

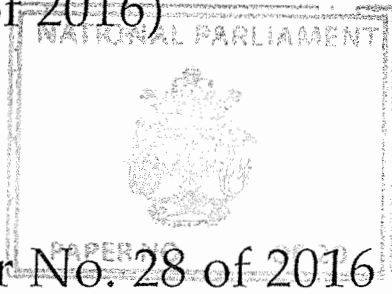


National Parliament of Solomon Islands

Bills and Legislation Committee

Committee Report

Report on the Town and Country Planning
(Amendment) Bill 2016
(No. 11 of 2016)



NP-Paper No. 28 of 2016

Presented on 16th November 2016

National Parliament Office

COMMITTEE MEMBERS

The current members of the Bills and Legislation Committee (10th Parliament) are:

Hon. Connelly Sandakabatu, MP (Chairman)

Hon. Jeremiah Manele, MP

Hon. Dr Derek Sikua, MP

Hon. Rick Houenipwela, MP

Hon. Matthew C. Wale, MP

Hon. Culwick Togamana, MP

Hon. Steve Abana, MP

Hon. Commins A. Mewa, MP

Hon. Namson Tran, MP

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CHAIR'S FOREWORD



Hon. Connelly Sandakabatu MP, Chairman

REPORT OF THE BILLS AND LEGISLATION COMMITTEE

Mr Speaker,

Pursuant to Standing Orders No. 71 (g) of the National Parliament of Solomon Islands, it is an honour and pleasure for me Sir, to present the Report of the Bills and Legislation Committee on the Inquiry into the Town and Country Planning (Amendment) Bill 2016 for laying before Parliament.

A handwritten signature in black ink, appearing to read 'Connelly Sandakabatu'. The signature is written in a cursive style with a large initial 'C'.

Hon. Connelly Sandakabatu

Chairman

Bills and Legislation Committee

16 November 2016

COMMITTEE FUNCTIONS

The Committee is established under *Standing Order*71; an Order made pursuant to the *Constitution*¹ and has the functions, together with the necessary powers to discharge such, to:

- (a) examine such matters as may be referred to it by Parliament or the Government;
- (b) review all draft legislation prepared for introduction into Parliament;
- (c) examine all subsidiary legislation made under any Act so as to ensure compliance with the Acts under which they are made;
- (d) monitor all motions adopted by Parliament which require legislative action;
- (e) review current or proposed legislative measures to the extent it deems necessary;
- (f) examine such other matters in relation to legislation that, in the opinion of the Committee require examination; and
- (g) make a written report to each Meeting of Parliament containing the observations and recommendations arising from the Committee's deliberations.

¹Section 62, *Constitution of Solomon Islands* 1978.

EXECUTIVE SUMMARY

The *Town and Country Planning (Amendment) Bill 2016* aims to reform some of the deficiencies in the Town and Country Planning Act to modernise planning practices in the Solomon Islands. Since the enactment of the *Town and Country Planning Act* shortly after independence together with minor amendments thereafter, interpretation of certain legal and administrative provisions within the Act have become somewhat out dated and impractical. Therefore, the Bill seeks to make various reforms to the principal Act to provide for more relevant terminology, appeals process, enforcement provisions, Board powers, penalties, and delegation of responsibilities for Planning and Development.

The Committee welcomes these reforms by the Ministry of Lands, Housing and Survey that will make the Act become more consistent and relevant. However, the Committee is concerned about some proposals contained in the Bill, as follows:

- (a) the availability of qualified planners at the commencement of the Act;
- (b) legal provisions that allow Provincial Executives and the Honiara City Council to act on behalf of the Planning and Development Board when no Board is appointed;
- (c) the imposition of Local Planning Scheme on Perpetual Estates and Customary Lands once registered;
- (d) provision for the Provincial Boards to approve Provincial Plans displacing provincial governments;
- (e) transparency in the application process at the board level;
- (f) the composition of the Planning Appeals Tribunal; and
- (g) Provincial Assembly and Honiara City Council being appointing authorities.

The Committee recommends the Ministry of Lands, Housing and Survey take relevant and urgent steps to ensure the necessary technical capacity exists at the commencement of the Act.

Statutory time limits ought to be set for a Board to be appointed by the Provincial Assembly and the Honiara City Council, if they remain the appointing authorities.

Additionally, the Committee recommends the Ministry of Lands, Housing carry out consultations with relevant stakeholders on the implications of the imposition of Local Planning Schemes on Perpetual Estates.

The Committee recommends that Provincial Plans be approved by the Provincial Executive and not the Provincial Board.

Furthermore, considerations and decisions of the Board on applications for permission to develop land must be published in the media.

With regards to membership of the Planning Appeals Tribunal, the Committee recommends that the Minister of Lands, Housing and Survey ought to be responsible for appointments. Furthermore, Board members are to be excluded from the Tribunal to enhance its independence and impartiality.

Finally, the Committee recommends that appointment of Provincial Board members be done by the Provincial Executives and not the Provincial Assembly.

The Committee commends the Bill to the House.

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1.0 INTRODUCTION

This Report contains the findings and recommendations of the Bills and Legislation Committee (the "Committee") after having inquired into the **Town and Country Planning (Amendment) Bill 2016** (the "Bill") as required under the Standing Orders of the National Parliament of Solomon Islands (the "Standing Orders").

The Bill was submitted on 12 October 2016 to the Speaker through the Clerk to Parliament as required under the *Standing Orders*². The Committee deliberated on 24th October 2016 and resolved to conduct an inquiry into the Bill and invited relevant stakeholders³ to appear before the Committee and make presentations on the contents, policy and administrative matters, and intentions of the Bill.

Hearings into the Bill were held on the 28th of October and 4th of November 2016 at the National Parliament Building. The List of witnesses that appeared before the Committee and minutes of these proceedings are outlined in Appendix 1 and 2 respectively.

² *Standing Order* 44 (1)

³See Appendix 1

2.0 BACKGROUND INFORMATION

The Bill is proposed by the Ministry of Lands, Housing and Survey (the “Ministry”) and seeks to amend *The Town and Country Planning Act* (the “principal Act”). The principal Act is “*An Act for the administration of town and country planning in Solomon Islands, the making of local planning schemes, the control and development of land and for matters connected therewith and incidental thereto*”⁴

The proposed amendments provide for various reforms, including the changing of the title of the Act to the more relevant terminology of Planning and Development.

The objectives⁵ of this Bill are to;

- change the title of the Act;
- replace the unnecessarily separate concepts of Local Planning Areas and Control of Development Areas by making the Act apply to all registered lands;
- categorising development into four classes to provide for greater clarity and to allow Boards to delegate responsibilities to officers to assess simple applications;
- make provisions requiring the Board to publish applications and consider public comments;
- propose a Planning Appeals Tribunal as a means to improving the process for appeal of the Board’s decision on an application;
- make provisions relating to the lapsing of permission;
- make provisions for the right to apply for an extension of time; and existing use rights are clarified and improved;
- allow for the Boards to have wider powers to take action in relation to land use nuisances;
- make provisions to allow the Provincial Executive or City Council to assume responsibilities of a board in cases where respective Boards are yet to be appointed ;
- strictly define Board membership, with requirements that members be drawn from relevant government and statutory authorities, and the secretary must be a qualified planner; and
- permit Boards to prepare Provincial Plans, and must also consider climate change and other environmental hazards when preparing local planning schemes.

⁴ *Town and Country Planning Act*.

⁵ *Town and Country Planning (Amendment) Bill 2016: Objects and Reasons*.

3.0 ISSUES DISCUSSED

The Committee makes the following observations.

3.1 Commencement Provisions

The Committee noted the Bill when enacted will commence⁶ on the day appointed by the Minister by *Gazette* notice but no specific dates were given. The issue of capacity is a major concern to the Committee. It is important to ensure that qualified physical planners are in the Provinces and Honiara at the commencement of the Act, as the proposals contained in the Bill require the presence of qualified and experienced physical planners to implement.

In his evidence the Permanent Secretary⁷ for the Ministry of Lands, Housing and Survey stated that the commencement of the new Act might take about six months or so as the Ministry will need to set up a Tribunal, prepare regulations and other administrative support systems.

The Director of Physical Planning Division⁸ in his evidence on the issue of capacity development stated that seven out of nine Provincial Boards have already been established with core staff. The Ministry is yet to recruit nine Qualified Physical Planners for each Provincial Board.

Committee Comment

The Committee stressed that more capacity development (especially for the Provinces) will be needed to give effect to the Act so as not to obstruct or delay development proposals. The Committee notes that there is an acute shortage of qualified physical planners in the country; much less than those with appropriate experience.

Key recommendation 1

That the Ministry of Lands, Housing and Survey recruit more technical people with the capacity to implement the development and physical planning provisions of the Bill. Further, that the Ministry

⁶ Clause 2, *Town and Country Planning (Amendment) Bill 2016*.

⁷ Mr Stanley Wale, *Evidence*, 28th October 2016.

⁸ Mr Baddely Ronnie, Director Physical Planning at the Ministry of Lands, Housing and Survey.

liaise with the Ministry of Education and the Ministry of Planning to allocate an appropriate number of scholarships to students of Physical Planning and related disciplines.

3.2 The Exercising of Powers and Functions by the Provincial Executives and Honiara City Council in the absence of a Board.

The Committee noted that Clause 8 of the Bill proposes to allow the Provincial Executives and the Honiara City Council, to act on the Board's behalf when a Board is yet to be appointed. The Committee notes the inconsistency in requiring the Council of Honiara City as opposed to the Executive as in the case of provinces to perform the functions of boards.

The Committee is concerned that this may be a disincentive for a board to be appointed. If this proposal is retained, a statutory time limit must be set for the appointment of boards.

The Legal Draftsperson⁹ in her evidence stated that the majority of Provinces do not have appointed Boards, and therefore powers are not being exercised legally which is subject to challenge in the courts. The proposed provision will empower Provincial Executives to assume the responsibilities of the Board when a Board is not appointed, thereby ensuring that decisions made are legal. And that it is difficult, even when a timeframe is given, to force a person to exercise the power to appoint a Board.

The Permanent Secretary¹⁰ explained to the Committee that the Ministry has never received any complaints about the lack of appointment of the Board.

The Director of Physical Planning explained to the Committee that this proposed provision stems from past experience when boards were not appointed for long periods of time. This provision will cater for the Provincial Executive or the Honiara City Council to assume responsibility in the short term. The Director acknowledged the Committee's concern that there should be a time limit placed on the length of time period an executive may perform the functions of a board. Acting on the advice of the Director, the Minister may need to step in.

⁹ Ms Catriona Steele, Attorney General's Chamber. *Evidence*, 28th October 2016.

¹⁰ Mr Stanley Wale, Ministry of Lands, Housing and Survey, *Evidence*. 28th October 2016.

Committee Comment

The Committee recognises the difficulty in finding appropriately qualified people to fill these boards, and thus the delays in appointing boards. However, planning issues are becoming a bottleneck in the development of this country. We have to look forward and ensure the availability of qualified persons to deal with these very important matters. Further, planning and development decisions affecting planning schemes, zoning, permits, etc., may involve commercial interests. The Committee is therefore concerned that having Provincial executives and the Honiara City Council perform the functions of boards may leave these higher governance institutions vulnerable to corruption

Key Recommendation 2

That the Ministry of Lands, Housing and Survey:

- (a) amend the Bill to remove Provincial Executives and the Honiara City Council from performing the functions of planning boards when a board is yet to be appointed or;
- (b) propose an amendment to place statutory time limits on the appointing authorities on the appointment of the Board to operate under (e.g. 30 -40 days' timeframe);
- (c) propose an amendment to the Bill to replace the Provincial Assembly and the Honiara City Council with Provincial Executive and the Honiara City Council Executive as appointing authority
- (d) create legal standing for any person to seek judicial review of the lack of appointment of a board.

3.3 The Crown's Imposition on Perpetual Estates

The Bill proposes to allow Provincial Boards to prepare Provincial Plans, and then after consulting the Provincial Executive and the general public, to approve such plans¹¹.

The Director of Physical Planning Division described the intention of the Provincial Plan as the overall strategic development plan of a province which covers both registered and customary land.

The Committee is concerned that this aspect of the Bill may infringe on the constitutional property rights of holders of perpetual estates.

¹¹ Clause 9 of the *'Town and Country Planning (Amendment) Bill 2016'*.

The Commissioner of Lands¹² in his evidence stated that the Province can use the process of acquisition in dealing with Perpetual Estate holders or Customary Landowners in acquiring land to implement the contents of the Provincial Plan if that land is identified for provincial development but admits it is hard to implement.

The Legal Draftsperson¹³ explained to the Committee that the Ministry has increased the penalties for failure to comply with an enforcement notice quite significantly for non-compliance on registered land. There is an initial penalty (50,000 Penalty Units) that is applied and then a continuing penalty (1,000 Penalty units per day) for everyday that they fail to comply with the enforcement notice.

Furthermore, in relation to perpetual estates with grant conditions the Legal Draftsperson explained that the right to use land is differentiated from ownership of the land. The Bill will regulate the use of land including perpetual estates. The constitution specifically carves out Town and Country Planning from the Protection from Deprivation of Property. The title to the land is not affected but the use of land will be regulated so there is no constitutional issue.

The Committee is concerned about perpetual estates without grant conditions held by tribes or members of tribes that the impositions proposed in the amendments will infringe on their rights.

Key recommendations 3

That the Ministry of Lands, Housing and Survey to carry out nationwide consultations with tribal land owners and Perpetual Estate holders to clarify to them how the amendment will impose on their land once it has become registered.

3.4 Approval of Provincial Plan by the Planning and Development Board

The amendments propose to allow a Provincial Board to prepare the Provincial Plan, and after consulting the Provincial Executive and the general public, to approve such a plan.

¹² Mr Nelson Noapu, Commissioner of Lands at the Ministry of Lands, Housing and Survey.

¹³ Ms Catriona Steele, Attorney General's Chamber.

Committee Comment

The Committee is concerned that the Board has displaced the Provincial Executive in the matter of approval of provincial plans. The Committee agrees that preparation of and consultations on the provincial plans are rightly parked with the board. However, provincial government must not be undermined in such an important matter as the approval of a province-wide plan.

Key recommendation 4

That the Ministry of Lands, Housing and Survey amend Clause 9 of the Bill to ensure the power to approve the provincial plan is given to the provincial government/executive.

3.5 Publication of Applications

The Bill proposes to introduce new requirements for applications to be published, in the interest of transparency. The Board would not be permitted to make a decision on the application until after the publication requirements are met.

Committee comment

The Committee welcomes and commends this proposal

3.6 Transparency of the Board in Considering Applications

The Committee notes the powers of the Board to consider applications.

The Legal Draftsperson in her evidence stated that currently there are no requirements for Minutes of Board Meetings to be published. However, there is an existing requirement in the principal Act that requires the Board to keep a Register containing information with respect to applications for permission and the manner in which the applications have been dealt with and the decisions that have been made, which is open to the public. There is a mechanism in place where the Ministry could prescribe the Minutes to be kept in the Register.

Committee comment

However, the Committee is of the view that minutes of all board proceedings be published.

Key recommendation 5

That the Ministry of Lands, Housing and Survey amend Clause 18 to include a provision that the Board's Minutes be published in the media.

3.7 Composition of the Planning Appeals Tribunal

The Committee notes in the Bill that the Director of Physical Planning, who is also the Secretary, may appoint two other temporary members to the Planning Appeals Tribunal by Gazette notice¹⁴.

In addition, the Committee also notes that the City Clerk and the Provincial Secretary are also members of their respective appeal tribunals.

Committee comment

The Committee's view of the Solomon Islands overall legislative scheme in terms of appointments of tribunals is above the position of the Director as the chief technical officer. The Director's role is to make sure that the processes of appeal work.

In relation to the temporary membership of the tribunal, the Committee is concerned that the City Clerk and the Provincial Secretary are already Chairpersons of their respective planning boards. This presents a conflict of interest situation, and must be avoided.

¹⁴ Clause 21, *Town and Country Planning (Amendment) Bill 2016*, p. 13.

Key recommendation 6

The Committee recommends that the Ministry of Lands, Housing and Survey:

- (a) Allow the Minister of Lands, Housing Survey to make the appointments to the Planning Appeals Tribunal. The Director of Physical Planning Division is to recommend candidates to the Minister for such appointments.
- (b) Exclude the City Clerk and or the Provincial Secretary from becoming temporary members of the Planning Appeals Tribunal. The Planning Appeals Tribunal to remain independent of the Board.

3.8 Appointment of the Board

The Bill seeks to amend the Schedule to the Act by stating that members of the Board must be representatives of government and statutory authorities, thus encouraging a professional and informed approach to assessments and decision making. Furthermore, the Secretary to the Board must hold a tertiary qualification in town or urban or physical planning, or urban design. The Secretary is not a member of the Board.

Committee comment

The Committee is concerned that the Bill maintains that the Provincial Assembly as the appointing authority for a Province. It is impractical for a Provincial Assembly to appoint Boards, as it would have to be by way of a resolution. Board appointments should be done by the Provincial Executive.

Key recommendation 7

The Committee recommends the relevant Clause of the Bill be amended to specify that the appointments of the Board is made at the Provincial Executive level for the Provinces and Executive of the City Council for Honiara.

4.0 RECOMMENDATIONS

At the conclusion of the hearing and based on the evidences collected at the hearing, the Committee makes the following recommendations –

Recommendation 1

That the Ministry of Lands, Housing and Survey recruit more technical people with the capacity to implement the development and physical planning provisions of the Bill. Further, that the Ministry liaise with the Ministry of Education and the Ministry of Planning to allocate an appropriate number of scholarships to students of Planning and related disciplines.

Recommendation 2

That the Ministry of Lands, Housing and Survey:

- (a) Amend the Bill to remove Provincial Executives and the Honiara City Council from performing the functions of planning boards when a board is yet to be appointed or;
- (b) Propose an amendment to place statutory time limits on the appointing authorities on the appointment of the Board to operate under (e.g. 30 -40 days' timeframe);
- (c) Propose an amendment to the Bill to replace the Provincial Assembly and the Honiara City Council with the Provincial Executive and the Honiara City Council Executive as appointing authority
- (d) Create legal standing for any person to seek judicial review of the lack of appointment of a board.

Recommendation 3

That the Ministry of Lands, Housing and Survey to carry out nationwide consultations with tribal land owners and Perpetual Estate holders to clarify to them how the amendment will impose on their land once it has become registered.

Recommendation 4

That the Ministry of Lands, Housing and Survey amend Clause 9 of the Bill to ensure the power to approve the provincial plan is given to the provincial government/executive.

Recommendation 5

That the Ministry of Lands, Housing and Survey amend Clause 18 to include a provision that the Board's Minutes be published in the media.

Recommendation 6

The Committee recommends that the Ministry of Lands, Housing and Survey:

- (a) Allow the Minister of Lands, Housing Survey to make the appointments to the Planning Appeals Tribunal. The Director of Physical Planning Division is to recommend candidates to the Minister for such appointments.
- (b) Exclude the City Clerk and or the Provincial Secretary from becoming temporary members of the Planning Appeals Tribunal. The Planning Appeals Tribunal to remain independent of the Board.

Recommendation 7

The Committee recommends the relevant Clause of the Bill be amended to specify that the appointments of the Board is made at the Provincial Executive level for the Provinces and Executive of the City Council for Honiara.

END OF REPORT

5.0 APPENDICES

Appendix 1: Witnesses

Date	Name	Position & Organisation
Fri 28 October 2016 9.30 am	Mr Stanley Walenesia	Permanent Secretary - Ministry of Lands, Housing and Survey (MLHS)
	Mr Baddely Ronnie	Director of Physical Planning - MLHS
	Mr Jimmy Ikina	MLHS
	Mr Nelson Noapu	Commissioner of Lands - MLSH
	Ms Catriona Steele	Legal Drafts Lady - Attorney General's Chamber
	Ms Lovelyn	MLHS
Friday 4 November 2016 9.30am	Mr Andrew Mua	City Mayor - Honiara City Council (HCC)
	Mr Charles Kelly	City Clerk - HCC
	Mr Timothy Tadarea	Physical Planner - HCC
	Mr Paul Inifiri	Legal Officer - HCC
	Mr Vincent Kohata	Legal Officer - HCC
	Mr Chaniel Sani	Building Inspector - HCC

Appendix 2: Minutes of Proceedings



NATIONAL PARLIAMENT OF SOLOMON ISLANDS

BILLS AND LEGISLATION COMMITTEE

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Minutes of Proceedings

Committee Hearing into the Town and Country Planning (Amendment) Bill 2016

Day 1/Friday 28th October 2016, CR II, Parliament House 9:00am.

1. Members Present

Hon Connelley Sandakabatu, Chairman

Hon Jeremiah Manele, MP

Hon Dr Derek Sikua, MP

Hon Matthew Wale, MP

Hon Dr Culwick Togamana, MP

Hon Commins Aston Mewa, MP

Committee Secretariat

Mr Wilson Anii

Mr Gregory Fineanganofa

2. Welcome and Opening Remarks

The Chairman made opening remarks and welcomes the Permanent Secretary (PS) and other officials from the Ministry of Lands, Housing and Survey (MLHS), and the Attorney General's Chamber. He then invited the PS to introduce his group and make his presentation.

3. Committee hearing into the Town and Country planning (Amendment) Bill 2016

The Hearing proper commenced and the following witnesses were admitted:

Hearing 1 Witnesses

Mr Stanley Walenesia	Permanent Secretary
Ms Catriona Steele	Legal Draftsman, Attorney General's Chamber
Ms Lovelyn Foutaiasi	Ministry of Lands, Housing and Survey

Mr Jimmy Ikina,	Ministry of Lands, Housing and Survey
Mr Baddely Ronnie	Director of Physical Planning
Mr Nelson Noapu	Commissioner of Lands

The PS with assistance from the AG Chambers made their presentation before the committee.

The Committee questioned the PS, other MLHS officials and the Legal Draftsperson on the contents of the Bill.

The PS and his officials answered, made clarification and commented on the Bill.

Evidence concluded and the Chair thanks the witnesses for their attendance and contribution on the Bill.

Hearing suspended.

The Hearing resumed at 12:00pm and the following witnesses from the Ministry of Infrastructure Development were admitted;

Evidence concluded and the Chair thanks the witness for his attendance and contribution on the Bill.

4. Adjournment

Chair made closing remarks.

The Committee hearing ended at 4:00pm

Day 2/ Friday 4 November 2016, CR II, Parliament House 10:05am

1. Members Present

Hon. Connelly Sandakabatu, MP (Chairman)

Hon. Jeremiah Manele, MP

Hon. Mathew Cooper Wale, MP

Hon. Dr Culwick Togamana, MP

Secretariat

Mr Wilson Anii

Mr Gregory Fineanganofa

Ms Salome Pilumate

2. Welcome and Opening Remarks

The Chairman made opening remarks and welcomed representatives from the Honiara City Council to make their presentation.

3. Committee hearing into the Town and Country Planning (Amendment) Bill 2016

The Hearing proper commenced and the following witnesses were admitted:

Hearing 4 Witness

Mr Andrew Mua,	City Mayor
Mr Charles Kelly,	City Clerk
Mr Timothy Tadarea,	Physical Planner
Mr Paul Inifiri,	Legal Officer
Mr Vincent Kohata,	Legal Officer
Mr Chaniel Sani,	Building Inspector

The witnesses from the Honiara City Council made their presentation before the Committee.

Members of the Committee then questioned the representatives from Honiara City Council based on their presentation.

Witnesses answered and commented on the Bill.

Evidence concluded and the Chair thanks the witness for their attendance and contribution on the Bill.

4. Adjournment

Chair made closing remarks.

The Committee hearing ended at 10:45am

