

Conservation Areas Act 1978

INDEPENDENT STATE OF PAPUA NEW GUINEA.

Conservation Areas Act 1978,

Being an Act—

(a) to provide for the preservation of the environment and of the national cultural inheritance by—

(i) the conservation of sites and areas having particular biological, topographical, geological, historic, scientific or social importance; and

(ii) the management of those sites and areas,

in accordance with the fourth goals of the National Goals and Directive Principles; and

(b) to give effect to those Goals and Principles under Section 25 of the *Constitution*; and

(c) to establish a National Conservation Council;

and for related purposes.

PART I.—PRELIMINARY.

1. Compliance with Constitutional requirements.

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution*, namely—

(a) the freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and

(b) the right to privacy conferred by Section 49 of the *Constitution*,

is a law made for that purpose, taking into account the National Goals and the Basic Social Obligations, particularly the fourth goal of the National Goals and Directive Principles entitled "natural resources and environment".

(2) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this law relates to a matter of national interest.

(3) For the purposes of Section 53 (*protection from unjust deprivation of property*) of the *Constitution*, the purpose of the preservation of the environment is a public purpose.

2. Interpretation.

In this Act, unless the contrary intention appears—

"area" includes—

- (a) a site, place or region; and
- (b) a building or other structure including equipment, furniture, fittings and articles associated with or connected with the building or other structure; and
- (c) in relation to the conservation of an area—the immediate surroundings of the area;

"authority" includes any Minister, Departmental Head, head of a statutory authority or body, member of a Provincial Government, Local-level Government or Local-level Government Authority;

"the Chairman" means the Chairman of the Council;

"conservation area" means an area declared to be a conservation area under Section 17(1);

"Council" means the National Conservation Council established under Section 4;

"the Deputy Chairman" means the Deputy Chairman of the Council;

"environment" means the total stock of physical, biological and social resources available to man and other species and the ecosystems of which they are a part;

"Local-level Government" means any Local-level Government established under the Organic Law on Provincial Governments and Local-level Governments;

"management committee" means a Conservation Area Management Committee established under Section 25(1);

"management plan" means a plan prepared under Section 27(1)(d);

"member" means a member of the Council;

"public purposes" means—

- (a) the purposes defined as public purposes in Section 2 of the *Land Act 1996*; and
- (c) the purposes expressed in Section 3(a)(iii) of the *National Land Registration Act 1977*; and

(d) the purpose of the preservation of the environment;

"ranger" means a person appointed as a ranger under Section 38;

"the Register" means the Register of of conservation areas kept under Section 18;

"this Act" includes the regulations.

3. Application to the State.

This Act binds the State.

PART II.—NATIONAL CONSERVATION COUNCIL.

4. Constitution of National Conservation Council.

(1) A National Conservation Council is hereby established.

(2) The Council shall consist of not less than five members, who shall—

(a) have technical or special knowledge in relation to matters likely to be before the Council; and

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(c) be appointed at the pleasure of the Minister.

5. Chairman and Deputy Chairman.

(1) The Minister shall appoint one member to be the Chairman and another member to be the Deputy Chairman.

(2) In the event of the absence of the Chairman, or his inability or unavailability to act, the Deputy Chairman has all the powers and functions of the Chairman.

6. Meetings of the Council.

(1) Meetings of the Council shall be held at such times and places as the Chairman determines.

(2) At a meeting of the Council—

(a) half of the number of members of the Council is a quorum; and

(b) the Chairman, or in his absence the Deputy Chairman, shall preside; and

(c) all questions shall be decided by the majority of votes of the members present and voting; and

(d) the member presiding has a deliberative and, in the event of an equality of votes on a matter, also a casting vote.

(3) The Council shall cause minutes of its meetings to be recorded and kept.

(4) Subject to this Act, the procedures of the Council are as determined by the Council.

(5) The Office of Environment and Conservation shall act as secretariat to the Council.

7. Validity of proceedings.

No act or proceeding of the Council, and no act done by any person acting as Chairman or Deputy Chairman shall be invalidated by reason of a vacancy or vacancies in the number of members of the Council.

8. Disclosure of interest.

(1) Where a member has a direct or indirect financial interest otherwise than as a member of and in common with the other members of an incorporated company consisting of more than 25 persons and of which he is not a director, in a matter being considered or about to be considered by the Council he shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Council.

(2) In Subsection (1), "indirect financial interest" includes an interest of a spouse or child.

(3) Where a member is a member of an organization that has a direct or indirect financial or other special interest in a matter being considered or about to be considered by the Council, he shall, as soon as possible after the relevant facts have come to his knowledge, disclose his membership of that organization and the nature of that interest at a meeting of the Council.

(4) A disclosure under this section shall be recorded in the minutes of the Council.

(5) The Council may, on being informed of the interest of a member in a matter being considered or about to be considered by it, by resolution in which that member shall not vote, resolve that that member take no further part in the proceedings of the Council in respect of that matter.

9. Functions of the Council.

The functions of the Council are—

- (a) to furnish advice to the Minister on matters relating to conservation areas, including action to conserve and improve conservation areas; and
- (b) to establish the criteria for areas to be recommended as conservation areas; and
- (c) to consider any proposals for development affecting, or in the vicinity of, a conservation area or proposed conservation area; and
- (d) to advise the Minister on the formulation of rules applicable to conservation areas, and on the administration and control of conservation areas; and
- (e) to advise the Minister on the formulation of regulations; and
- (f) to encourage public interest in and knowledge of conservation areas and conservation generally; and
- (g) to advise the Minister on any matter referred to it by the Minister.

10. Powers of the Council.

(1) The Council may do all things that are necessary or convenient to be done for or in connection with the performance of its functions, and, in particular, has the power to require details to be given to it of any development proposals in or in close proximity to a conservation area that, in its opinion, may injure or detrimentally affect a conservation area.

(2) In the exercise of its powers under Subsection (1), the Council may, in respect of a development proposal, obtain a report from the management committee concerned in the area of that proposal.

11. Annual reports of the Council.

The Council shall as soon as practicable after the end of each year, furnish to the Minister a report on the operations of the Council during that year.

PART III.—CONSERVATION AREAS.

12. Recommendation to declare conservation area.

(1) Where the Minister is of the opinion that an area has particular biological, topographical, geological, historical, scientific or social significance or other special value for the present community or for future generations, he may cause to be prepared a recommendation that the area be declared a conservation area.

(2) A person, group of persons or authority may make a written request to the Minister to give consideration to making a recommendation that an area be declared a conservation area.

(3) A recommendation prepared under Subsection (1) may include—

(a) a description of the area including the boundaries; and

(b) an inventory of—

(i) persons living in the area; and

(ii) land ownership within the area; and

(iii) use to which land is put within the area; and

(iv) features of special significance found within the area; and

(c) any other factors contributing to the need for conservation of the area.

(4) A recommendation prepared under Subsection (1) shall be available for inspection at all reasonable times at—

(a) the Office of Environment and Conservation; and

(b) the office of the Provincial Government of the province in which the area the subject of the recommendation is situated; and

(c) the office of the Local-level Government in the area the subject of the recommendation.

13. Duties of Minister concerning recommendation.

(1) Where the Minister has caused a recommendation under Section 12(1) to be prepared, he shall give notice of the recommendation in accordance with Section 37.

(2) A notice under Subsection (1) shall state—

(a) a description of the area including the boundaries; and

(b) that there has been prepared a recommendation that the area be declared a conservation area; and

(c) the offices at which the recommendation is available for inspection; and

(d) that any person may make representation to the Minister within 90 days of compliance by the Minister with the provisions of Section 37.

14. Person may make representation to the Minister.

(1) Where a recommendation has been made under Section 12(1), any person may, within 90 days of compliance by the Minister with the provisions of Section 37, make a written representation to the Minister.

(2) On receipt of a representation under Subsection (1) the Minister may invite the person making the representation—

(a) to provide further information; or

(b) to enter into consultation with him.

15. Submission to National Executive Council.

(1) Where the Minister has prepared a recommendation under Section 12(1), he shall—

(a) after the expiry of 90 days following compliance by him with the provisions of Section 37; and

(b) after consideration of any representation made to and consultation with him under Section 14,

make a submission to the National Executive Council.

(2) A submission made under Subsection (1) shall contain—

(a) a copy of the recommendation made under Section 12(1); and

(b) a summary of any representations made under Section 14(1); and

(c) a final recommendation.

(3) A summary under Subsection (2)(b) shall be made available for public inspection at all reasonable times at the offices specified in Section 12(4).

16. Decision.

(1) After consideration of a submission under Section 15, the National Executive Council shall—

(a) decide that the area the subject of the submission be declared a conservation area and advise the Head of State accordingly; or

(b) decide that the area the subject of the submission not be declared a conservation area.

(2) Notice of a decision under Subsection (1)(b) shall be given in accordance with Section 37.

17. Declaration of conservation area.

(1) The Head of State, acting on advice given under Section 16(1)(a), may declare an area to be a conservation area.

(2) Notice of a declaration made under Subsection (1) shall be given in accordance with Section 37.

PART IV.—REGISTER OF CONSERVATION AREAS.

18. Establishment of Register of conservation areas.

The Minister shall open and keep a register to be known as the Register of conservation areas.

19. Entry in register on declaration.

Where an area is declared to be a conservation area, the Minister shall immediately register as a conservation area the area the subject of the declaration.

20. Effect of registration.

(1) An entry in the Register is conclusive evidence that an area is a conservation area.

(2) Where it is necessary to prove that an area is or is not a conservation area, the production of the Register, or any extract from it purporting to be certified by the Minister, is admissible and is sufficient proof of such matters.

21. Search.

A person may at all reasonable times inspect the Register and make a copy of or take an extract from an entry in the Register.

22. Minister may issue certificate.

The Minister may issue a certificate in the prescribed form certifying that an area described in the certificate has been registered in the Register.

23. Certificate evidence of registration.

A certificate issued by the Minister under Section 22 shall be received in all courts of justice as evidence of the particulars contained in it.

24. Rectification of Register.

The Minister—

(a) may, on such evidence as seems to him sufficient; or

(b) shall, on the order of the National Court,

correct errors in the Register and in certificates and copies of entries and supply entries omitted to be made under this Act.

PART V.—CONSERVATION AREA MANAGEMENT COMMITTEES.

25. Conservation Area Management Committees.

(1) Where an area is declared to be a conservation area, the Minister shall, as soon as is practicable, establish a Conservation Area Management Committee for that conservation area.

(2) A management committee established under Subsection (1) shall consist of not less than three members appointed by the Minister by notice in the National Gazette.

(3) Membership of a management committee shall reflect the interests of—

(a) the owners of the land within the conservation area; and

(b) the Provincial Government, Local-level Government or Local-level Government Authority in the province or areas within which the conservation area is situated.

(4) The Constitution of a management committee shall be as determined by the management committee and approved by the Council.

(5) Where the declaration of a conservation area is revoked, the management committee for that area shall cease to function.

26. Procedures of a management committee.

(1) A management committee shall meet not less than once in every three months.

(2) Subject to this Act and to any direction given by the Minister, a management committee shall determine its own procedure.

27. Functions of a management committee.

(1) The functions of a management committee in respect of the conservation area for which it is established are—

(a) to manage the conservation area; and

(b) to make recommendations to the Minister on the making of rules applicable within the conservation area; and

(c) to advise the Minister in respect of co-ordination of development within the conservation area; and

(d) to prepare a management plan for the conservation area outlining the manner in which land use will be managed and features of special significance conserved; and

(e) to direct the work of rangers; and

(f) such other functions as are determined by the Minister.

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(2) A management plan prepared under Subsection (1)(d) shall be subject to approval by the Minister who, in his consideration of such a management plan, shall have regard to physical planning considerations.

28. Rules for conservation areas.

(1) Subject to Subsection (2), the Minister may, after consultation with—

(a) the management committee; and

(b) the Council; and

(c) as far as practicable the owners of the land within the conservation area; and

(d) the relevant authority,

make rules for the protection, development, land use activities, management and control of the conservation area.

(2) A person who, without reasonable excuse (proof of which is on him) contravenes or fails to comply with a provision of a rule made under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K500.00.

Default penalty: A fine not exceeding K200.00.

29. Powers of a management committee.

Subject to this Part, a management committee has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

30. Annual reports of a management committee.

A management committee shall, as soon as practicable after the end of each year, furnish to the Minister a report on its operations during that year.

Part VI.—DEVELOPMENT IN CONSERVATION AREAS.

31. Restriction on development or alteration of existing use of land.

(1) An owner or occupier of land in a conservation area shall not develop or alter or permit the development or alteration of the existing use of that land except—

(a) in accordance with the terms of the management plan for that conservation area; or

(b) in accordance with written approval from the Minister.

(2) Where a notice of recommendation under Section 12(1) has been given in respect of an area, an owner or occupier of land within that area shall not develop or alter or permit the development or alteration of the existing use of that land except with the written approval of the Minister, until—

(a) the land has been declared a conservation area, when the provisions of Subsection (1) shall apply; or

(b) notice under Section 16(2) has been given that the land not be declared a conservation area.

32. Application for development approval.

(1) Where, in respect of any land—

(a) in a conservation area; or

(b) in an area in respect of which a notice of recommendation has been given under Section 12(1),

any development or alteration of the existing use of that land is proposed (other than in accordance with the terms of the management plan)—

(c) the owner of the land; or

(d) the proponent, with the consent of the owner of the land; or

(e) where the proponent is the State and the proposed use is a public purpose, the proponent,

shall make application to the Minister for approval to develop, or alter or permit the development or alteration of the existing use of the land.

(2) An application under Subsection (1) shall be in the prescribed form and shall be accompanied by—

(a) plans and specification of the proposed development or alteration, where relevant; and

(b) particulars of any adverse change—

(i) in the environment of the conservation area; or

(ii) in the area in respect of which a notice of recommendation under Section 12(1) has been given,

likely to arise out of the proposed development or alteration.

(3) The Minister may require an applicant to lodge such other plans and specification and provide such further information as the Minister considers necessary or relevant to enable him adequately to assess the application.

33. Duties of Minister on receipt of application for development approval.

Where the Minister has received an application under Section 32(1) together with any additional material required by him under Section 32(3), he—

(a) shall, where the application relates to a conservation area, refer a copy of the application, together with the additional material, to the management committee for that conservation area and seek its opinion; and

(b) may refer a copy of the application, or of any part of it to—

(i) the Council; and

(ii) such other authority, body or person (if any) as he thinks fit,

and seek its or their opinion; and

(c) shall, where the applicant is the State under Section 32(1)(e), refer a copy of the application or any part of it to the owner of the land and to any person likely to be injuriously affected; and

(d) may require a notice to the effect that application has been made to be advertised in such other manner as he considers appropriate.

34. Approval may be granted.

(1) The Minister may, after considering—

(a) the application together with all material lodged under Section 32; and

(b) the opinion of the management committee to which reference was made under Section 33(1)(a); and

(c) any opinion or opinions sought under Section 33(1)(b); and

(d) the impact or likely impact of the proposed development or alteration on the environment of the conservation area or of the area in respect of which a notice of recommendation under Section 12(1) has been given; and

[xxxviii](e) any physical planning considerations,

approve the application, or approve the application subject to conditions, or refuse to approve the application.

(2) Where the Minister approves an application or approves an application subject to conditions, he shall grant to the applicant written approval in the prescribed form.

(3) Where the Minister refuses to approve an application, he shall notify the applicant in writing setting out the grounds for refusing the application.

35. Offences.

(1) A person who develops or alters or permits the development or alteration of the existing use of land in a conservation area except—

(a) in accordance with the terms of the management plan for that conservation area; or

(b) in accordance with written approval from the Minister under Section 34(1),

is guilty of an offence.

Penalty: A fine not exceeding K40,000.00.

Default penalty: A fine not exceeding K4,000.00.

(2) A person who develops or alters or permits the development or alteration of the existing use of land in an area in respect of which a notice of recommendation has been given under Section 12(1), except in accordance with written approval from the Minister under Section 34(1), is guilty of an offence.

Penalty: A fine not exceeding K40,000.00.

Default penalty: A fine not exceeding K4,000.00.

(3) It shall not be a defence to an action for an offence under this section that the development or alteration to the existing use of land did not adversely affect the environment.

36. Minister may order restoration.

(1) Where he considers it necessary for the preservation of the environment of a conservation area or an area in respect of which a notice of recommendation under Section 12(1) has been given, the Minister may direct a person who has been convicted of an offence against Section 35 to restore any land to which the offence relates to the state that it was in before the commission of the offence.

(2) If a person to whom a direction is given under this section fails to comply with that direction within the time limit specified in the direction, or where there is no time limit specified, within a reasonable time, the Minister may enter on the land with whatever assistance is reasonably necessary and carry out the work required to give effect to the direction.

(3) Any costs and expenses incurred by the Minister exercising his powers under Subsection (2) shall be a debt due and payable to the State by the person to whom the direction was given.

PART VII.—MISCELLANEOUS.

37. Notice.

Where—

- (a) the Minister has prepared a recommendation under Section 12(1); or
- (b) the National Executive Council has made a decision under Section 16(1)(b); or
- (c) the Head of State, acting on advice, has made a declaration under Section 17(1),

the Minister shall cause a notice of the recommendation or a copy of the declaration to be published—

(d) in the National Gazette; and

(e) at the office of the Local-level Government in whose area the area the subject of the recommendation or decision or declaration is situated; and

(f) by a radio broadcasting service which specifically serves the area the subject of the recommendation or declaration; and

(g) at the office of the Provincial Government of the province in which the area the subject of the recommendation or decision or declaration is situated; and

(h) in such other places and in such other manner as he considers appropriate.

38. Appointment of rangers.

The Minister may, after consultation with the management committee for a conservation area appoint by written notice, a person to be a ranger for that conservation area for the purposes of ensuring compliance with this Act.

39. Powers of ranger.

A ranger may at all reasonable times enter and inspect any land in the conservation area.

40. Obstruction of ranger.

A person who—

(a) hinders or obstructs a ranger; or

(b) refuses or fails to comply with any reasonable request of a ranger,

in the exercise of his powers or functions under this Act is guilty of an offence.

Penalty: A fine not exceeding K50.00.

41. General penalty.

A person who fails to comply with a provision of this Act is guilty of an offence, and where no specific penalty is provided is liable to a fine not exceeding K500.00.

42. Person obtaining development approval must comply with other laws.

A grant of development approval under Section 34 does not relieve a proponent from compliance with the requirements or provisions of any other law.

43. Regulations.

The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed for carrying out or giving effect to this Act, and for the imposition of fines not exceeding K500.00 for offences against the regulations.

[xxxvi]Section 4(2)(b) repealed and replaced by the *Conservation Areas (Amendment) Act* 1992 (No. 3 of 1992).

[xxxvii]Section 27(2) was amended by the *Physical Planning (Consequential Amendments) Act* 1989 (No. 33 of 1989), s18.

[xxxviii]Section 34(1)(e) added by the *Physical Planning (Consequential Amendments) Act* 1989 (No. 33 of 1989), s19.