



BARBADOS TOWN PLANNING SOCIETY

Transparency & Modernisation of Planning

A Prospectus for Action

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Summary

This report makes the case for transparency and modernisation of the planning system in Barbados on economic, social and environmental grounds. It puts forward a Prospectus for Action which sets out a roadmap for fundamental reform along with improvements that can be made immediately.

A. The Wider Issues

Barbados needs a Freedom of Information Act. This will give credibility to the system. There is a need for a return to the public service ethos accompanied by modern transparency and efficiency.

B. Developing a Programme for Improvement

A Planning Modernisation and Transparency Taskforce should report in 12 months on the administrative, legislative, technological and attitudinal changes needed to give Barbados a suitable modern, transparent and efficient planning system. This should include a staffing and skills review along with costings and an implementation plan.

C. Immediate Actions

Measures to be implemented within 6 months include:

- A detailed weekly list of applications received and decisions made
- Meaningful quarterly performance statistics
- Implementation of reforms to the sec.18 and sec.19 referral and review processes
- Use of email for statutory consultations about planning applications
- More consultation with interest groups
- Implementation of a protocol on conflicts of interest
- An improved validation process for applications – requesting information early
- A “streaming” system for “simple” and “complex” applications
- Implementation of a system of neighbour consultation on all planning applications
- Improved communications (email and voicemail) for T&CDPO staff
- Evidence-based approach to be required in the new Physical Development Plan

Introduction

The Barbados Town Planning Society has decided that Transparency and Modernisation in Planning should be its focus for 2015.

Already, the Society held its 2015 Annual Symposium/Workshop in February on the theme of Transparency and Modernisation in Planning. Speakers at that event outlined the case for change and there was a positive response from delegates representing organisations in both the private and public sectors involved in construction and development in Barbados. Participants were able to put forward their own ideas for change in the workshop session. A full report of the Symposium is available separately on the BTPS website (www.barbadosplanningsociety.org).

At the Symposium, delegates were told that it was not a one-off discussion of the issues that would soon be forgotten. BTPS committed itself to taking the matter further – stating the case for change and making proposals for improving the planning system in Barbados. That is the purpose of this report. It makes the case for transparency and modernisation of planning in Barbados by setting out the economic, social and environmental arguments for change. It goes on to set out a Prospectus for Action. This proposes a roadmap for implementing a fundamental review of the planning system in Barbados which would address the underlying problems in the present system. It also lists a number of improvements that could be introduced in the short term – within a six month deadline – that would in themselves achieve a significant improvement on the status quo. These changes would start the process of modernisation and begin to introduce the transparency that is desperately needed.

The proposals in our Prospectus for Action draw strongly on discussion at the Symposium and we are grateful for participants' contributions both at the event and subsequently. Our objective is to generate as wide a discussion of these issues as possible. While we are formally submitting the report to the Prime Minister (as Minister responsible for town planning), the Permanent Secretary Defence and Security and to the Chief Town Planner, we are also sending it to other government departments and agencies involved in planning, to members of the Social Partnership and to the Leader of the Opposition as well as other interest groups, professional bodies and the press. The report will also be publicly available on the BTPS website.

The Case for Transparency and Modernisation

Town planning is about balancing competing private and public interests regarding the use of land. It is necessary to remember that the public interests concerned are those of the wider community and not only those of one or more public body or agency. Town planning is inevitably also concerned with balancing social, economic and environmental considerations. Town planning should be about place making and making places better. Through development control, planning is also about protecting the environment and public amenity. Balancing planning issues can be a complex business and sometimes the arguments for or against a particular change can be finely balanced. However, the processes for reaching a decision should not be so complex as to exclude the public whose interests planning is protecting. Nor should those processes be closed to public scrutiny.

There is an economic imperative for modernising planning in Barbados. This imperative is linked to the Government's facilitation agenda and the demands of business and investors for efficient public services. As a Nation we should be acutely aware of the danger that our competitors are overtaking and outpacing us. This does not just include competitor territories in the Lesser Antilles – some of whom have shown growth rates recently that out-perform Barbados. It also includes bigger players. For instance, with Cuba becoming released from restrictions imposed by the USA, that island has the potential to be a major economic power in the Caribbean. We also need to be aware of competition from well-organised and well-ordered smaller states such as Bermuda and from other places beyond the confines of the Caribbean. To compete for investment we need to be taken seriously and, to be taken seriously, it is becoming increasingly important that we are seen to behave appropriately. Having a modern and efficient planning system which can be seen to be open and fair would help.

The reasons for modernising the planning system are not just economic. As a small island developing state (SIDS) we need to protect and manage our sensitive environment. The basis for this exists in the Town & Country Planning Act, Cap. 240. However, the present Act was originally passed many years ago, in 1965, and has not had the substantial revisions needed to meet modern development pressures. The present Act was based largely on the English 1962 Town & Country Planning Act. It should be noted that in England there have been a number of major reviews to the legislation since the 1960's to meet changing societal requirements as well as changes in the nature and scale of development. Moreover, a system that relies on English

legislation passed fifty years ago can hardly be expected to meet the needs of a Caribbean SIDS in the second decade of the Twenty First Century.

In 2015 it is necessary to consider land use planning in Barbados in the wider context of the international understanding of what constitutes sustainable development and what are the appropriate standards for citizen involvement in decision-making. Indeed, Barbados has formal treaty obligations which should affect how the country manages its decision-making on land use planning and related environmental issues. Since 1987 and the Bruntland Report's proposition of the sustainable development concept there has been a global paradigm shift in aspirations and expectations with the prevailing philosophy encapsulated in Principle 10 of the Rio Declaration of 1992:

“Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

BTPS believes that the Barbadian public deserves a modern, inclusive, fit-for-purpose planning system. Transparency is a vital requirement and there is a clear analogy with courts of law where it is established that justice must not just be done but also needs to be seen to be done. Barbados has an educated population that is quite capable of engaging in discussion about the economic, social and environmental consequences of major development proposals. The time has passed when planning issues could be regarded as purely technical and the preserve of a small group of professionals and politicians. But the public cannot play its valid role if the system is closed and information is withheld.

The present arrangements in Barbados are not open and this has a pernicious impact on the reputation of both the planning system and the planners involved in it. When the public does not know what is going on until well after the event this breeds suspicion about the fairness and probity of the system. Openness and transparency would have a positive reputational impact on the planners and politicians involved.

Some of the changes proposed in this Prospectus for Action will require legislation but others will not. Some of the changes needed will cost money but others can be implemented quickly for little additional cost. BTPS is realistic in understanding that there are limits to how rapidly all the necessary reforms can be implemented, particularly in view of the current economic situation and available resources for public spending. However, BTPS is firmly of the view that the present state of affairs itself represents a cost and a hindrance to the country. Something has to be done quickly to start off the process of improvement. There is a need for an overall strategy for modernisation and for an implementation plan. There is also a need to make some rapid progress by identifying significant changes that can be made quickly (and cheaply) to achieve some early wins – what the management consultants call the “low hanging fruit”.

BTPS recognizes that some improvements are already being discussed or are in the pipeline. However, experience suggests that these things are taking too long and may not come to fruition. The reform process needs to be speeded up. It should be recognized that time is running out and that complacency is the biggest threat. We are in danger of being left behind. But to make really significant progress needs commitment all round – from politicians, civil servants, planners, other professionals, and the private sector.

BTPS stresses that increased transparency is absolutely vital. Without it, other change may just add efficiency to a system that is becoming discredited. More openness and transparency are needed to give the planning system more credibility. We need to build trust and gain the support of the public.

There are, however, a number of legal, technical and managerial areas that need to be updated as part of the overall review:

- 1) The plan making process needs to be more rapid and plans need to be kept up-to-date. In Barbados the current Physical Development Plan was produced in 2003 but not approved by Government until 2008. It was supposed to have a ten year life. This timing issue undermines the credibility of the planning process and the credibility of the Chief Town Planner’s representatives defending its policies in hearings. There is a message here for politicians – of all parties – to support timely production of the next plan and approve it for implementation in a timely manner too.

- 2) A more evidence-based approach is needed for preparation of the PDP and for development control decision-making. This would help prevent a process of “decision by assertion”. Government already holds a mass of information across departments and this should be shared. There may be confidentiality issues but aggregated data should not be treated as secret or the private possession of one body.
- 3) One key example of where more information is needed for effective decision making is land release for housing development. To approach this logically, we need to know how much undeveloped land has approval and how much extra land (if any) is needed for a given period. There should be a strategic housing land availability and housing needs assessment with the results made public. After completion of that exercise, a 5-year supply of land could be designated for housing development and rolled forward on a regular basis.
- 4) The sub-division process should be the subject of review. The present situation ties up a lot of unused land indefinitely and much of it reverts to bush with environmental and economic implications. It is an inefficient approach to housing land delivery and contrasts with the way a volume builder would “build out” a site. It is recognized that there are social and cultural considerations here, but it is a very inefficient and unproductive use of land which in a small island like Barbados is obviously in short supply. This issue is, of course, tied up with the future of agriculture and the quantity of land required for that purpose, so some clear answers on those issues would help. The present situation, however, detracts from the quality of the island’s landscape with implications for tourism.
- 5) The concept of “development control” needs to be replaced by that of “development management” where the objective is to promote and assist the best solutions rather than just prevent unsuitable development. Meaningful pre-application discussions can help achieve this.
- 6) Management needs to come into the planning process in a wider sense. The whole process needs to be driven rather than being reactive. Things should not be allowed to drift and disappear in the system. This point does not just apply to decisions delegated to the Chief Town Planner but also to decisions referred to the Minister and to appeals decided by the Minister. Deadlines need to be set and met – this applies to deadlines for applicants as well as for the Town & Country Development Planning Office.
- 7) An improved validation process for applications should prevent incomplete applications entering the system at all. The statutory time limit for the determination of an

application should only run from the time at which a validated application is registered. Environmental Impact Assessments, where needed, should be requested at the outset, as should other supporting technical information. In some cases it could be agreed that a full EIA is not needed but a scoping exercise could identify a list of key issues that need to be addressed. This could save time for everyone involved.

- 8) Statutory consultations with other Government departments and agencies could be speeded up through more use of electronic communications (eg emails) rather than physically transporting files and using typed or hand-written paper communications. It is also noted that, in the absence of a fully operational building standards legislative framework, the planning consultations system is being used by various departments and agencies to deal with detailed environmental and construction standards issues and that this can, in itself, slow the consultation process.
- 9) The arrangements for pre-application discussions should be clearer and more formal. There could be a charge for T&CDPO time taken up in such discussions which could later be deducted from the application fee.
- 10) A “service level agreement” could be implemented between the CTP and other departments/agencies relating to statutory consultations. Data could be published on different bodies’ performance. If consultation responses are not received within the published deadline. The CTP should immediately proceed to determine the application on the basis of existing policy.
- 11) An open and formal approach should be adopted to registering and resolving potential conflicts of interest. Public servants working in the planning and development control system should not carry out private commissions for developers.
- 12) A wider management issue is the need for the empowerment and development of staff across the Civil Service. The traditional structures are very hierarchical and inefficient. Talented young staff could be allowed to use more initiative and given more responsibility. Duplication and repetition should be eradicated. Decisions should be taken at the lowest possible level. Managers should spend more time managing and only work on major cases.
- 13) In the longer term the whole development control process should be computerized. These systems have existed for years elsewhere and we should take advantage of other people’s R&D. It is possible for the progress of applications to be open to view at every stage on the internet and for the progress of individual applications to be tracked through the process. This can extend to publication of all supporting information,

statutory consultation responses, written objections from members of the public and interested parties, planning officers' reports and eventual decisions. In the UK, for instance, the same openness applies to applications and appeals considered by the Planning Inspectorate or Secretary of State. This all goes to help public understanding of the issues and build credibility.

- 14) In revising the legislation, consideration should be given to an amendment granting planning permission automatically if the CTP does not determine it within the statutory time limit. This proposal could, perhaps, apply to specified classes of application which meet published development standards.
- 15) In Barbados at present public involvement and consultation generally only takes place when there is an EIA. All applications should be subject to appropriate neighbour consultation. The fundamental point here is that in a modern democracy the public has a right to know, a right to comment, and a right for their comments to be given proper consideration. A recent court decision (Re Valley View Day Nursery) supports this view with a judgment finding that the T&CDPO was wrong to grant permission for a day care nursery in a residential sub-division without consulting the residents. It is understood that neighbour consultation has been introduced where there is a proposal for change of use in a residential area. This practice should be extended to all applications.
- 16) Greater clarification is needed in relation to EIAs. The Act gives no detailed guidance and there are no EIA Regulations – the process is dealt with only in The Applicants' Handbook & Guide to Town Planning (2002). This lists the classes of development requiring an EIA but also has a broad statement that development outside of these classes may still be subject to an EIA. Screening criteria are not listed so people can be unsure about whether an EIA will be required. The handbook gives guidelines for EIA terms of reference (scoping) and states the requirement for a public meeting but does not mention the consequences of failure to proceed correctly, state how records of the meeting should be kept and whether they should be included in the report, or require public consultation during the process of producing an EIA rather than just at the end. Furthermore, the Handbook is silent on who should review the completed EIA, what criteria should be used to evaluate it, and the rights of both third parties and the applicant.
- 17) Input should be more actively sought from relevant voluntary organizations such as the National Trust. These bodies have experience and expertise. Welcoming their contribution and taking it into consideration will again build confidence.

- 18) Consideration should be given to whether the referral and review processes (Cap. 240 sec.18 and sec.19) could be made more public and independent, perhaps with independent professional planning inspectors or with the assistance of professional staff based in the Ministry. At present there are no approved guidelines for the sec.18 or sec.19 procedures or the conduct of hearings although consultants have submitted a report on these matters. The current custom for sec.18 (applications referred to the Minister) is unsatisfactory in that while the CTP's arguments are shared with the applicant, the report of the person who conducts the hearing is not. Hearings do not take place in public and no report of the proceedings is published. As regards sec.19 (appeals to the Minister) the statement of the CTP's case – which the applicant has to answer – is generally not disclosed to the applicant. This is unfair and conflicts with normally accepted standards of good practice. Again, the report of the person conducting the hearing is not made available to the applicant and there is no public record of the proceedings. While the Minister must (if requested) give the applicant a statement of reasons for the decision, in practice this is not the fully reasoned statement disclosing the matters taken into account that would normally be required in similar review proceedings and often merely repeats the reasons given in the CTP's original decision.
- 19) One aspect of planning that does not generally get a high level of consideration in Barbados is design. It is, however, a key element in place making. It is especially important in heritage areas and there are clear linkages to the attractiveness of the tourism product and therefore the economy. Buildings can be “bad neighbours” just because of their massing and how they sit on a site.
- 20) The present policy on the height of buildings should be reviewed – the maximum height has become the default height and results in an unattractive uniformity in some areas.
- 21) There is limited use of masterplanning in Barbados. It is an urban design approach to major developments and is a meeting point for planning, architecture, landscape architecture and engineering. Failure to adopt a masterplanning approach to major developments can result in expensive retro-fitting at a later date but still fail to achieve an optimal solution.

The main conclusion to be drawn from all this is that modernising planning is important and improvements need to be introduced soon. We need to modernise planning in Barbados for ourselves, for the community, for the economy, and the environment and also to be taken

seriously in the wider world. Again, it is stated that transparency and openness need to be seen as the pre-requisites of modernisation.

The BTPS Prospectus for Action

A. The Wider Issues

At the Symposium and in other discussions a number of wider issues were raised. These were relevant to the matters of transparency and modernisation of planning in Barbados but have far broader implications across the public sector and its operations. Some relate to issues of efficiency and attitudes towards members of the public and applicants for planning permission. The fact that these issues were raised is a cause for concern in that they go to the heart of the matter of what the public sector exists for. Public servants do not work just for their departmental head and they do not work just for the Government. They work for the people of the country. It is therefore important that they treat members of the public respectfully and deal with the matters they raise in a prompt, efficient and unbiased manner. The private sector equivalent of these issues is “customer service” and improved customer service skills in the public sector would help. However, it has to be stressed that the issue in the public sector is far more important because of the nature of public servants’ work and the nature of the relationship that should exist with the public – traditionally called the public service ethos. This prospectus could be summed up as calling for a return to the traditional ethos of public service but with modern transparency and efficiency.

The one element of the wider issues that must be subject to a specific recommendation is access to public information. There was a strong call for a Freedom of Information Act which BTPS supports. Both main political parties have raised this issue in the past but it has never been implemented. We firmly believe that the existence of such an Act would benefit the planning and development process in the island and provide the transparency across the whole spectrum of Government activity that is needed in a modern democratic country. We recommend that Government presents such legislation within the next year and call upon the Opposition to support its passage with constructive input. One outcome of a Freedom of Information Act should be that T&CDPO planning application files will be open to examination by members of the public. This would apply both to files where a decision is still pending and to files where a decision has been made.

B. Developing a Programme for Improvement

BTPS proposes that a Planning Modernisation and Transparency Taskforce should be established. This should include members of the private and public sectors and have an independent chair. The Taskforce would work on a “task and finish” basis with a limited life of twelve months. The Taskforce should be provided with secretarial and research resources to enable it to perform its functions.

The remit of the Taskforce would be to report in detail on the necessary changes to provide Barbados with a modern, transparent and efficient planning system suited to the needs of a Caribbean SIDS at Barbados’ stage of development and going forward to meet those needs for the following twenty years. A necessary part of the Taskforce’s remit would be to compare present practice in Barbados with relevant best practice elsewhere, drawing lessons from both developed countries and Small Island Developing States (SIDS). The Taskforce’s report would cover the necessary:

- administrative changes
- legislative changes
- technological changes
- attitudinal changes
- staffing and skills review

The Taskforce’s report would consider the costs of the proposals and take a realistic approach to determining the aspects that could be delivered in the short term and those that for financial or legislative reasons would take longer. The report would include an implementation plan with clear deadlines.

C. Immediate Actions

Notwithstanding the need for a full and detailed review, BTPS is convinced that there are actions which can be implemented in the short term to provide improved transparency and efficiency. These actions do not require new legislation or significant additional expenditure. BTPS is convinced that if implemented they will deliver early quick gains which will benefit the public as users of the planning system and enhance the credibility of the system and those working in it. These “low hanging fruit” of the improvement process are as follows:

- a) The CTP should publish a weekly list of all applications received and all decision notices issued. The decisions should include those falling to the CTP and decisions by the Minister under sec.18 and sec.19. The list should be released to the press (traditional and electronic) and posted on the T&CDPO website. It is vital that this list should appear consistently and on a weekly basis in order to allow timely interventions by members of the public. For each listed application the information provided should include the application number, the date the application was registered, the location of the site, the applicant's name, and a description of the proposed development. For decisions, the list should also indicate whether an application was approved or refused. This simple measure would take away some of the "mystery" surrounding the planning system and give the opportunity for the public to know what is going on. It would allow members of the public affected by proposals and interested organizations to submit their comments before an application is decided rather than only hearing about proposals "on the grapevine" or when construction starts on site. Significantly, none of the developers who attended the Symposium were adverse to this proposal. In addition, provision should be made for public access (possibly through a dedicated terminal in the T&CDPO reception) to existing computerised systems such as GIS.
- b) Meaningful performance statistics should be published regularly on a quarterly basis.
- c) Following publication of the consultants' 2013 report and a short period of stakeholder consultation, Government should proceed to implement the recommendations for revision of the sec.18 and sec.19 procedures. This report recommends a more pro-active approach to managing the process with deadlines for all parties, it includes a guidance manual which covers the conduct of hearings and site visits and requires disclosure of evidence by all parties. It also recommends training for the persons chairing hearings.
- d) The T&CDPO and all Government departments and agencies involved in the statutory consultation process should use electronic communication (e-mail) as the default means of communicating on planning applications.
- e) It should be the norm and not the exception that the National Trust and other relevant interest groups are consulted on sensitive development proposals, particularly those in heritage areas.
- f) The Chief Town Planner should implement a conflict of interest protocol. This should help avoid accusations of inappropriate behaviour. The protocol should also make it clear that staff of the T&CDPO should not work privately for developers.

- g) An improved validation process should be implemented to ensure that applications are complete before they are registered and that additional information, such as an Environmental Impact Assessment where required, is requested at the outset. These requirements should be applied in a consistent manner.
- h) A clear “streaming” system should be introduced for applications. All simple applications should be determined within the statutory deadline. When an application is identified as “complex” the T&CDPO and the applicant should agree a time-table for the production of any additional information and the periods necessary to evaluate it or obtain external comments. A senior member of staff should be assigned responsibility for each complex application and should be responsible for meeting the agreed timetable and keeping the applicant informed on progress.
- i) The CTP should implement a protocol for neighbour consultation on all planning applications. This would allow immediate neighbours of development proposals to comment within a prescribed time period and to have their views taken into account.
- j) Contact with T&CDPO staff would be made easier by increased use of e-mail and by providing individual voicemail. There should be standard response times which should be monitored. The T&CDPO should also review its procedures for communicating with applicants’ properly appointed agents as this is perceived to be a significant problem, particularly when clients are based overseas. Customer service standards should be published and performance should be monitored.
- k) Consultants working on the new Physical Development Plan must be made aware that a robust evidence base is required and that it needs to be put together in a way that allows it to be updated in the future so that an evidence-based approach can be used in evaluating major development applications. This particularly applies to information on housing demand and housing land availability.

BTPS recommends that the Permanent Secretary and the Chief Town Planner implement all of the measures for immediate action (listed in Section C, above) within six months.