination of applications for planning permission, taking into account applicable plans;

(*b*) overseeing construction activities and ensuring that the activities are consistent with applicable master plans;

(*c*) providing guidance on land use and management in its area of jurisdiction; and

(*d*) providing guidance in enforcement activities in its area of jurisdiction.

(7) Where a member of a planning committee has a financial or proprietary interest in any matter coming before the planning committee in respect of the exercise of its functions under the Act, the member shall disclose such interest to the planning committee and, if it is a matter on which a vote is to be taken, the member shall not vote on the matter.".

Amendment of s. 33 of the principal Act

5. Section 33 of the principal Act is amended, in subsection (1), by adding a new paragraph (e) as follows —

"(e) a rural layout plan, which shall be a simple land use plan for the whole of a village area.".

Insertion of s. 43A into the principal Act

6. The principal Act is amended by inserting, immediately after section 43, a new section 43A as follows -

"Malawi as a planning area

43A. Subject to this Act, a person shall not carry out any development in Malawi without a planning permission granted under this Part.".

Replacement of s. 45 of the principal Act

7. Section 45 of the principal Act is repealed and replaced with the following new section 45 —

"Types of development permission

45. The types of development permission that may be granted under this Part are as follows—

(*a*) an outline development permission and development permission for development anywhere in Malawi including within a land development control area;

(*b*) an advertisement permission for the display of advertisements anywhere in Malawi;

(*c*) a subdivision permission for the subdivision of land;

(*d*) a permission for change of use of land or building;

(*e*) a permission for construction of utilities and services such as roads, power lines, water pipes and sewer lines; and

(*f*) a permission for amalgamation of plots.".

8. Section 46 of the principal Act is amended — Amendment of s. 46 of the principal Act

(*a*) in subsection (1), by deleting paragraph (*a*) and substituting therefor the following new paragraph (*a*) —

"(*a*) made to a local government authority, where there is a planning committee, or to the Commissioner, where there is no planning committee;" and

(*b*) by deleting subsection (8) and substituting therefor the following new subsection (8) —

"(8) The responsible authority shall, within thirty days of the receipt of an application for development permission, inform the applicant of the decision on the application, or where no decision has been made, of the progress on the application, and the likely date by which a decision will be made:

Provided that where the responsible authority fails to make a decision or to advise the applicant of the progress on the application within sixty days of the receipt of the application for development permission, the applicant shall be at liberty to commence development.".

9. Section 57 of the principal Act is repealed. Repeal of s. 57 of the principal Act

10. Section 59 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection (2) — Amendment of s. 59 of the principal Act

"(2) A person who feels aggrieved by the stop notice issued pursuant to subsection (1) may appeal to the Council within thirty days from the date of service of the notice:

Provided that the person shall not continue with the development until the appeal is disposed of in his favour.".

Amendment of s. 67 of the principal Act

11. Section 67 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection (2) —

"(2) Any acquisition of land and any payment of compensation therefor under this Act shall be in accordance with the Lands Acquisition and Compensation Act.".

Amendment of s. 46 of the principal Act

12. Section 74 of the principal Act is amended, in subsection (1), by deleting the word "Registrar" and substituting therefor the word "Commissioner".

Amendment of the First Schedule to the principal Act

13. The First Schedule to the principal Act is amended by deleting paragraph (*a*) and substituting therefor the following new paragraph (*a*) —

"(*a*) the building by the lessee or licensee of or under which the plot is held and any rules regulating building operations within a traditional housing area and subject to the provisions of section 43 of this Act;".

Passed in Parliament this twenty nineth day of March, two thousand and twenty-two.

FIONA KALEMBA
Clerk of Parliament