



REPUBLIC OF VANUATU

PHYSICAL PLANNING (AMENDMENT) ACT NO. 26 OF 2021

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Assent: 10/12/2021
Commencement: 11/01/2022

PHYSICAL PLANNING (AMENDMENT) ACT NO. 26 OF 2021

An Act to amend the Physical Planning Act [CAP 193].

Be it enacted by the President and Parliament as follows-

1 Amendment

The Physical Planning Act [CAP 193] is amended as set out in the Schedule.

2 Commencement

This Act commences on the day on which it is published in the Gazette.

SCHEDULE

AMENDMENTS OF PHYSICAL PLANNING ACT [CAP 193]

1 Long Title of the Act

Repeal the Long Title, substitute

“To provide for the control of the development of land within a declared Physical Planning Area.”

2 Section 1 (Interpretation)

Insert in their correct alphabetical positions:

““Department” means the Department of Urban Affairs and Planning;

“Director” means the Director responsible for urban affairs and planning;

“Physical Planning Area” means an area declared by a Council to be a Physical Planning Area under paragraph 2(4)(b);”

3 Section 1 (Definition of “plan”)

Repeal the definition, substitute

““plan” means a Zoning and Development Control Plan prepared in accordance with section 3.”

4 Sections 2, 3, 4 and 5

Repeal the sections, substitute“

“2. Physical planning areas

- (1) A Council may declare an area within its jurisdiction to be a Physical Planning Area.
- (2) A Council must not declare an area within its jurisdiction to be Physical Planning Area unless the Council:
 - (a) has identified the boundaries of the area to be declared as a Physical Planning Area; and
 - (b) has taken into consideration the following matters:

- (i) the rules of custom of that area; and
 - (ii) how the welfare of both the people in that area and the people of Vanuatu generally will be affected in making this declaration; and
 - (iii) the sustainability of the Physical Planning Area; and
 - (iv) the climate change related issues; and
 - (v) the natural hazards within that area; and
 - (vi) any relevant national policies; and
- (c) has consulted with the following persons:
- (i) the relevant council of chiefs in the development of Physical Planning Areas; and
 - (ii) person who are likely to be affected by the declaration; and
 - (iii) any relevant Government Agencies.
- (3) The Council, after complying with the requirements under subsection (2), must:
- (a) inform the Director of its intention to declare an area as a Physical Planning Area; and
 - (b) cause a notice of its intention to declare an area as a Physical Planning Area including a map of the proposed Physical Planning Area boundary to be published in the Gazette; and
 - (c) invite representations in writing from any person who objects to the proposed declaration; and
 - (d) cause a copy of this notice that includes a map of the proposed Physical Planning Area boundary to be available for public inspection for a period of 1 month from the date of its gazettal in the office of the Council.
- (4) After the period under paragraph (3)(d) has lapsed, the Council must:

- (a) consider any representations made by the public in relation to the proposed declaration; and
- (b) in the case where the Council is of the opinion that it is in the public interest to declare that area as a Physical Planning Area - cause a declaration of that Physical Planning Area including a map of the proposed Physical Planning Area boundary to be published in the Gazette.

3. Zoning and Development Control Plan

- (1) If the Council declares an area to be a Physical Planning Area, the Council must prepare a Zoning and Development Control Plan for that Physical Planning Area within 1 year of a declaration under paragraph 2(4)(b).
- (2) If the Council does not complete the plan within the period set out under subsection (1), the Council must notify the Director at least 1 month before the end of the period under subsection (1) when the plan is to be completed.
- (3) The Department must provide sufficient support to the Council to complete the Plan within the period under subsection (1) or as notified under subsection (2).
- (4) The plan must:
 - (a) specify the zones in which the Council is prepared to consider applications for specified kinds of development; and
 - (b) delineate the zones in the Physical Planning Area with the intended objective and outcome of each zone, and the development guidelines and rules required to achieve those objectives and outcomes; and
 - (c) include design and development standards to guide development and to be used to assess applications including:
 - (i) the assessment of the potential environmental impacts of proposed zones; and
 - (ii) risk assessment including climate change and geological hazards; and

- (d) contain provisions to control, prevent or minimise nuisance, damage or loss to neighbours through development, changing land use and subdivision; and
 - (e) contain provisions for customary access and customary use rights whenever possible; and
 - (f) contain such other information as the Council considers necessary.
- (5) The Council must:
- (a) consult with local communities and ensure that the plan takes into consideration custom and local knowledge; and
 - (b) ensure the plan accommodates the custom of the Physical Planning Area, the custom may but not limited to custom rights of access and usage of the land and sea; and
 - (c) consult with government agencies to ensure that the plan takes national policies into account.
- (6) When the plan has been completed, the Council must cause a notice to be published in the Gazette providing for the following:
- (a) that a plan has been prepared over a declared Physical Planning Area; and
 - (b) information on where and when that plan may be viewed by the public.
- (7) The Council must provide a guideline setting development standards and design to guide development, to be used by the Council to assess applications, and for assessment of the potential environmental impacts, climate change threats and geological hazards.
- 4. Development in a Physical Planning Area**
- (1) A person must not carry-on development within a Physical Planning Area without having received the permission of the Council under section 5.
 - (2) In addition to subsection (1), the following transactions must not occur within a Physical Planning Area:

- (a) transfer of a land within the Physical Planning Area; and
 - (b) a subdivision of land within a Physical Planning Area.
- (3) Despite subsection (1), the Council may specify in its declaration of a Physical Planning Area the types of development listed under Schedule 1 that do not require the permission of the Council.
- (4) Any person who contravenes subsection (1) or (2) commits an offence, punishable on conviction by a fine not exceeding VT500,000, or a term of imprisonment not exceeding 3 years, or both.

5. Application for development

- (1) An application for development is to:
- (a) be made to the Council in such form as approved by the Council; and
 - (b) contain such information as the Council may specify.
- (2) The Council may require an applicant to publicly advertise sufficient particulars of the proposed development in a manner determined by the Council if the proposed development is considered by the Council:
- (a) to be a large development; or
 - (b) is likely to be of public interest.
- (3) For the purposes of paragraph (2)(a), “large development” means a development which in the opinion of the Council is of a scale that needs public representation and consultation.”

5 After section 7

Insert

“7A Conflict of interest

- (1) A member of a Council who has a direct or indirect financial or personal interest in a matter being considered, or about to be considered, at a meeting of the Council must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest at the meeting.

- (2) A disclosure under subsection (1) is to be recorded in the minutes of the meeting of the Council and the person concerned must not:
- (a) be present during any deliberation of the Council in relation to that matter; or
 - (b) take part in any decision of the Council in relation to that matter.
- (3) A Councillor who contravenes subsection (1) or (2) commits an offence punishable on conviction by a fine not exceeding VT1,000,000, or a term of imprisonment not exceeding 5 years, or both.”

5A Section 9

Repeal the section.

6 Section 14

Repeal the section, substitute

“14. Immunity from proceedings

The following persons are immune from any legal proceedings for damage, loss, death or injury sustained during a state of emergency or because of anything done or omitted to be done in good faith under this Act:

- (a) a Councillor; or
- (b) employees of the Council or the Department; or
- (c) a person authorised under this Act.”

7 Section 15

Repeal the section, substitute

“15. Appeals

- (1) A person aggrieved by a decision of a Council under this Act may appeal to the Minister within 7 days of being served with the written notice of that decision.
- (2) An application for appeal must be made to the Director and must be:
 - (a) in the prescribed form; and
 - (b) accompanied with the prescribed fee.

- (3) The Minister, on the advice of the Director, is to appoint the members of a Steering Committee consisting of 3 members from senior staff within the Department.
- (4) The Steering Committee must consider the application for appeal and make a recommendation to the Minister within 30 days of the lodging of the application.
- (5) The Minister is to make a decision on the recommendation of the Steering Committee on all appeals made under this section.
- (6) The Minister may, on the recommendation of the Steering Committee, confirm, modify, amend or rescind the decision of the Council.
- (7) The Director must:
 - (a) record the decision of the Minister, and the reason for the decision, in writing; and
 - (b) send a copy of the decision and reasons to person concerned, within 7 days of the decision.

16. Regulations

- (1) The Minister may, by Order, make Regulations not inconsistent with this Act for the better carrying out or to give effect to the provisions of this Act.
- (2) Without limiting the generality of subsection (1), the Minister may make Regulations for all or any of the following:
 - (a) prescribe fees or other charges to be payable with respect to any matter done or required to be done under this Act and the person liable to pay the same;
 - (b) compensation for loss of use, loss of access to land and natural resources;
 - (c) Sustainable Development Safeguards; and
 - (d) prescribe forms and standards of planning applications and creation of standardised controls for specific types of development.”