



**TOWN AND COUNTRY PLANNING  
(AMENDMENT) BILL 2016**

**(NO. 11 OF 2016)**





# **TOWN AND COUNTRY PLANNING (AMENDMENT) BILL 2016**

(NO. 11 OF 2016)

A

BILL

Entitled

**AN ACT TO AMEND THE TOWN AND COUNTRY PLANNING ACT  
(CAP. 154).**

**ENACTED BY THE NATIONAL PARLIAMENT OF SOLOMON ISLANDS.**

# TOWN AND COUNTRY PLANNING (AMENDMENT) BILL 2016

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# TOWN AND COUNTRY PLANNING (AMENDMENT) BILL 2016

## PART 1 PRELIMINARY MATTERS

### 1 Short title

This Act may be cited as the *Town and Country Planning (Amendment) Act 2016*.

### 2 Commencement

This Act commences on the day appointed by the Minister by *Gazette* notice.

## PART 2 AMENDMENT OF TOWN AND COUNTRY PLANNING ACT

### 3 Act amended

This Part amends the *Town and Country Planning Act* (Cap. 154) (the “**principal Act**”).

### 4 Short title amended

Section 1 of the principal Act is amended by deleting “*Town and Country Planning Act*” and substituting “*Planning and Development Act*”.

### 5 Section 2 amended

(1) Section 2 of the principal Act is amended by deleting the definitions of “*customary land*”, “*Local Planning Area*” and “*Local Planning Scheme*”.

(2) Section 2 of the principal Act is amended by inserting the following definitions in alphabetical order:

“**City Clerk**” means the City Clerk mentioned in section 42 of the Honiara City Act 1999;

***“class 1 development”*** has the meaning given in section 14(2);

***“class 2 development”*** means a development in an area to which a Local Planning Scheme applies that is identified as a class 2 development in the Local Planning Scheme;

***“class 3 development”*** means:

- (a) in an area to which a Local Planning Scheme applies – a development that is identified as a class 3 development in the Local Planning Scheme; or
- (b) in an area to which no Local Planning Scheme applies – any development other than a class 1 development;

***“class 4 development”*** means a development in an area to which a Local Planning Scheme applies that is identified as a class 4 development in the Local Planning Scheme;

***“Director of Physical Planning”*** means the person in charge of planning matters within the Ministry responsible for the administration of this Act;

***“Honiara City Council”*** means the Honiara City Council established by section 4 of the *Honiara City Act 1999*;

***“Local Planning Scheme”*** means a Local Planning Scheme approved under section 11;

***“Planning Appeals Tribunal”*** means the Tribunal established by section 28A;

***“Provincial Plan”*** means a Provincial Plan approved under section 5A;

***“registered land”*** means land registered under the *Land and Titles Act* (Cap. 133);

***“zone”***, in relation to a local planning scheme, means a classification applied to land to control the types of land uses and developments that may be carried out on that land.

- (3) The definition of “Board” in section 2 of the principal Act is amended by deleting “Town and Country Planning” and substituting “Planning

and Development”.

- (4) The definition of “Minister” in section 2 of the principal Act is amended by deleting “town and country”.

**6 Section 3 amended**

Section 3 of the principal Act is amended by deleting “land” (wherever occurring) and substituting “registered land”.

**7 Section 4 amended**

Section 4 of the principal Act is amended by deleting “land other than customary land” and substituting “registered land”.

**8 Section 5 amended**

- (1) The heading to section 5 of the principal Act is amended by deleting “Town and Country Planning” and substituting “Planning and Development”.

- (2) Section 5(1) of the principal Act is amended by deleting “Town and Country Planning” and substituting “Planning and Development”.

- (3) Section 5 of the principal Act is amended by inserting the following after subsection (4):

“(5) A Board may appoint authorised officers to exercise powers or perform functions of the Board under the direction of the Board.

- (6) At any time during which a Board has not been appointed, the powers and functions of the Board may be exercised and performed by:

(a) in the case of a Province, the Provincial Executive; or

(b) in the case of Honiara, the Honiara City Council.”

**9 New section 5A**

The principal Act is amended by inserting the following after section 5:

**“5A Provincial Plans**

- (1) A Board for a province may approve a Provincial Plan for the



development of land in the province.

(2) The Provincial Plan must include the following matters:

- (a) the location and extent of registered land and customary land in the province;
- (b) an outline of the existing and proposed uses of land in the province, including the location of existing and proposed:
  - (i) roads and other transport infrastructure; and
  - (ii) community settlements, schools and clinics; and
  - (iii) industrial infrastructure; and
  - (iv) areas for agriculture, forestry and mining activities;
- (c) the long-term strategy for development in the province;
- (d) in relation to a provincial plan for Guadalcanal Province, the relationships and links between existing and proposed land uses in the province and in Honiara;
- (e) any other matter relevant to the development of the province that the Board considers relevant or the Minister directs the Board to include in the Plan.

(3) Before approving a Provincial Plan, the Board must:

- (a) consult the Provincial Executive of the province; and
- (b) publish a notice in a newspaper circulating in the province inviting the public to make submissions to the Board about the content of the Plan:
  - (i) in writing, within a specified time; or
  - (ii) orally, at a public meeting of the Board held at a specified time and place at least one week after the publication of the notice; and
- (c) consider any submissions made by the Provincial Executive or a member of the public.

- (4) As soon as practicable after approving the Provincial Plan, the Board must publish a notice in the *Gazette* stating:
  - (a) that the Plan has been approved; and
  - (b) where copies of the Plan can be inspected.
- (5) The Provincial Plan takes effect on the date the notice is published in the *Gazette*.
- (6) The Board may review and modify the Provincial Plan from time to time.
- (7) Subsections (3), (4) and (5) apply to any modifications made to the Plan as a result of a review."

## **10 Section 6 amended**

- (1) Section 6(1)(a), (b), (c), (d) and (f) of the principal Act are amended by inserting "and" at the end.
- (2) Section 6(1) of the principal Act is amended by inserting the following after paragraph (f):
  - "(g) to address any social, environmental or economic issues identified in a study carried out under section 8, including any risks to land uses and developments caused by climate change;
  - (h) to reach a general consensus amongst residents of the area covered by the Local Planning Scheme and other stakeholders on appropriate land use and development policies through a participatory process."
- (3) Section 6(2) of the principal Act is repealed and replaced with the following:
  - "(2) Subject to any regulations about the form and content of Local Planning Schemes, a Local Planning Scheme must:
    - (a) include maps and descriptions to illustrate the proposals included in the Local Planning Scheme with the degree of particularity that is appropriate to the area covered by the Local Planning Scheme; and

- (b) specify the population of the area covered by the Local Planning Scheme; and
- (c) indicate the zones to be applied to the area covered by the Local Planning Scheme, which may include the proposed permissible building and population densities for each zone; and
- (d) state the overall objective of the Local Planning Scheme and the objective of each of the zones in the Scheme; and
- (e) display and describe the existing and proposed land uses, including the location of existing and proposed:
  - (i) roads and other transport infrastructure; and
  - (ii) settlements, schools and clinics; and
  - (iii) industrial infrastructure; and
  - (iv) areas for agriculture, forestry and mining activities; and
- (f) for each zone in the Local Planning Scheme, classify types of development as a class 1, 2, 3 or 4 development; and
- (g) describe how the Local Planning Scheme gives effect to any Provincial Plan in place."

**11 Section 7 replaced**

Section 7 of the principal Act is repealed and replaced with the following:

**"7 Areas for which Local Planning Scheme may be prepared**

A Local Planning Scheme may be prepared for any area of registered land."

**12 Section 8 amended**

- (1) The heading to section 8 of the principal Act is repealed and replaced with the following:

**"8 Study before preparing Local Planning Scheme"**

- (2) Section 8(1) of the principal Act is repealed and replaced with the following:

"(1) For the purpose of preparing a Local Planning Scheme for an area, the Board must first institute a study to examine the matters that may affect the development of the area or the planning of its development."

- (3) Section 8(2) of the principal Act is amended by repealing the opening words from "Without prejudice" to "the following" and replacing them with the following:

"Without limiting subsection (1), the following matters must be examined in the study:"

- (4) Section 8(2)(a) of the principal Act is repealed and replaced with the following:

"(a) the principal physical, environmental, social and economic characteristics of the area (including the principal purposes for which land is used and the factors that may affect how the land can be used) and, so far as they may be expected to affect the area, the principal physical, environmental, social and economic characteristics of any neighbouring areas;"

- (5) Section 8(2) of the principal Act is amended by inserting the following after paragraph (c):

"(ca) the information and data available in relation to the impact of climate change and natural hazards on the area;"

- (6) Section 8(2)(f) of the principal Act is amended by deleting "changes already" and substituting "future land use needs or changes".

- (7) Section 8(2)(b), (c) and (f) of the principal Act are amended by deleting "Local Planning Area" (wherever occurring) and substituting "area".

**13 Section 9 amended**

Section 9(1) of the principal Act is amended by deleting "Local Planning Area" and substituting "area".

**14 Section 12 amended**

Section 12(1) of the principal Act is amended by:

- (a) deleting “for any Local Planning Area”; and
- (b) deleting “that Local Planning Area” and substituting “the area covered by the Local Planning Scheme”.

**15 Section 13 repealed and replaced**

Section 13 of the principal Act is repealed and replaced with the following:

**“13 Application of Part**

This Part applies to all registered land.”

**16 Section 14 amended**

- (1) Section 14(1) of the principal Act is amended by deleting all the words from “that is” to “Part apply” and substituting “other than a class 1 development”.

- (2) Section 14(2) of the principal Act is amended by:

- (a) inserting “the subdivision of land” after “means”; and
- (b) deleting all the words from “that the following” to “that is to say” and substituting “any of the following (a **“class 1 development”**); and
- (c) inserting “unless a Local Planning Scheme provides otherwise” after “forestry” in paragraph (e); and
- (d) repealing paragraph (f) and replacing it with the following:
  - “(f) any use or development of land identified in a Local Planning Scheme or prescribed by regulation as a class 1 development.”

**17 Section 15 amended**

- (1) Section 15(2) of the principal Act is amended by:

- (a) inserting “and” at the end of paragraphs (a), (b) and (d); and

(b) inserting the following after paragraph (d):

“(e) if the person is not the registered owner of the land, include a letter from each registered owner authorising the development; and

(f) include any additional information that is reasonably necessary to enable the Board to assess the application in relation to the matters listed in section 16(1).”

(2) Section 15 of the principal Act is amended by inserting the following after subsection (4):

“(5) A person may not apply for permission to develop land if the proposed development is a class 4 development.”

## **18 New section 15A**

The principal Act is amended by inserting the following after section 15:

### **“15A Requirement to publicise application**

(1) As soon as practicable after the Board receives an application for permission to develop land, the Board must publicise the application as required by the regulations.

(2) The Board must not decide the application under section 16 until 28 days after all the requirements to publicise the application have been met.

(3) The Board's decision on the application is not invalidated only because it failed to meet all the requirements to publicise the application if:

(a) the Board substantively complied with the requirements to publicise the application; and

(b) the Board believed in good faith that all the requirements to publicise the application had been met.”

## **19 Repeal and replacement of section 16**

Section 16 of the principal Act is repealed and replaced with the

following:

**"16 Power of Board to deal with application**

- (1) Subject to subsection (5), the Board must consider the following matters before deciding an application for permission to develop land:
  - (a) whether the proposed development is consistent with any relevant Provincial Plan, Local Planning Scheme or other applicable development strategy of the national or provincial government;
  - (b) whether granting permission for the development would be consistent with the regulations and any directions given by the Minister under section 5;
  - (c) whether the proposed development is consistent with any applicable law;
  - (d) any submissions received from anyone other than the applicant in relation to the application;
  - (e) whether the land is susceptible, or likely to become susceptible, to any hazards to health or safety, including landslip, soil instability, soil erosion, flooding, storm surge, tsunamis, fire, pollution and contamination, and whether the application outlines measures to adequately respond to those hazards;
  - (f) whether the proposed development is appropriate in relation to the following:
    - (i) the existing condition and use of the land;
    - (ii) the existing condition and use of adjoining land;
    - (iii) the impact of the development on anything of heritage, architectural or scientific value;
    - (iv) traffic safety, including the proposed points of entry and exit into passing traffic and the estimated speed of passing traffic;
    - (v) any easements attached to the land;

- (g) whether the proposed development will be supported by adequate infrastructure and services, and, if it will be necessary to make changes to existing infrastructure and services, whether this will disadvantage existing users;
- (h) whether the proposal for the development makes adequate provision, if appropriate, for landscaping;
- (i) the effect of the proposed development on the health, safety and social wellbeing of the general public;
- (j) the environmental impact of the proposed development, including:
  - (i) the likely emission of pollutants from the proposed development;
  - (ii) the energy required to support the development and whether it will be generated from renewable sources;
  - (iii) the impact of the development on flora and fauna.
- (2) In assessing the proposed development in relation to the matters mentioned in subsection (1), the Board must consider the design, location, size and appearance of the proposed development.
- (3) Subject to subsection (5), having considered the application, the Board may:
  - (a) grant permission for the proposed development; or
  - (b) refuse to grant permission for the proposed development.
- (4) A permission to develop land is subject to the following conditions:
  - (a) any conditions prescribed by the regulations;
  - (b) the conditions of any development consent issued under Part III of the *Environment Act 1998* for the development;
  - (c) any additional conditions the Board considers appropriate and specifies in the permission, including conditions:
    - (i) regulating the development of other land under the control of the applicant, or requiring work to be carried out on



such land, if it is necessary or desirable to do so for the purposes of the development authorised by the permission; or

- (ii) limiting the period of the permission and requiring the removal of buildings or equipment and the rehabilitation of the land before the expiry of the period.
- (5) The Board must not consider an application, or grant permission, for:
- (a) a class 4 development; or
  - (b) a development that is a prescribed development under Part III of the *Environment Act 1998*, unless the application is accompanied by a copy of the development consent or exemption from the requirement to obtain development consent issued under that Act.
- (6) The Board may delegate its power under subsection (3) to determine an application for a class 2 development to:
- (a) for a class 2 development within Honiara City – the City Clerk (or his or her nominee); or
  - (b) for any other class 2 development– the Provincial Secretary of the province in which the proposed development will take place (or his or her nominee).
- (7) A person who determines an application under subsection (6) must submit a written report detailing the outcome of the application, including any conditions imposed on the development, to be tabled at the next meeting of the Board.”

## **20 Section 17 amended**

- (1) Section 17(1) of the principal Act is repealed and replaced with the following:
- “(1) A permission granted under section 16 lapses if the development has not been substantially completed to the satisfaction of the Board within the following period after the permission is granted:
- (a) for a class 2 development – 12 months;

- (b) for a class 3 development – 3 years.
- (1A) For subsection (1), the Board must determine whether a development is substantially completed on reasonable grounds.
- (1B) However, the Board may extend a permission for a period not exceeding the original period of the permission if the holder of the permission applies for the extension at least 28 days before the expiry of the permission."
- (2) Section 17(2) of the principal Act is amended by deleting "Subject to subsection (1), any" and substituting "An".

## **21 Section 19 amended**

- (1) The heading to section 19 of the principal Act is repealed and replaced with the following:

### **"19 Appeals"**

- (2) Section 19(1) of the principal Act is amended by deleting all the words from "Minister" to "Minister" and substituting "Planning Appeals Tribunal".
- (3) Section 19(2) of the principal Act is amended by:
  - (a) deleting "Minister" and substituting "Planning Appeals Tribunal"; and
  - (b) deleting "him that" in paragraph (b) and substituting "the Tribunal that"; and
  - (c) deleting "him under this Act" in paragraph (b) and substituting "the Minister under this Act".
- (4) Section 19(3) of the principal Act is amended by:
  - (a) deleting "Minister" and substituting "Planning Appeals Tribunal, having applied the requirements of section 16 in relation to the decision,"; and
  - (b) deleting "him" and substituting "the Tribunal".
- (5) Section 19(5) of the principal Act is amended by:

- (a) deleting "Minister" and substituting "Planning Appeals Tribunal"; and
- (b) deleting "to him".

**22 New section 20A**

The principal Act is amended by inserting the following after section 20:

**"20A Modification of permission on application**

- (1) A person who has been granted permission to develop land under section 16 may apply to the Board for a modification of the permission, provided that the proposed modification would not:
  - (a) change the use of the land; or
  - (b) increase the floor space of any building approved under the original permission by more than 50%.
- (2) The Board may only approve the application if the development, as modified, continues to meet the requirements of this Act."

**23 Section 21 amended**

- (1) The heading to section 21 of the principal Act is repealed and replaced with the following:

**"21 Revocation and modification of permission on Board's initiative"**

- (2) Section 21(1) of the principal Act is amended by deleting all the words from "Provided" to "expedient".
- (3) Section 21(2) of the principal Act is repealed and replaced with the following:
  - "(2) The Board must give written notice of the revocation or modification to the occupier of the land and any other person who has an interest in the land or permission."
- (4) Section 21(4) of the principal Act is amended by:
  - (a) deleting "by an Order made"; and

- (b) deleting “the making or the Order” and substituting “receiving written notice of the revocation or modification”.

**24           Section 22 amended**

Section 22 of the principal Act is amended by inserting the following after subsection (4):

- “(5) The Board must serve an enforcement notice as required by the regulations.”

**25           Section 27 amended**

- (1) Section 27(2) of the principal Act is repealed.
- (2) Section 27(3)(b) of the principal Act is repealed.
- (3) Section 27(4) of the principal Act is repealed.
- (4) Section 27(5) of the principal Act is amended by inserting “or topping or lopping of parts of trees that overhang a property boundary (unless such topping or lopping would kill the tree)” after “Act,”.
- (5) Section 27 of the principal Act is amended by inserting the following after subsection (6):
  - “(7) The owner or occupier of land on which a tree that is subject to a tree preservation order is located may appeal to the Planning Appeals Tribunal against the making of the order, and section 19 applies to the appeal as if it were an appeal in relation to a development.
  - (8) The owner or occupier of land on which a tree that is subject to a tree preservation order is located may apply to the Board for revocation of the order under section 16, as if the application for revocation were an application for permission for a class 3 development.”

**26           Section 28 amended**

- (1) The heading to section 28 of the principal Act is repealed and replaced with the following:

**“28           Nuisance orders”**

- (2) Section 28 of the principal Act is repealed and replaced with the following:

- “(1) The Board may make an order (a **“nuisance order”**) requiring the owner or occupier of land to remove or mitigate a hazard or nuisance, or potential hazard or nuisance, on the land.
- (1A) Without limiting subsection (1), the Board may make a nuisance order in relation to any of the following:
- (a) excessive noise;
  - (b) pollution;
  - (c) pests;
  - (d) rubbish disposal;
  - (e) antisocial behaviour;
  - (f) the maintenance of land or buildings.”
- (3) Section 28(2) of the principal Act is amended by deleting “notice served under this section” and substituting “nuisance order”.

**27 New section 28A**

The principal Act is amended by inserting the following after section 28:

**“28A Planning Appeals Tribunal**

- (1) The Planning Appeals Tribunal is established.
- (2) The Tribunal consists of the following permanent members:
  - (a) a legal practitioner of at least 10 years standing, appointed by the Minister, who is the chairperson of the Tribunal;
  - (b) the Director of Physical Planning, who is the Secretary to the Tribunal.
- (3) In addition, for the hearing of a particular appeal, the Tribunal consists of the following temporary members:
  - (a) for an appeal relating to a development or matter within Honiara City – the City Clerk; or

- (b) for an appeal relating to any other development or matter – the Provincial Secretary of the province in which the development (or proposed development) is located;
  - (c) up to 2 other members with expertise relevant to the appeal appointed by Gazette notice by the Director of Physical Planning.
- (4) The permanent and temporary members of the Tribunal are entitled to the remuneration prescribed by the regulations.
  - (5) Subject to this Act, the Tribunal may determine its own procedures and rules."

## **28        New Part IVA**

The principal Act is amended by inserting the following after new section 28A:

### **"PART IVA        EXISTING USE RIGHTS**

#### **28B        Existing permission to develop land**

- (1) This section applies in relation to a permission to develop land granted under section 16 that is in force immediately before the approval or commencement of a Local Planning Scheme (an "***existing permission***").
- (2) The approval or commencement does not affect or alter the validity of the existing permission.
- (3) If the Local Planning Scheme defines the development as a class 4 development, any application to modify the existing permission is taken to be an application for permission for a class 4 development.
- (4) However, the application to modify the existing permission is taken to be an application for permission for a class 3 development if the proposed modification will not result in:
  - (a) a significant intensification or alteration of the development, in the opinion of the Board; or
  - (b) an increase in the floor space of any building approved under

the existing permission by more than 50%.

**28C Existing developments not requiring permission**

(1) In this section:

*“amendment date”* means the date the *Town and Country Planning (Amendment) Act 2016* commences.

(2) This section applies to a development:

- (a) on land to which Part IV did not apply immediately before the amendment date; and
- (b) that had commenced but not been completed immediately before the amendment date.

(3) Part IV does not apply to the development if the development is substantially completed to the satisfaction of the Board within the following period after the amendment date:

- (a) for a class 2 development – 12 months;
- (b) for a class 3 development – 3 years.

(4) For subsection (3), the Board must determine whether a development is substantially completed on reasonable grounds.”

**29 Section 33 amended**

(1) Section 33(1) of the principal Act is amended by:

(a) inserting the following after paragraph (b):

“(ba) prescribe types of development as class 1 development, either generally or in relation to a specific area of land;”; and

(b) deleting “Minister,” in paragraph (c) and substituting “Planning Appeals Tribunal”.

(2) Section 33(2) of the principal Act is repealed.

**30 Schedule amended**

(1) Clause 1(1) and (2) of the Schedule to the principal Act are repealed

and replaced with the following:

“(1) In this Schedule, “**appointing authority**” means:

- (a) in the case of the Board for a Province, the Provincial Assembly of the Province; or
- (b) in the case of the Board for Honiara, the Honiara City Council.

(1A) Each Board consists of:

- (a) a Chairman, who is:
  - (i) in the case of the Board for a Province, the Provincial Secretary of the Province; or
  - (ii) in the case of the Board for Honiara, the City Clerk; and
- (b) the person in charge of planning matters for the appointing authority; and
- (c) at least 4 but not more than 6 other members appointed by the Minister acting in accordance with the advice of the appointing authority, including:
  - (i) an employee of the Solomon Islands Water Authority established by section 5 of the *Solomon Islands Water Authority Act* (Cap. 130); and
  - (ii) an employee of the Solomon Islands Electricity Authority established by section 3 of the *Electricity Act* (Cap. 128); and
  - (iii) an officer of the Ministry responsible for the environment; and
  - (iv) an officer of the Ministry responsible for infrastructure.

(2) If, in the case of a particular Province, it is not possible to appoint a person mentioned in subclause (1A)(c), the Minister must appoint a person with expertise in the relevant field.”.

(2) Clause 1 of the Schedule to the principal Act is amended by inserting the following after subclause (3):



- (4) If the composition of a Board does not meet the requirements of subclause (1A) on the commencement of the *Town and Country Planning (Amendment) Act 2016*, the Minister must revoke and appoint new members as necessary to ensure the composition of the Board meets the requirements of subclause (1A) within 12 months after the commencement of that Act."
- (3) Clause 2 of the Schedule to the principal Act is repealed and replaced with the following:
- "2 Secretary to Board**
- (1) The appointing authority must appoint a person to be the Secretary to the Board who holds a tertiary qualification in town or urban or physical planning, or urban design.
- (2) The Secretary is not a member of the Board."
- (4) Clause 5 of the Schedule to the principal Act is repealed and replaced with the following:

**"5 Authentication of decisions**

The decisions of the Board must be authenticated:

- (a) by the signature of the Chairman or, if the act or decision was made at a meeting at which an acting Chairman presided, the acting Chairman; and
- (b) only after the minutes recording the decision have been confirmed by the Board."

**31 Amendments to penalties**

The principal Act is amended as specified in the following table:

<i>Provision amended</i>	<i>Delete</i>	<i>Substitute</i>
Section 24(3)	five hundred dollars	5000 penalty units
	fifty dollars	500 penalty units
Section 25(1)	five hundred dollars	50,000 penalty units

	fifty dollars	1000 penalty units
Section 26(3)	five hundred dollars	500 penalty units for each day the development continues
Section 27(6)	five hundred dollars and, in case of a continuing offence, to a further fine not exceeding fifty dollars for every day after the first day during which the contravention is so continued	50,000 penalty units
Section 30(3)	fifty dollars	1000 penalty units
Section 30(4)	five hundred dollars or to imprisonment for a term not exceeding three months	50,000 penalty units
Section 32	fifty dollars	1000 penalty units

### **PART 3                      AMENDMENT OF SUBSIDIARY LEGISLATION**

#### **32                      Amendment of Town and Country Planning (Tree Preservation) (Honiara) Regulations**

The definition of "Board" in regulation 2 of the *Town and Country Planning (Tree Preservation) (Honiara) Regulations* (LN 97/1986) are amended by deleting "Town and Country Planning" and substituting "Planning and Development".

#### **33                      Revocation of declarations of Local Planning Areas**

Each declaration of a Local Planning Area made under section 7 of

the principal Act and in force immediately before the commencement of this Act is revoked.

## **TOWN AND COUNTRY PLANNING (AMENDMENT) BILL 2016**

### **OBJECTS AND REASONS**

The Town and Country Planning Act was passed shortly after independence, and despite minor amendments since that time, it has not kept up pace with modern-day planning practices. This Bill seeks to make various reforms, including changing the title of the Act to the more relevant terminology of Planning and Development.

This Bill replaces the unnecessarily separate concepts of Local Planning Areas and Control of Development Areas with a provision stating that the Act will apply to all registered land. Developments will be categorised into four classes, for exempt, simple, complex and prohibited developments, with the aim of providing greater clarity and to allow Boards to delegate responsibilities to officers to assess the simple applications. Provisions requiring the Board to publicise applications and consider public comments are proposed to be introduced. A Planning Appeal Tribunal is proposed, as a means of improving the process whereby an applicant can appeal against the Board's refusal of an application or the conditions of planning permission. Provisions relating to the lapsing of permission, the right to apply for an extension of time, and existing use rights are clarified and improved. Boards will have wider powers to take action in relation to land use nuisances.

The lack of appointed Boards in some provinces is addressed by a provision allowing the Provincial Executive or City Council to assume responsibilities of a Board. Board membership will be more strictly defined, with a requirement that members be drawn from relevant government and statutory authorities, and the Secretary must be a qualified planner. Boards will be permitted to prepare Provincial Plans, and must also consider climate change and other environmental hazards when preparing local planning schemes.

The details of the proposed amendments are set out in the Explanatory Memorandum to the Bill.

HON. MOSES GARU  
MINISTER FOR LANDS, HOUSING AND SURVEY

## **TOWN AND COUNTRY PLANNING (AMENDMENT) BILL 2016**

### **EXPLANATORY MEMORANDUM**

Clause 1 provides for the short title.

Clause 2 provides for the commencement provisions.

Clause 3 provides for the amendment of the Town and Country Planning Act.

Clause 4 proposes to rename the Act: the Planning and Development Act.

Clause 5 amends the definitions used in the Act.

Clauses 6, 7, 11 and 15 together seek to change the areas to which the Act applies, from certain areas of registered land as described in a schedule to the Act, to instead apply to all registered land in the country.

Clause 8 proposes to change the title of Town and Country Planning Boards to Planning and Development Boards, and also allow the Board to appoint authorised officers to act on the Board's decisions. Furthermore, this Clause would allow the Provincial Executive or Honiara City Council, as the case may be, to act on its behalf if there is no Board appointed.

Clause 9 proposes to allow a Provincial Board to prepare a Provincial Plan, and then after consulting the Provincial Executive and the general public, to approve such a plan.

Clause 10 proposes to introduce additional purposes of a local planning scheme, and change the matters that need to be included in a local planning scheme, including the classification of types of development as class 1, 2, 3 or 4 developments.

Clause 12 proposes to change the manner in which a study is carried out, and the matters that the Board needs to consider in that study.

Clauses 13 and 14 allow for a local planning scheme to be prepared for any area of registered land and reviewed for that same area, instead of being restricted to local planning areas.

Clause 16 proposes to change the way in which developments exempt from

requiring permission under the Act are defined, and proposes to label these "Class 1 developments", which may also be defined as such in a local planning scheme or in Regulations.

Clause 17 allows a person other than the land owner to submit an application with the owner's written permission, and to submit any other information which is not prescribed but which may assist the Board to make an informed assessment of the application.

Clause 18 proposes to introduce new requirements for applications to be publicised, in the interests of transparency. Also under this Clause, the Board would not be permitted to make a decision on the application until after the publication requirements are met.

Clause 19 sets out a comprehensive range of considerations a Board must make before making a decision on an application for permission to develop land, including consideration of any public submissions made.

Clause 20 proposes to change the provisions relating to when an approval lapses, from the provision that a development must commence within 12 months, to a provision that development must be substantially completed, within 12 months or 3 years for Class 2 and 3 developments respectively.

Clauses 21 and 27 propose to change the appeals process, with the power to determine appeals shifted from the Minister to a new Planning Appeals Tribunal, consisting of a legal practitioner, the Director of Physical Planning, and other temporary members.

Clause 22 proposes to allow a person who has the Board's permission to develop land to apply to the Board for minor changes to that permission.

Clause 23 proposes to change the manner in which the Board can take the initiative to modify a permission previously granted, by removing the need for an Order to be made by the Minister to effect the modification.

Clause 24 establishes that Regulations can specify how an Enforcement Notice is to be served.

Clause 25 seeks to amend the provisions relating to Tree Preservation Orders, by removing the need for the Minister to confirm an Order before it is made, and also clarifies that such Orders cannot apply to the topping or lopping of parts of a tree that overhang a property boundary. The provision whereby the owner or occupier of the land has the right to make

representations before an Order becomes effective is replaced with such person's right of appeal to the Tribunal against the Order, and also the right to apply to the Board for the Order to be revoked.

Clause 26 seeks to broaden the Board's power to issue notices relating to amenity issues ("derelict land") to instead allow the Board to issue a nuisance order which can cover a wider range of land use issues.

Clause 28 proposes to introduce new provisions clarifying the lawful status of existing developments, particularly those developments that existed prior to the commencement of the amendments to the Act.

Clause 30 seeks to amend the schedule to the Act by stating that particular members of a Board must be representatives of government and statutory authorities, thus encouraging a professional and informed approach to assessments and decision-making. Furthermore, the Board Secretary will be required to be a qualified planner, and this Clause clarifies that Board decisions will be authenticated by the Chairman's signature after the Minutes are confirmed.

Clause 31 seeks to amend the penalties that apply under the Act.

Clause 32 changes the title of a Board referred to in the Town and Country Planning (Tree Preservation) (Honiara) Regulations to reflect the proposed title.

Clause 33 seeks to revoke the declaration of Local Planning Areas, as the Act will instead apply to all registered land.

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