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THE OFFICIAL GAZETTE 13TH DECEMBER, 2023
LEGAL SUPPLEMENT — C

BILL No. 21 of 2023

Wednesday 13th December, 2023

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.

13th December, 2023.

The following Bill which will be introduced in the National Assembly is published for general information.

S.E. Isaacs,
Clerk of the National Assembly.

GUYANA

BILL. No. 21 of 2023

SEA AND RIVER DEFENCE BILL 2023

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A BILL
Intituled

AN ACT to repeal and replace existing legislation on sea and river defence, to make provision for protection from inundation from the sea or rivers and to provide for the establishment, construction and maintenance of sea and river defences, natural defences and to provide for related matters.

A.D. 2023 Enacted by the Parliament of Guyana:-

PART I

PRELIMINARY

Short title. 1. This Act may be cited as the Sea and River Defence Act 2023.

Commencement. 2. This Act shall come into force on such day as the Minister may, by order, appoint.

Interpretation. 3. In this Act, unless the context otherwise requires -

"administrative penalty notice" means the notice established under section 70;

"Board" means the Sea and River Defence Board constituted under section 5(1);

"cattle" means any horse, mare, gelding, colt, filly, bull, cow, ox, steer, heifer, calf, mule, ass, ram, ewe, sheep, lamb, boar, sow, barrow, hog, pig, goat or kid;

"Chairperson" and "Vice-Chairperson" mean, respectively, the Chairperson and Vice-Chairperson of the Board, appointed under section 5(3);

"Chief Officer" means the Chief Sea and River Defence Officer or a public officer in the Ministry responsible for sea and river defences designated in writing by the Minister to be the Chief Officer for the purposes of this Act, and includes any person appointed in writing by the Chief Officer as his deputy in matters connected with sea and river defence;

"construct" in relation to sea and river defences, includes planting, cultivating and developing mangroves and other vegetation for the purpose of sea or river defence, and "construction" shall be accorded a corresponding meaning;

"council drainage area" has the meaning assigned by section 2 of the Municipal and District Councils Act;

Cap. 28:01.

"Court" means the Supreme Court of Guyana;

"empoldered land" means any land which lies within an area bounded by the sea and by a backdam and is contained between side-line dams, being protected from flooding on the land side by the back and side-line dams, and includes those dams;

"estate" means any land or portion of land in a district, other than State or Government land in the occupation of the State not within the boundaries of a village or of a council drainage area;

"Government" means the Government of the Cooperative Republic of Guyana;

"local authority" means the council of any town established under section 32 of the Municipal and District Councils Act, or of any local government district established under the Municipal and District Councils Act, or any village council or country authority under the Local Government Act;

Cap. 28:01

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"mean high water mark" means the line left by the medium high tide between the spring tides and the neap tides;

"Minister" means the Minister responsible for sea and river defences;

"occupier", in relation to any premises, means -

(a) any lessee, licensee or other occupant of the premises;

(b) the owner of the premises or an agent of the owner; or

(c) any person in charge of the premises;

"official website" means a website maintained by the Board, the Ministry of Public Infrastructure, the Department of Public Information or, with the consent of the Minister, or any other public body;

"opinion of the Board" means an opinion delivered by a majority decision at a meeting of the Board;

"proprietor" includes the attorney of any proprietor, the secretary of any company which owns an estate and the manager of any sugar estate;

"sea or river defence" means any dam, concrete, stone, timber, wall, groyne or other construction used by the Board, a proprietor or occupant of land as a protection against flooding from the sea or a river;

"sea or river defence plan" means a plan prepared under section 13(1);

"sea or river defence zone" means the area demarcated for a sea or river defence under section 17(1)(b)(ii);

"vessel" includes any ship or boat or any other description of vessel used in navigation; and

"village" means any village district or any country district duly declared under the Local Government Act;

Cap. 28:02

"work" includes anything that may be made, done, planted, built or constructed in, upon or in connection with building, creating, repairing, restoring, strengthening, heightening or protecting any sea and river defence.

General duty of cooperation with respect to sea and river defences.

4. (1) Without prejudice to the performance of any function required or authorised under any other enactment, it is the duty of any public authority in Guyana to cooperate with the Board where actions or decisions may impact upon sea and river defences –

(a) when preparing, executing or reviewing any policy, plan or programme; or

(b) when exercising any decision-making function.

(2) Cooperation under subsection (1) includes, whenever appropriate -

(a) collecting and sharing of data and information that may inform the work and tasks of the Board;

(b) developing guidelines, standards or other criteria for decision-making, jointly with the Board;

(c) developing guidelines for members of the public, industry or other stakeholders, jointly with the Board;

(d) entering into memoranda of understanding.

(3) The Minister, in consultation with Cabinet, may give directions to the Board in respect of the cooperation referred to in this section.

PART II

SEA AND RIVER DEFENCE BOARD

Sea and River Defence Board.

Schedule I.

5. (1) There shall be a Sea and River Defence Board established in accordance with this Part and Schedule I.

(2) The Board shall consist of the *ex officio* members, or their representatives, listed in paragraph 2(2)(a) of Schedule I and not less than seven and no more than fourteen other persons appointed by the Minister in accordance with paragraph 2(2)(b) of Schedule I.

(3) The Minister shall appoint a Chairperson of the Board.

(4) The Board shall elect a Vice-Chairperson from amoung its members.

Functions of the Board.

6. The functions of the Board are -

(a) to monitor, review and assess the requirements for sea or river defences throughout Guyana;

(b) to develop guidelines, standards and criteria for use in the decision-making processes of other agencies where those decisions might impact upon sea or river defences;

(c) to consider the adequacy of sea and river defence districts, and to make recommendations to the Minister for the variation or creation of sea and river defence districts;

(d) to prepare sea and river defence plans and cost estimates for construction of sea and river defences;

(e) to ensure that all sea and river defences in Guyana are properly maintained and to control construction and other works, including those carried out by other public bodies under any enactment;

(f) to assist in, and where necessary arrange for, the carrying out of works in an emergency to avert or mitigate flooding;

(g) to plan, implement, manage and regulate waterfront development projects;

(h) to enforce the provisions of this Act, and regulations made under it; and

(i) to carry out such other tasks as the Minister may from time to time direct.

Secretariat.

7. (1) The Board shall have a permanent Secretariat.

(2) The Chief Officer, in consultation with the Board, shall nominate -

(a) a member of his staff to assume the role of Executive Secretary; and

(b) such other members of staff, on such terms and conditions as may be expedient, as are needed by the Secretariat.

(3) The Minister shall ensure that the Secretariat is provided with adequate administrative staff, facilities and equipment to enable it to carry out its functions under this Act.

(4) All instruments required to be executed by the Board shall be deemed to be sufficiently executed if signed by the Chairperson or Vice-Chairperson and the Executive Secretary.

Funds.

8. (1) The Board shall not have its own funds.

(2) Funds for the purposes of the Board shall be provided through the Ministry's budget, taking account of the estimate of funds made pursuant to section 9(1)(c).

(3) The Board may, on behalf of the Ministry, enter into agreements for the provision of funds related to its functions, in which case such funds shall be held in the Ministry's account for the exclusive use of the Board.

(4) The Board shall maintain a record of all funds received and all expenditure.

Board to report annually.

9. (1) The Board within three months of the end of each financial year shall make a report to the Minister on -

(a) the work of the Board during the financial year;

(b) expenditure on works, the Secretariat and other matters related to the purposes of the Board;

(c) an estimate of funds required for the next financial year; and

(d) any other matter that -

(i) the Board considers shall be included; or

(ii) the Minister requests.

(2) The Minister shall lay a copy of the report before the National Assembly -

(a) within fourteen days of receiving the report, if the National Assembly is then in session; or

(b) within fourteen days after the commencement of the next session of the National Assembly.

(3) As soon as practicable after the report has been laid before the National Assembly or after the expiry of the deadline which applies under subsection (2), whichever is sooner, the Executive Secretary shall make a copy of the report available to the public in accordance with section 40.

Power to make by-laws.

10. The Board may, with the approval of the Minister, make by-laws to regulate its proceedings.

PART III

NATIONAL SEA AND RIVER DEFENCES

Application of this Part.

11. (1) This Part applies to the districts set out in Schedule II.

Schedule II.

(2) The Minister may, upon a recommendation of the Board and after conducting appropriate public consultations by order -

(a) vary the boundaries of a district;

(b) revoke a district; or

(c) create a district.

(3) Every order made under subsection (2) shall be published in the *Gazette* and in at least one daily newspaper having widespread circulation in Guyana and on an official website.

Consideration and review of the need for sea and river defences.

12. (1) The Board shall consider and keep under review the need within any district to -

(a) construct a new sea or river defence;

(b) modify any existing sea or river defence; and

(c) maintain or repair any existing sea or river defence.

(2) In carrying out its duty under subsection (1), the Board shall have regard to -

(a) the extent, condition and effectiveness of existing sea and river defences;

(b) flood risks to the local habitat and environment;

(c) scientific, social, economic and environmental considerations;

(d) the national and local interests; and

(e) any other matter considered relevant by the Board or the Minister.

(3) The Board shall include the results of its considerations and reviews in its Annual Report under section 9.

Procedure prior to construction of a sea or river defence.

13. (1) Subject to section 15, where the Board determines under section 12 that there is a need to construct a new sea or river defence or to modify an existing sea or river defence, it shall prepare a plan in accordance with this section.

(2) A sea or river defence plan shall -

(a) define the outer limits of the sea or river defence zone;

(b) describe the technical specifications of the proposed sea or river defence;

(c) include a map on which the sea or river defence zone is demarcated;

(d) describe the geographical, hydrological and other relevant conditions which apply in the proposed area of the sea and river defence, including adjacent areas;

(e) describe the nature and scale of the current flood risk and the expected reduction in risk as a result of the sea and river defence;

(f) specify the social, economic and environmental objectives to be achieved through construction of the sea and river defence;

(g) include an estimate of the cost of constructing the sea and river defence; and

(h) include an estimate of on-going maintenance needs.

(3) The Board may in writing authorise any competent person and his agents and servants to enter any specified land for the purpose of carrying out the preparation of the sea and river defence plan.

(4) Any person acting under an authority pursuant to subsection (3) may enter land only after having given twenty-four hours' notice to the owner or occupier of the land.

(5) A person authorised under subsection (3) shall have power to -

(a) make all necessary surveys and recordings; and

(b) carry out any other examinations, observations and other investigations necessary for the preparation of the sea and river defence plan.

Public consultation on draft sea or river defence plan.

14. (1) On completion of the draft sea or river defence plan, the Board shall deposit a copy of each document at -

(a) the office of the Minister;

(b) the regional office of the region in which the sea or river defence will be situated; and

(c) the regional office of any other region which may be affected by the sea or river defence.

(2) The Board shall publish an electronic copy of the draft sea or river defence plan on an official website.

(3) Once the requirements in subsection (1) have been fulfilled, the Board shall -

(a) commence a public consultation in accordance with section 41; and

(b) ensure that members of the public have at least one month to provide responses to the consultation.

Minor construction works.

15. (1) In this section, "minor construction works" means any construction that -

(a) shall not have significant environmental or social impacts; and

(b) shall take place on State land without any need for a change in title.

(2) Where the Board determines under section 12 that there is a need for minor construction works the Board may -

(a) replace the requirements in section 13(2) with such other requirements as it considers appropriate; and

(b) disregard section 14(3).

(3) Where the Board disregards section 14(3), it shall -

(a) conduct such other consultations as it considers proportionate; and

(b) prepare a report of those consultations.

Approval for construction of sea or river defence.

16. (1) Once the consultation requirements under section 14(3) or section 15(2), as the case may be, have been completed, the Board shall -

(a) prepare a final sea or river defence plan; and

(b) submit that plan, along with the report of the consultation produced pursuant to section 41(3)(a) or section 15(3)(b), as the case may be, to the Minister.

(2) If the Minister approves the construction of the sea or river defence, the Minister may decide that -

(a) the cost of the construction is to be defrayed out of the funds of the Ministry and order the Board to cause the sea or river defence to be constructed; or

(b) the cost of the construction is to be provided by Parliament and instruct the Board to submit the sea or river defence plan to Parliament together with a request for the sanction of and the provision of the money.

(3) Where Parliament has sanctioned the expenditure and made provision for the money to be expended on the construction of a sea or river defence, the Minister may order the Board to cause the sea or river defence to be constructed.

Publication of order for construction of sea or river defence.

17. (1) When an order for the construction of a sea or river defence has been made by the Minister under section 16, the Board shall -

(a) publish notification of the order in the Gazette, in at least one newspaper of widespread circulation and on an official website;

(b) publish as part of that notification -

(i) a copy of the order; and

(ii) a demarcation of the sea and river defence zone; and

(c) include information on where the sea or river defence plan may be consulted, pursuant to subsection (2).

(2) Prior to the date of the notification in the Gazette referred to in subsection (1)(a), the Board shall deposit a copy of the sea or river defence plan to be available for inspection during office hours at -

(a) the office of the Minister;

(b) the regional office of the region in which the sea or river defence will be situated; and

(c) the regional office of any other region which may be affected by the sea or river defence.

(3) The Board shall publish an electronic copy of each document on an official website.

Sea and river defence zones the property of the State.

18. (1) On the publication of an order as provided by section 17(1), the area demarcated as the sea or river defence zone shall become the property of the State.

(2) Except as may be required by the Constitution in any individual case, there shall be no right to compensation in respect of any property which is vested in the State under this section.

Plan of sea or river defence to be deposited with Registrar.

19. (1) Whenever a sea or river defence zone becomes the property of the State under this Act, the Board shall within one month deposit a plan with -

(a) the Registrar, who shall file the same as of record in the Deeds Registry and shall make such annotations on the records as may be necessary; or

(b) the Registrar of Lands.

(2) In subsection (1) -

(a) "Registrar" and "Deeds Registry" have the meanings assigned to those words in section 2 of the Deeds Registry Act; and

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(b) "Registrar of Lands" has the meaning assigned in section 2 of the Land Registry Act.

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Performance of sea and river defence works.

20. (1) Subject to subsections (2) and (3), all works relating to sea and river defences shall be performed, under the direction of the Board, by the Ministry or its agents, including contractors.

(2) Where the Board thinks fit, and the Chief Officer approves, the execution of any works may be given out to be performed by contract.

(3) In any case where it is proposed that a contract may be undertaken by any company or body of persons in which a member of the Board may be interested directly or indirectly -

(a) the works may be given out to such a contractor only with the express written permission of the Minister; and

(b) any member with such an interest does not vote or participate in any matter relating to that contract.

Maintenance of sea or river defence by responsible entity.

21. (1) Any drainage, irrigation or navigation construction that occupies or needs to occupy any part of a sea or river defence shall be constructed, managed, maintained and replaced by the entity responsible for the construction.

(2) The Board may impose conditions or requirements on the responsible entity relating to the construction, management, maintenance or replacement of any construction referred to in subsection (1) so as to ensure that such construction does not impede or interfere with the construction, management, maintenance or replacement of sea defences.

(3) If the responsible entity neglects, fails or refuses to comply with any condition or carry out any requirement imposed under subsection (2), the Board may cause the necessary works to be done and may recover, on behalf of the Ministry, the costs of doing so from the responsible entity.

(4) In this section -

(a) "responsible entity" means, as the case may be -

(i) the National Drainage and Irrigation Authority, where it is proprietor of the construction;

(ii) the proprietor of the immediately adjacent estate; or

(iii) the local democratic organ responsible for the immediately adjacent land;

(b) "drainage, irrigation or navigation construction" includes sluices, kokers, flood-gates, gallows-posts, doors, hoisting-

gear or similar structures which are used in relation to drainage or irrigation or for purposes of navigation.

Expenditure for sea defences to be provided by Parliament.

22. All costs and charges incurred in the construction or maintenance of any sea defence together with all expenses of administration shall be defrayed from such moneys as may be provided from time to time by Parliament.

PART IV

LOCAL SEA AND RIVER DEFENCES

Application of this Part.

23. This part applies to sea and river defences, other than those to which Part III applies.

Provision and maintenance of sea and river defences.

24. Where the opinion of the Board is that it is necessary, in respect of any estate, to execute works in order to provide a sea or river defence or to maintain, repair or strengthen an existing sea or river defence, an authorised officer may serve a flood protection notice on the owner or occupier of the estate for the purpose of requiring those works.

No alteration of the sea or river defence without permission of the Board.

25. (1) No deviation from the existing sea or river defence of an estate shall be made unless the permission of the Board has been first obtained, and the Board may refuse the permission or attach to it any terms or conditions that appear expedient.

(2) If any deviation is attempted without first obtaining the permission, an authorised officer may serve a flood protection notice prohibiting the attempt and requiring the removal of any works already begun or executed in contravention of this section.

(3) For the purposes of this section, the proprietor of an estate shall be deemed to have attempted to deviate from the line of an existing outer dam if he constructs or begins to construct a dam intended, in the opinion of the Board or the Chief Officer, ultimately to be used as an outer dam.

Power of proprietor to raise money for protection from water.

26. (1) The proprietor of any right or interest in an estate who desires to secure the estate in which he is interested from inroads of the sea, a river or creek, or from being flooded by water, may apply to the Board, in such form and manner as the Board may require, either for –

(a) an advance by way of loan to defray the expense of any necessary permanent works; or

(b) for an order authorising the Ministry to execute the permanent works and charging the cost to the estate.

(2) Upon receiving an application under subsection (1) -

(a) the Board shall, within twenty-eight days, review the application and provide a copy of the application and its observations on it to the Minister; and

(b) the Minister, within a further period of twenty-eight days from the date on which the application and observations of the Board were received, shall determine the application.

(3) In determining the application under subsection (2)(b), the Minister may approve completely or partially with modifications or reject the application and may attach to any approval such terms and conditions as are considered necessary or expedient.

Loans for works.

27. (1) The Minister may direct that any money advanced by way of loan or expended in the execution of any works under this Act shall be repaid in the manner, at the times, by the instalments, and with interest at the rate deemed expedient by the Minister.

(2) Where the cost of any works executed by the Ministry under this Act exceeds the estimated cost by more than one- third thereof, the Minister, if he deems it expedient to do so and if Parliament provides the necessary funds, may

direct that the amount expended in excess of the amount of the estimated costs and one-third added shall be paid out of those funds.

Execution of works for protection of a local authority district.

28. Where the Board, in order to protect the foreshore of a local authority district the Board deems it expedient to execute works that are intended for the protection of more than one estate or of any district, the following requirements shall be observed -

(a) the Board shall prepare plans and specifications of the proposed works together with an estimate of their cost;

(b) the Board shall also prepare a statement showing the estates, and any railway, canal, building, or immovable property of any kind not a plantation, which it is proposed shall be made liable to contribute to the cost of the execution or maintenance of any of the works and the proportion or manner in which it is proposed to assess the amount to be paid by each of those estates and any railway, canal, building, or immovable property of any kind, not a plantation;

(c) the Board shall conduct a public consultation, for at least one month, in which the plans, statements and other documents referred to in subsections (a) and (b) shall be made available;

(d) anyone who objects to the execution of any of the proposed works, or to the proportion or manner in which it is proposed to assess an estate in which he is interested shall, within the deadline for responses given in the consultation, provide to the Board in writing objections and the grounds on which they are based; and

(e) after the expiration of the consultation, the Board shall provide to the Minster a report on the outcome and

assessment of the consultations, together with the documents and plans and copies of any written objections received.

Decision as to works to be executed and apportionment of costs.

29. (1) The Minister, after considering the expediency of executing works proposed pursuant to section 28, and if Parliament appropriates the necessary funds, may by order authorise the execution of such works as appear to him necessary.

(2) The Minister may direct that the cost of the execution and maintenance of the works shall be repayable by the proprietors of the estate situate in the district intended to be protected in the proportions and the manner the Minister thinks fit.

(3) Prior to making an order under subsection (1), the Minister shall take into account all relevant circumstances, including any objections received, and shall publish that report in accordance with section 40.

Power to take material for execution of works.

30. (1) Where the Ministry or Board executes any works under this Act for the protection of an estate, it may remove earth, cut wood, and take material of every kind from or on the plantation necessary for any of the works.

(2) If any material is taken under subsection (1) and the proprietor of the estate or his authorised agent objects to the material being taken or objects to the place from or the manner in which any of the material is being taken, he or she may apply to the Board for directions to be given, and the Board shall have full power to give any directions as are necessary in each case.

Preferent lien for the amount of loan.

31. (1) All money advanced by way of loan, and all moneys expended by the Ministry, under this Act, other than grants, shall be deemed a debt due to the State.

(2) As it relates to repayment, the State shall have a preferent lien on the estate after debts due to the State, and the lien shall continue notwithstanding any devolution or transport of that estate.

(3) All such moneys may be recovered by parate execution by the Accountant General against the proprietor of the estate without naming him or her.

(4) When a sum is repayable by instalments, on the failure to pay any instalment or interest within ten days after it becomes due, the proprietor shall pay the whole amount then remaining unpaid with the interest which immediately becomes due and payable.

(5) A certificate signed by the Accountant General that a specified amount is due under this Act from the proprietor of the estate shall, without any proof of the signature, be received in all courts as proof of the fact until the contrary is proved.

Proof of order of Minister.

32. The production of a copy of an order or direction of the Minister, certified as a correct copy by the Permanent Secretary, or the production of the *Gazette* containing the official publication of an order or direction of the Minister under this Act, shall be conclusive proof of that order or direction having been made or given and that it was in all respects rightly made or given and is binding upon all persons.

Execution of works pursuant to a flood protection notice.

33. Any work or thing which the proprietor of an estate is required under this Act to execute or do, if he refuses or neglects to execute or do it within a reasonable time, an authorised officer may serve on him a flood protection notice, requiring him to execute the works.

PART V

WATERFRONT DEVELOPMENT ZONES

Waterfront development zones.

34. (1) In respect of any sea or river defence zone, the Board may, subject to subsections (2) and (3), propose to the Minister any area within it to be designated as a waterfront development zone.

(2) Prior to making a proposal under subsection (1), the Board shall -

(a) prepare a draft proposal, in accordance with subsection (3); and

(b) carry out a public consultation on that proposal in accordance with section 41.

(3) The draft proposal prepared pursuant to subsection (2)(a) shall include -

(a) an outline of the objectives and rationale for the waterfront development zone;

(b) a description of the anticipated commercial activities in the waterfront development zone;

(c) an assessment of the impact of the waterfront development zone on the sea or river defence, including the measures necessary to maintain the long-term integrity of the sea or river defence; and

(d) such other information as the Board may agree or the Minister may direct.

(4) The Minister, taking account of the proposal received under subsection (1) and the results of the consultation conducted pursuant to subsection (2)(b), may designate an area within a sea or river defence zone as a waterfront development zone.

(5) Following a designation under subsection (4), the Board shall -

(a) publish notification of the designation in the *Gazette*, in at least one newspaper and on an official website; and

(b) publish as part of that notification -

(i) a copy of its proposal; and

(ii) a demarcation of the waterfront development zone.

Permitted development.

35. (1) Without prejudice to the other provisions of this Act or to any other enactment, the Board may authorise construction and other development works within a waterfront development zone.

(2) Notwithstanding the provisions of subsection (1), the Board shall not grant any authorisation unless the developer is able to demonstrate that -

(a) a lease, licence or other permit to occupy the land in the waterfront development zone has been obtained;

(b) all necessary consents for the proposed development have been obtained; and

(c) the construction of the proposed development and the conduct of the proposed activities in the waterfront development zone will not negatively impact or compromise the sea or river defence.

(3) The Board may attach such conditions to an authorisation under subsection (2) as it considers necessary to protect a sea or river defence and such conditions may relate to -

(a) any construction or other development work in the waterfront development zone;

(b) the maintenance and management of the waterfront development zone.

(4) Conditions imposed under subsection (3) are transferable to subsequent developers and may be attached to the –

(a) lease relating to the land of the waterfront development zone, with consent of Commissioner of the Guyana Land Surveys Commission; or

(b) authorisation granted under subsection (1).

(5) The grant of an authorisation under subsection (1) does not affect the obligations upon or liability of the developer in relation to any other authorisation, permission or consent that he may be required to obtain.

(6) In this section and section 36, "developer" means the holder, at any point in time, of the lease, licence or other permit to occupy the land in the waterfront development zone.

Management of waterfront development zones.

36. (1) Unless through a procedure in this Act the Board agrees otherwise, the developer is responsible for the proper maintenance and management of a waterfront development zone in accordance with any -

(a) conditions imposed under section 35(3)(b);

(b) conditions or requirements that exist pursuant to subsection (2); and

(c) other requirements imposed on the developer under any other law.

(2) The Board may, in addition to other steps it may take under this Act, in order to ensure the proper maintenance and management of a waterfront development zone -

(a) with the approval of the Minster, make by-laws in relation to that zone;

(b) issue licences, for such period and subject to such conditions as it considers expedient; or

(c) on behalf of the Ministry, enter into an agreement with any natural or legal person, including the developer.

Regulations under Part V.

37. (1) The Minister may make regulations, pursuant to section 75, for the implementation of this Part.

(2) The regulations referred to in subsection (1) may establish a separate entity to carry out the Board's functions under section 36 provided that such regulations ensure that the Board is consulted, and where necessary provides consent, in relation to matters affecting sea or river defences.

PART VI

INFORMATION AND PUBLIC PARTICIPATION

Access to Information Act applies.

Act No. 21 of 2011.

38. For the avoidance of doubt, nothing in this Act constitutes a derogation from any provision of the Access to Information Act and -

(a) request for access to an official document related to this Act is a request for access to an official document under the Access to Information Act; and

(b) noting in this Act requires the publication or disclosure of any exempt information or any other information or document for which publication or disclosure must or may be refused under the Access to Information Act.

Access to information.

39. (1) The Board shall disseminate information about its activities, sea or river defences and flood risks as widely as possible, including on official websites.

(2) The Board shall develop a policy and procedures for the provision of information to members of the public, consistent with the Access to Information Act 2011.

Act No. 21 of 2011.

Publication of reports, minutes, etc.

40. (1) This section applies -

(a) in respect of minutes of any meetings of the Board, including any subsidiary body;

(b) in respect of any consultation documents and reports produced pursuant to section 41;

(c) in respect of reports by the Minister pursuant to section 29(3); or

(d) in respect of any other document the Board or any other body or person is required to publish in accordance with this section or that it elects to publish in accordance with this section.

(2) A body or person to which this section applies shall -

(a) maintain copies of the public document in written or electronic form;

(b) make copies of the public document open to inspection by the public during ordinary business hours; and

(c) make copies of the public document openly available to a member of the public on request.

(3) The duty in subsection (1)(c) can be discharged by making copies of the public document available in electronic form on an official website.

(4) Where a member of the public makes a request of the kind referred to in subsection (1)(c), the Board may specify a reasonable charge to cover the costs of supplying the copies requested.

Public consultations.

41. (1) Where in this Act reference is made to a public consultation, the Board must -

(a) give notification that a consultation is taking place by means of publication of a notice in the Gazette, in at least one newspaper of widespread circulation published in Guyana and in electronic form on an official website;

(b) comply with the publication requirements in section 40;

(c) obtain and provide to the persons being consulted any relevant documents and plans, together with such technical and scientific advice as is considered necessary and to the extent it is available;

(d) ensure that all persons as may have an interest in or be affected by the matter subject to consultation have the opportunity to participate in and respond to the consultation;

(e) record all responses to the consultation, however received; and

(f) produce a report of the consultation, including -

(i) a summary of the responses received to the consultation; and

(ii) a statement explaining how the responses have or have not been taken into account.

(2) The Secretary shall make a copy of the report referred to in subsection (1)(f) available to the public in accordance with section 40.

PART VII

AUTHORISED OFFICERS

Authorised officers.

42. (1) The Minister may from time to time by instrument in writing appoint any public officer, or category of public officer, to carry out some or all of the duties and functions of authorised officers under this Act.

(2) The following persons are deemed to be an authorised officer for the purposes of this Act -

(a) the Chairperson, Vice-Chairperson and Executive Secretary;

(b) any constable designated in writing by the Board;

(c) any constable or other public officer assisting or accompanying an authorised officer in the exercise or performance of functions or powers conferred under this Act.

(3) The Board shall issue to each authorised officer an identity card in such form as the Board thinks fit.

Power to enter on land.

43. (1) An authorised officer may at any time enter any estate, or land in a village or in a council drainage area, or a sea or river defence zone with such persons, animals, vehicles, materials, appliances and instruments as may be necessary to -

(a) carry out works necessary for or incidental to the development, construction, maintenance, strengthening, repair or protection of the sea or river defence; and

(b) excavate and remove earth, cut and remove fascines and wood, and take and remove any other substance or thing required for works on the sea defence.

(2) There shall be no right to compensation under subsection (l), but if in any such case it appears to the Minister that material damage has been occasioned to the estate or land the Minister may, after consulting the Board, pay to the person affected such compensation as he may deem fit.

Emergency works.

44. (1) When an emergency occurs where any land in a district is likely to be or is inundated by the sea or river waters, the Minister may order the Board to take such immediate action and perform such works as may in the opinion of the Board be necessary to avert or mitigate such inundation.

(2) An order as aforesaid shall indemnify the Board and any person acting under its authority in respect of anything done in execution or intended execution of any decision or direction of the Board.

Enforcement powers.

45. (1) Where an authorised officer suspects that an offence against this Act is being or has been committed, the officer may at any time enter any premises or enter or board any vehicle, vessel or aircraft and do all or any of the following -

(a) investigate the suspected offence, in accordance with this section;

(b) require any person present on or in the vicinity of the premises to -

(i) disclose their full name and usual place of residence;

(ii) produce any permit, consent, or other evidence of a document authorising the act or omission that would otherwise constitute the offence;

(iii) cease carrying on any activity, specified by oral instruction by the authorised officer, which the officer has reasonable grounds to believe is an offence against this Act; and

(c) serve a flood protection notice on the person, or on any other person connected to the activity which the officer has reasonable grounds to believe is an offence against this Act.

(2) An authorised officer entering any premises under subsection (1) shall, if requested by an occupier of the premises, produce that his identity card.

(3) In the course of any entry under this section, the authorised officer may –

(a) carry out any inspection or survey;

(b) seize any equipment or article being used in the commission of an offence;

(c) review and copy any documents or other records documented in any form;

(d) take photographs or other audio or visual recordings;

(e) take samples of air, water, soil or other material found on or in the premises, vehicle or vessel.

(4) An authorised officer may, so far as is necessary to enable him to exercise any of the powers conferred by this section, prohibit entirely or to such extent as he may specify the movement, treatment or destruction of any object, container or package.

(5) Where any such record or document as is mentioned in subsection (3) is kept by means of a computer, an authorised officer may -

(a) have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the record or document; and

(b) require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford him such assistance as he may reasonably require.

Notification to be given.

46. (1) Subject to subsections (2) and (3), where any right of entry of an authorised officer exists under this Act, an authorised officer is not entitled to admission as of right to any premises which is occupied as a dwelling, unless twenty-four hours' notice of intended entry is given to the occupier.

(2) An authorised officer may enter any premises under a warrant issued by a Justice of the Peace if –

(a) the Board or an authorised officer has reason to believe that a contravention of the provisions of this Act or any

regulations made under it has occurred or is about to occur; and

(b) the circumstances are such that giving notice of the intended entry would defeat the purpose for which entry is sought.

(3) Subsection (1) does not apply in any case where entry into premises is needed in an emergency.

False statements, documents, etc.

47. (1) A person shall not make a statement that is false or misleading in any material particular in any application or in other information given to an authorised officer under this Act.

(2) A person shall not –

(a) falsify or alter any document that is granted, served or issued by an authority or authorised officer under this Act;

(b) provide to an authority or authorised officer a document that –

(i) has been falsified or altered by the person; or

(ii) the person knows to have been falsified or altered.

(3) A person who contravenes the provisions of subsection (1) or (2) commits an offence, and upon summary conviction shall be liable to a fine of five hundred thousand dollars and to imprisonment for a period of three months.

Person must not hinder any officer.

48. (1) A person shall not intentionally or recklessly delay, hinder or obstruct an authorised officer in the exercise of powers under this Act.

(2) A person who contravenes subsection (1) commits an offence, and is liable on summary conviction to a fine of five hundred thousand dollars and to imprisonment for a period of three months.

Protection of authorised officers.

49. No authorised officer shall in any way be liable to be prosecuted, or be liable in damages, for the exercise or performance in good faith of the functions, duties, or powers vested in the person or the Board under this Act.

PART VIII

FLOOD PROTECTION NOTICES

Power to serve flood protection notices.

50. An authorised officer may serve a flood protection notice where -

(a) an authority exists pursuant to a provision of this Act; or

(b) in the opinion of the Board, it is necessary for steps to be taken -

(i) in order to ensure compliance with this Act, or regulations made under it; or

(ii) otherwise to protect persons, property or the environment from flooding.

Content of flood protection notices.

51. (1) A flood protection notice shall -

(a) describe the premises, including the sea or river defences, to which it relates;

(b) specify the purpose of the notice, including any danger or nuisance the notice is intended to address;

(c) specify, to the extent necessary -

(i) any operations which are to be carried out on the premises or other necessary actions that are to be taken;

(ii) the manner in which those operations are to be carried out;

(iii) the person or persons who are to carry out those operations; and

(iv) the time-frame within which those operations are to be carried out;

(d) specify excluded operations; and

(e) specify the date on which the notice is to come into effect and the period for which it is to have effect.

(2) In this Part, "excluded operations" means any operations or actions which must not be carried out on the premises.

Offences in relation to flood protection notices.

52. (1) A person is guilty of an offence where, he or she, without reasonable excuse, fails to carry out a required operation, in the manner specified by a flood protection notice.

(2) Any person who intentionally obstructs any person from carrying out an operation required to be carried out under a flood protection notice is guilty of an offence.

(3) Any person who, without reasonable excuse, carries out, or causes or permits to be carried out, any excluded operation is guilty of an offence.

(4) A person who contravenes subsection (1), (2) or (3) commits an offence and is liable on summary conviction -

(a) in the case of a body corporate, to a fine of five million dollars;

(b) in the case of a natural person, to a fine of five million dollars and imprisonment for six months.

Miscellaneous provisions as to flood protection notices.

53. (1) A flood protection notice may -

(a) specify one or more requirements or alternative requirements; and

(b) define by reference to a map or plan or otherwise the extent of the premises referred to in the notice.

(2) Any works required by a flood protection notice shall be carried out or arranged to be carried out by the person on whom the notice is served -

(a) to the satisfaction of the Board; and

(b) in compliance with any directions issued by the Board or by an authorised officer.

(3) An authorised officer may amend or withdraw a flood protection notice served under this Act by a further flood protection notice served on the person –

(a) on whom the original notice was served; or

(b) who is the occupier or in charge of the premises in respect of which the further notice is intended to be served.

(4) A notice under subsection (3) may be subject to any conditions as the authorised officer considers expedient to impose for the purpose of ensuring that the objectives of the original notice, where they continue to exist, are met.

Appeals against flood protection notices.

54. (1) A person may appeal against a flood protection notice to the Court within the period of twenty-eight days of the date of service where -

(a) a flood protection notice is served on the person; or

(b) the person is subject to the imposition of requirements under a flood protection notice.

(2) On any appeal under subsection (1), the Court may –

(a) modify or quash the flood protection notice, as appropriate, if it is satisfied that –

(i) the service of the notice, or any requirement contained in it, is not reasonable in all the circumstances;

(ii) there is a material defect in the notice; and

(b) in any other case, dismiss the appeal.

New occupier becomes recipient of flood protection notice.

55. (1) Where a flood protection notice is served under this Act and there is a change in the occupation of the premises to which the notice relates, the person on whom the notice was served shall inform -

(a) the Board of the change in the occupation of the premises to which the notice relates together with the date of such change and the name of the new occupier; and

(b) the new occupier of the premises of the contents of the notice.

(2) The new occupier shall, from the time both of these requirements have been fulfilled, be deemed to be the recipient of that notice.

Failure to comply with a notice.

56. (1) If any person fails to comply with a flood protection notice served, or deemed to be served on him under this Act, without prejudice to any proceedings consequent on that failure, an authorised officer may, on production if so required of his authority –

(a) at all reasonable times for the purposes of this Act enter any premises to which the notice relates;

(b) take or cause to be taken such steps as appear to him to be necessary either to –

(i) ensure compliance with the requirements of the notice; or

(ii) remedy the consequences of the failure to carry them out.

(2) An authorised officer entering any premises under subsection (1) may take with him such other persons and such equipment and vehicles as he considers necessary for the purposes of facilitating the exercise of his powers under that subsection.

(3) The other persons mentioned in subsection (2), whether or not accompanied by the authorised officer and on production, if so requested, of their authority given in that behalf by the authorised officer, may remain on the premises and from time to time re-enter the premises with any equipment or vehicles that person considers necessary, and carry out works and in the manner directed by the authorised officer.

(4) Where an authorised officer takes any steps pursuant to paragraph (1), the Minister may recover all reasonable costs of taking such steps as a debt from the person on whom the notice was served.

Information as to compliance with flood protection notices.

57. A person on whom a flood protection notice has been served, or is deemed to have been served, under this Act shall, if so required by an authorised officer or by the Board -

(a) inform the authorised officer or the Board, as the case may be, whether the requirements of the notice have been complied with; and

(b) if they have been complied with, of the details of the steps taken in order to comply with those requirements.

PART IX

OFFENCES

Damage to sea and river defences.

58. (1) Anyone who damages any sea or river defence commits an offence.

(2) A person does not commit an offence under subsection (1) if acting under and within a written authorisation, including a flood protection notice of the Board or an authorised officer.

Making drain into the sea or construction on sea defence.

59. (1) No person shall, without the written authority of the Board, make -

(a) any drain, trench or cutting in the earth so as to affect any sea or river defence; or

(b) any construction, erection, alteration or thing in, about or upon any sea or river defence.

(2) Any person who contravenes, or aids or abets any person in contravening this section, commits an offence.

Obstruction to sea or river defence.

60. Any person who without lawful authority places or cause to be placed in, about or upon any sea or river defence any matter or thing that affects or impairs or which can reasonably be expected to affect or impair the efficiency, usefulness or operation of the sea or river defence, commits an offence.

Removal of earth, shell and other materials an offence.

61. Any person who without lawful authority removes any earth, sand, shell, clay, gravel, shingle, mineral substance, plant material or vegetation, or any other matter or thing whatsoever from within a sea or river defence zone commits an offence.

Trespass of cattle.

62. (1) A person having the custody or control of cattle trespassing on a sea or river defence zone shall be liable on summary conviction to a fine of five hundred thousand dollars.

(2) Any cattle trespassing may be seized and impounded by any police constable or by an authorised officer.

Forfeiture.

63. Any item of equipment or other article used in connection with an offence under this Act shall be forfeited.

Defences to prosecution.

64. It shall be a defence to any prosecution for an offence under any of the provisions of this Act, if it is proved that any act charged as an offence was done in good faith for the purpose of averting or mitigating an imminent risk or incident in which any estate or village or council drainage area is or is likely to be inundated by water.

General penalty for offences.

65. Any person who commits an offence against this Act for which a maximum monetary penalty on conviction is not specified, that person shall be liable on summary conviction -

(a) in the case of a body corporate, to a fine not exceeding ten million dollars, and if the offence is a continuing one to a further fine of ten thousand dollars for each day or part of a day that the offence continues after the date charges are laid;

(b) in the case of an individual, to a fine not exceeding one million dollars and if the offence is a continuing one to a further fine of one thousand dollars for each day or part of a day that the offence continues after the date charges are laid, or to imprisonment for a term not exceeding six months or to both the fine and the imprisonment.

Liability for loss and damage.

66. (1) A person is liable to the Government for any loss or damage caused by the commission of an offence under this Act or regulations made under it, in addition to any fine or penalty imposed where the person -

(a) has been convicted of that offence;

(b) has admitted to that offence; or

(c) is deemed to have admitted to that offence pursuant to section 73(3).

(2) In this section, loss and damage includes -

(a) in the case of damage to mangroves and other vegetation, loss or damage relating to the ecosystem or losses to biological value and amenity;

(b) in the case where the circumstances of the offence led to a failure of the sea or river defence, any loss or damage caused to any communities including any financial aid provided from public funds to such communities.

(3) The liability for loss or damage under subsection (1) may be discharged by –

(a) carrying out restorative works under the supervision of the Board, pursuant to subsection (4);

(b) by the payment of compensation, pursuant to an award of the Court under subsection (5); or

(c) a combination of both.

(4) Where liability arises under subsection (1), the Board may direct an authorised officer to serve a flood protection notice on the person who is liable and require that person to do all or any of the following under the supervision of and to the satisfaction of the Board -

(a) to clear up and remedy any damage caused to any sea or river defence; and

(b) to remove any structure or material placed in contravention of this Act.

(5) Where liability arises under subsection (1), the Court may make an award for compensation after taking into consideration -

(a) representations, if any, on the extent of loss or damage and the amount of the compensation from -

(i) the Board;

(ii) the person who committed or admitted to the offence; and

(b) the ability of the person who committed or admitted to the offence to pay; and

(c) the extent of any remedial works carried out by or at the request of the person who committed or admitted to the offence.

(6) The amount of compensation for loss or damage under subsection (5) may be awarded by the Court as restitution in addition to, and recovered in the same manner as a fine.

Damage caused by vessels.

67. (1) Where any offence is committed through the discharge of oil, noxious liquid substances or other harmful substances from a vessel, including wrecks, the clearance of any the vessel by the Customs Department shall be withheld until -

(a) all proceedings before the Court have been finally dealt with; and

(b) any fine payable under subsection (1) or (2) is satisfied or paid.

(2) Any penalty or amount payable under subsection (1) or (2) will constitute a lien on such vessel which may be recovered in proceedings by action in the Court.

Prosecution of offences.

68. (1) Proceedings for offences under this Act may be instituted under the Summary Jurisdiction Acts.

(2) Prosecution for an offence under this Act may be instituted by -

(a) any member of the police force;

(b) an authorised officer;

(c) any person employed by the Board for this purpose; or

(d) any other person authorised in writing for this purpose.

Strict liability.

69. (1) In any proceedings related to any offence against this Act, or regulations made under it, it is not necessary for the Board or the prosecution, as the case may be, to prove that the alleged offender intended to commit a strict liability offence unless it is specified that such proof is required.

(2) It is a defence in any proceedings for a strict liability offence if the alleged offender proves -

(a) that he did not intend to commit the offence; and

(b) that -

(i) in any case where it is alleged that anything required to be done was not done, he took all reasonable steps to ensure that it was done; or

(ii) in any case where it is alleged that anything prohibited was done, he took all reasonable steps to ensure that it was not done.

PART X

ADMINISTRATIVE PENALTIES

Establishment of administrative penalty.

70. (1) Subject to subsection (4), this section applies in respect of any offence against this Act or regulations made under it.

(2) In respect of an alleged offence against this Act or regulations made under it, the Board may cause an administrative penalty notice in writing, in the approved form, to be served on a person where the Board –

(a) has reasonable cause to believe that the alleged offence was committed by that person;

(b) considers it would be appropriate to impose a penalty under this section, taking into account all the circumstances relating to the alleged offence, including the extent and scale of any wrong-doing and damage caused, and having regard to the conduct and previous conduct of the person concerned.

(3) In order to make the determination under subsection (2), the Board may -

(a) make enquiries and conduct surveys and investigations as are reasonably required; and

(b) procure the assistance of the police in order to conduct interviews of witnesses and any person alleged to have committed the offence.

(4) This section does not apply -

(a) in respect of any alleged offence if any information or charge has been laid in respect of the alleged offence;

(b) in respect of an alleged offence against a body corporate that has within the previous three years been convicted of an offence against this Act or regulations made under it or has been subject to an administrative penalty under this Act;

(c) in any other case where the application of this section is expressly excluded.

Timing of administrative penalty notice.

71. (1) Subject to subsection (2), an administrative penalty notice must be served within twenty-eight days of the alleged commission of the offence.

(2) If the Board considers that further time is required to conduct any enquiry, survey, investigation or interview under section 70(3), it may extend the period for service to fifty-six days provided -

(a) the decision to extend the period of service was made within twenty-six days of the alleged commission of the offence;

(b) a written record of the decision, including the date it was made and the reasons for it, is made in an instrument of the Board; and

(c) a copy of the Board's instrument is served with the administrative penalty notice, when it is served.

Form of an administrative penalty notice.

72. (1) An administrative penalty notice shall be endorsed with a statement setting out the provisions of this section and contain -

(a) the date and nature of the alleged offence;

(b) a detailed summary of the facts on which the allegation that an offence has been committed is based; and

(c) any other matters, exclusive of previous convictions that the Board considers relevant to the imposition of a penalty.

(2) Subject to subsection (1), the Board may from time to time determine the form of the administrative penalty notice and shall publish such form and any modification of it in the Gazette.

Procedure for administrative penalty.

73. (1) Any person on whom an administrative penalty notice is served may, within twenty-eight days after the notice is served, by a notice in writing in the approved form served on the Secretary, require that any proceedings in respect

of the alleged offence must be dealt with before a court, in which case the following provisions apply -

(a) no further proceedings may be taken under this section by the Board;

(b) nothing in this section may be construed to prevent –

(i) the subsequent laying of any information or charge in respect of the alleged offence;

(ii) the conviction of the person of the offence by a court; or

(iii) the imposition of any penalty under any enactment under this Act on such a conviction.

(2) Any person on whom an administrative penalty notice is served who does not require that any proceedings in respect of the alleged offence be dealt with before a Court may, by notice in writing served on the Secretary -

(a) admit the offence; and

(b) make submissions to the Board as to the matters the person wishes it to take into account in imposing any penalty under this section.

(3) A person on whom an administrative penalty notice is served, is deemed to have admitted the offence where after the expiration of twenty-eight days after the notice is served, the person -

(a) does not require that any proceedings in respect of the alleged offence be dealt with before a court; or

(b) admits the offence.

Imposition of administrative penalty.

74. (1) Subject to subsection (2), under this section where a person admits or is deemed to have admitted an offence, the Board shall impose on that person a monetary penalty equivalent to -

(a) fifteen per cent of the maximum penalty for the offence in the case of a first offence under this Act; and

(b) thirty per cent of the maximum penalty for the offence in the case of a further offence under this Act.

(2) If, after taking into account any submissions made by a person under section 73(1), the Board considers there are particular circumstances that justify a lesser monetary penalty than that required under subsection (1), it may impose such a lesser monetary penalty.

(3) The imposition of a monetary penalty on a person under this section does not affect any powers to suspend, withdraw, modify or do any other thing to any permit, consent, licence or other authority that may be held by that person under this Act or any other enactment.

(4) If the Board imposes a penalty on a person under this section in respect of an offence, the Board must give notice in writing in the approved form of the particulars of the penalty to be served on the person.

(5) A person on whom a penalty is imposed under this section must pay the amount of the penalty to the Government within twenty-eight days after the notice of the penalty is served on the person.

(6) A penalty that has been imposed under this section is recoverable by the Government, from the person on whom it has been imposed, in the same manner as a fine is recoverable on summary conviction for any offence.

(7) Despite the provisions of this Act, or any other enactment, where any offence has been admitted or deemed to have been admitted under this

section, no other or further information or charge may be laid in respect of the offence against the person by whom it is admitted.

General regulations.

75. (1) Subject to subsection (2), the Minister may make regulations for the following purposes -

(a) protecting the growth of mangroves, and other shrubs, trees and vegetation on or near the foreshore;

(b) protecting land and soil between high and low water marks or within a sea or river defence zone;

(c) managing waterfront development zones;

(d) administering and enforcing the Act;

(e) amending the level of fines or administrative penalties provided for in the Act;

(f) for any other purpose related to carrying out the objects and purposes of this Act.

(2) Regulations under subsection (1) shall -

(a) be subject to negative resolution of the National Assembly;

(b) take into account recommendations of the Board; and

(c) be made only after conducting a public consultation in accordance with section 41.

PART XI

GENERAL AND MISCELLANEOUS PROVISIONS

Keeping of register of proprietors.

76. (1) The Board shall keep a register for each district in which shall be recorded the names and empoldered areas of the estates and villages and council drainage areas in that district and the names and addresses of the proprietors.

(2) The proprietor of every estate shall from time to time cause his correct address to be entered in the register, and such address shall be his "registered address".

Service of notices.

77. (1) A notice, of any kind, may be served on any person -

(a) by delivering it to him personally;

(b) by posting it to him at his usual or last known place of abode or, where an address for service has been given by that person, at that address;

(c) in the case of a registered proprietor, to his registered address; or

(d) in the case of a body corporate, by delivering or posting it to the Director or other officer of that body at its registered or principal office in Guyana.

(2) Where a notice, other than an administrative penalty notice, cannot be served in accordance with subsection (1), the notice shall be taken to be served seven days after it has been addressed to "the occupier" and affixed to an object on the premises to which the notice relates.

Proof of service.

78. A declaration made before a justice of the peace by an authorised officer that any notice served under this Act was duly served shall be deemed in all courts of justice to be prima facie evidence that the notice was duly given and served, where it is accompanied by -

(a) an endorsed duplicate or copy of that notice; and

(b) a statement describing the mode of service.

Liability of principals and agents.

79. (1) If an offence against this Act is committed by any person acting as the agent or employee of another person, that other person is, without prejudice to the liability of the first-mentioned person, liable under this Act in the same manner and to the same extent as if that other person had personally committed the offence if it is proved that -

(a) the act or omission that constituted the offence took place with the authority, permission or consent of that other person; or

(b) the other person -

(i) knew or should have known that the offence was to be or was being committed; and

(ii) failed to take all reasonable steps to prevent or stop it.

(2) Where a body corporate is convicted of an offence against this Act, every person, being a director or a person concerned in the management of the body corporate, is guilty of the same offence if it is proved -

(a) that the act or omission that constituted the offence took place with the authority, permission or consent of that person; or

(b) that person -

(i) knew or should have known that the offence was to be or was being committed; and

(ii) failed to take all reasonable steps to prevent or stop it.

Proceedings under Act free.

80. (1) Any action, proceeding, prosecution or process under this Act or the regulations at the instance or on behalf of the Board shall be free.

(2) Any prosecution for an offence under this Act or regulations made under it may be instituted by any police constable or by any person authorised by the Chief Officer.

Act not to apply to harbours.

81. Nothing in this Act shall be deemed to apply to any harbour or to affect the powers, authority or jurisdiction of the Transport and Harbours Department in respect of any harbour.

Limitation provisions excluded.

Cap. 7.01.

82. The Limitation Act shall not apply to proceedings instituted by the Board for the recovery of moneys due to the Board or any other property to which a claim is made by the Board.

PART XII

TRANSITIONAL PROVISIONS, CONSEQUENTIAL AMENDMENTS AND REPEALS

Existing sea and river defences.

Cap. 64:02.

83. (1) Any sea or river defence in existence under either of the Acts listed in section 85 immediately prior to the commencement of this Act remains in force and has effect as if it had been made under a corresponding provision of this Act.

(2) For the purposes of Part III, the geographic limits of existing sea and river defences, as defined under the section 2 of the Sea Defence Act, comprise a "sea or river defence zone."

(3) This section does not affect or modify the title to any lands at the time of entry into force of this Act.

Other transitional provisions.

84. (1) Every permit, licence, certificate, declaration or notice issued under either of the Acts listed in section 85 and remaining in force or having effect immediately prior to the commencement of this Act shall remain in force and have effect as if it had been made under a corresponding provision of this Act.

(2) Every order, direction, decision or request made by any person authorised to make such orders, directions, decisions or requests under either of the Acts listed in section 85 shall, if still subsisting, be deemed to be an order, direction or decision made under the corresponding provisions of this Act and shall have effect accordingly.

Repeal of the Sea Defence Acts.

85. (1) Subject to section 84, the Sea Defences Act is repealed.

Cap. 64:01.

Cap. 64:02.

(2) Subject to section 84, the Sea Defence Act is repealed.

SCHEDULE I

CONSTITUTION OF THE BOARD

Section 5

Purpose of the Board.

1. The Board is charged with the care, maintenance, management and construction of sea and river defences in Guyana.

Membership of the Board.

2. (1) Every member of the Board is to be appointed by the Minister for a term of three years and is eligible for re-appointment.

(2) In appointing the members of the Board, the Minister shall ensure that the membership comprises -

(a) at least five members, or their respective nominees, from other Government bodies–

(i) the Chief Officer;

(ii) Chief Executive Officer, Central Housing and Planning Authority;

(iii) Commissioner of Guyana Land Surveys Commission;

(iv) Chief Executive Officer of National Drainage and Irrigation Authority;

(v) Commissioner of Guyana Forestry Commission;

(vi) Director of the Maritime Administration Department;

(vii) Director-General of Civil Defence Commission; and

(viii) Executive Director of Environmental Protection Agency;

(ix) Senior Director of the Department of Environment and Climate Change;

(b) at least three members representing a Regional Democratic Council; and

(c) at least three other members, including -

(i) at least one representative of the private sector;

(ii) at least one representative of a non-governmental organisation.

(3) Decisions on membership shall strive for an adequate gender balance, reflecting national policy objectives as may be specified from time to time.

(4) An appointed member may at any time resign by giving notice in writing to the Minister.

(5) Any appointed member may be suspended or removed from office by the Minister with the concurrence of Cabinet, only on grounds of incompetence, disability, bankruptcy, neglect of duty, or misconduct or if the member, having dissented from a majority decision of the Board, publicly criticises the decision of the majority.

(6) The Minister shall by notice in writing remove a member from office if the member, or the alternate, is absent from three consecutive meetings of the Board without leave of the Board.

(7) Where a member resigns, is removed from office, or where any member otherwise ceases to be a member, the Minister may appoint a person to replace that member in accordance with the provisions of these rules of procedure.

(8) The powers of the Board are not affected by any vacancies in its membership.

Meetings of the Board

3. (1) The Chairperson may summon a meeting of the Board at any time on seven clear days' notice to members from the day of posting the notice, and shall at the request in writing of three appointed members within six days of the receipt of such request summon a meeting on the notice.

(2) There shall be at least one meeting of the Board in every month.

(3) Every meeting of the Board is to be presided over by the Chairperson or the Vice-Chairperson, acting as Chairperson, and in the absence of the Chairperson and Vice-Chairperson, the members present shall appoint one of their number to be the Chair for that meeting.

(4) At meetings of the Board, the quorum necessary to transact business is one-third of the total membership.

(5) With the consent of the Chairperson, a member may attend a meeting of the Board by means of remote access technology.

(6) The Chairperson, or in his absence the Vice-Chairperson, of a meeting shall have an original and a casting vote.

(7) Every question before a meeting of the Board shall be decided by consensus, failing which it must be determined by a majority of valid votes of the members present.

(8) If an appointed member is unable to attend a meeting, a representative designated by that member may attend that meeting provided that—

(a) the representative does not represent the member in more than two meetings per year, except with the written permission of the Chairperson; and

(b) only one person is designated as representative in any calendar year.

Minutes of meetings.

4. (1) The Chair of any meeting of the Board shall cause minutes to be kept in a book maintained for the purpose of recording all resolutions and proceedings at its meetings.

(2) The minutes shall be approved by the Board at the following meeting, and signed by the Chairperson.

(3) A copy of the minutes of each meeting shall be furnished to every member of the Board and the Minister.

Disclosure of conflicting interests.

5. (1) Any member of the Board who, otherwise than in his capacity as a member, is directly or indirectly interested in any matter before the Board, shall as soon as possible after the relevant facts have come to his knowledge, disclose the nature of that interest -

(a) if the Board is in session to the Board; and

(b) in any other case, to the Executive Secretary.

(2) An interest for the purposes of sub-paragraph (1) includes -

(a) any financial or business interest; and

(b) any private, political or other interest relating to the matter before the Board which might lead to a personal

benefit from actions or decisions made in an official capacity.

(3) A disclosure under subparagraph (1) shall be recorded by the Board or the Executive Secretary, as the case may be, and the member shall thereafter not take part in any deliberations or decisions relating to the matter, but is to be counted for the purpose of forming a quorum.

(4) Without prejudice to any other action that is permitted by law, a person who contravenes subparagraph (1) may be removed from his position on the Board by the Minister in writing.

Sub-committees.

6. (1) The Board may establish such sub-committees as it considers necessary in order for it to carry out its functions and duties.

(2) The Board shall determine the membership, functions and rules of procedure of any sub-committee, provided that nothing is inconsistent with this Act.

Schedule II

Sea and River Defence Districts

Section 11

No. 1, ESSEQUIBO COAST and POMEROON extending from the mouth of the Pomeroon River to the mouth of Supenaam River and bounded as follows:

On the north-from the mouth of the Pomeroon River at its junction with the Atlantic Ocean thence in south easterly direction;

On the south—to the mouth of the Supenaam River;

On the east—by the Atlantic Ocean;

On the west—by the Pomeroon River in a south easterly direction to its junction with the Cozier Canal, thence in a north easterly direction to the junction, (0.7 miles) with an unnamed canal, from its junction with the Cozier Canal, thence in a south easterly direction to the junction, 0.7 miles east of the Public Road, of the prolongation of the unnamed canal and the Somerset and Berks Main Canal, thence in a south westerly direction along the Somerset and Berks Main Canal to its junction with the Tapakuma Main Canal, thence in a south easterly direction along the Tapakuma Main Canal to its junction with the northern boundary of Plantation Alliance, thence along the back boundaries of the estates from Plantation Alliance to Plantation Onderneeming and thence along the Tapakuma Irrigation Main Canal in a south easterly direction to the back boundaries of Spring Garden and Good Hope to a point 1½ miles south west of the mouth of the Supenaam River.

No. 2, THE ISLAND OF WAKENAAM in the Essequibo River.

No. 3, THE ISLAND OF LEGUAN in the Essequibo River.

No. 4, WEST COAST DEMERARA extending from the centre line of Naamryck Canal to the mouth of the Demerara River and south west of Demerara River to Plantation Wales and bounded as follows:

On the north—by the Essequibo River and the Atlantic Ocean, commencing from the junction of the Essequibo River with the north western end of the Naamryck Relief Canal and extending to the Transport and Harbours Stelling, Vreed-en-Hoop;

On the south—by the Boerasirie—Bonasika Canal and Boerasirie Service Canal, commencing from the junction of the Boerasirie— Bonasika Canal with the Naamryck Relief Canal and extending along the Boerasirie Service Canal to the western boundary of Plantation Lust-Tot-Rust, thence along the back boundaries of the second depths of Plantations Versailles, Malgre Tout, Klien Pouderoyen, and Swan-en-Schutz to the back boundary of Plantation Ruimzight, thence along the northern boundary of Plantation Swan-en-Schutz to the Demerara River;

On the east—by the Demerara River; up to Plantation Wales. West Bank Demerara.

On the west—by the Naamryck Relief Canal.

No. 5, EAST COAST DEMERARA, extending from the western boundary of Plantation Kingston to the Mahaica River and bounded as follows:

On the north—by the Atlantic Ocean;

On the south—by the southern boundary of the Ministry of Works and Supply Compound to Fort Street, thence north along Fort Street to its junction with Wight's Lane, thence east along Wight's Lane and its continuation into Young Street to its junction with Camp Road to its junction with Thomas Road, thence east along Thomas Road to its junction with the western boundary of Plantation Kitty to the Lamaha Canal, thence along the Lamaha Canal to its junction with the East Demerara Water Supply Canal, thence east along the East Demerara Water Supply Canal from its junction with the Lamaha Canal to its junction with the Shanks Canal;

On the east—by the Shanks Canal from its junction with the East Demerara Water Supply Canal to a point at the junction of the boundaries between Plantations Hand-en-Veldt, Voorzigtigheid, and Grove, thence along the back boundaries of Voorzigtigheid, Cambridge, Good Intent, Unity, Lancaster, Tranquility Hall and Spring Hall to the southern boundary of Spring Hall, to the Mahaica River, and the Mahaica River to the Atlantic Ocean;

On the west—by the Demerara River from its junction with the Atlantic Ocean to the southern boundary of the Ministry of Works and Supply Compound, Georgetown to the junction of Timehri, East Bank Demerara.

No. 6, MAHAICA ABARY, extending from the Mahaica River to the Abary River, and bounded as follows—

On the north—by the Atlantic Ocean;

On the south—by the public road from the Mahaica River to the western boundary of Plantation Belvidere, the western boundary of Plantation Belvidere to the common boundary between Plantations Belvidere and Salisbury, the back boundaries of the second and extra depths of the estates from Plantation Belvidere to Plantation Drill at the junction of the common boundaries of Plantations Drill, Dankbarheid and Anjou, by the common boundary between Plantations Dankbarheid and Anjou to Mahaicony River, the back boundaries of the coast estates and their second depths from Plantation Park to the Abary River at the common boundary between Plantations Adventure and Letter T;

On the east—by the Abary River from the northern boundary of Plantation Letter T to the Atlantic Ocean;

On the west—by the Mahaica River from the Atlantic Ocean to the public road bridge.

No. 7, WEST COAST, BERBICE, extending from the Abary River to the Berbice River and bounded as follows—

On the north—by the Atlantic Ocean;

On the south—by the northern and north-eastern boundaries of the tract held by the B.G. Rice Development Co. Ltd., under Grant No. 4961 to the back boundary of the second depth of Plantation Bush Lot, the back boundaries of the second depths of the estates from Plantation Bush Lot to Waterloo, the western boundaries of the tracts held by the Berbice Development Company under Leases A368 and A2621, the southern boundary of the tract held under Lease A2621 to the back boundary of the second depth of Nos. 5, 6, 7 and 8 Blairmont, the southern boundary of the second depth of No. 8, to the back boundary of the first depth of No. 9, the back boundaries of No. 9, Zorg-en-Hoop and Ithaca to the southern boundary of Plantation Ithaca and by the southern boundary of Plantation Ithaca to the Berbice River;

On the east—by the Berbice River from the south boundary of Plantation Ithaca to the Atlantic Ocean;

On the west—by the Abary river from the Atlantic Ocean to the northern boundary of the tract held by the Rupununi Development Company under Grant No. 4961.

No. 8, EAST AND CORENTYNE COAST, BERBICE, extending from the Berbice river to the Corentyne river and bounded as follows—

On the north—by the Atlantic Ocean;

On the south—by the Grand Canal from the Berbice river to the common boundary between Plantations Fyrish and Kilcoy, the western and south-eastern boundaries of the tract held by the Corentyne Sugar Company Limited, under licence A173, the south-eastern boundary of the tract held by Guyana Sugar Corporation Limited under Lease A2105 to the Old Alness Water Path, thence north-easterly along the Old Alness Water Path to the North/South Branch Canal of a Black Bush Polder, thence along the North/South Branch Canal to the Yakusari Canal thence north-easterly along the Yakusari Canal to the junction of the Second Depth of No. 52 and Seaford Dam thence along the back boundaries of the Second Depths of Villages Nos. 52 to 76, the back boundaries of the areas held under title from the State in the second and extra depths of Villages Nos. 77 to 83 to the southern boundary of No. 83 to the Corentyne River.

On the east—by the Corentyne river from the Southern boundary of No. 83 to the Atlantic Ocean;

On the west—by the Berbice river from the Atlantic Ocean to the Grand Canal.

EXPLANATORY MEMORANDUM

The Sea and River Defence Bill 2023 seeks to repeal and replace existing legislation on sea and river defence, to make provision for protection from inundation from the sea or rivers and to provide for the establishment, construction and maintenance of sea and river defences, natural defences and to provide for related matters, and to provide for related matters.

Clause 1 of the Bill provides for the short title of the Act and **clause 2** provides for the commencement of the Act.

Clause 3 of the Bill defines key terms in the Bill while **clause 4** imposes a general duty on public authorities to cooperate with the Board where decisions may impact sea and river defences.

Clause 5 of the Bill establishes a Sea and River Defence Board while **clause 6** sets out the functions of the Board, which includes monitoring, reviewing and assessing the requirements for sea or river defences throughout Guyana.

Clause 7 of the Bill provides that the Board shall have a permanent Secretariat and requires the Minister to ensure that the Secretariat is provided with adequate staff, facilities, etc.

Clause 8 of the Bill provides for funds of the Board to be provided through the Ministry's budget.

Clause 9 of the Bill requires the Board, within three months of the end of the financial year to make a report to the Minister, which shall be laid before the National Assembly.

Clause 10 of the Bill gives the Board power to make By-laws, with the Minister's approval.

Clause 11 of the Bill empowers the Minister to vary the boundaries of a district, revoke or create a district, where the Board recommends such action and appropriate public consultations were carried out.

Clause 12 of the Bill sets out the requirements where the Board is considering and reviewing the need to construct a new sea or river defence or modify an existing one.

Clause 13 of the Bill sets out the procedure to be followed before a sea or river defence is created or modified and includes the preparation of a plan.

Clause 14 of the Bill makes provision for a sea or river defence plan to be made available to the public and for consultations to be carried out.

Clause 15 of the Bill defines minor construction works and provides for steps to be taken where such works are to be done.

Clause 16 of the Bill provides for the Board to prepare a final plan after consultations have concluded. The plan is submitted to the Minister and where approved, the decision is made as to whether the cost will be defrayed out of the Ministry's funds or Parliament. Once approved by Parliament, the Board is allowed to construct the sea or river defence.

Clause 17 of the Bill provides that the Board shall publish the order for the construction of a sea or river defence.

Clause 18 of the Bill provides that the area demarcated as the sea or river defence zone shall become the property of the State.

Clause 19 of the Bill requires the Board to lodge the plan with the Deeds Registrar or the Land Registrar.

Clause 20 of the Bill provides for sea and river defence works to be carried out under the direction of the Board by the Ministry, agents of the Ministry or contractors.

Clause 21 of the Bill provides for drainage, irrigation or navigation construction that relates to a sea or river defence to be constructed, managed, maintained and replaced by the entity responsible for the construction.

Clause 22 of the Bill provides for costs incurred in the construction or maintenance of a sea defence to be paid out of moneys provided by Parliament.

Clause 23 of the Bill provides that Part IV shall apply to local sea and river defences and not national defences.

Clause 24 of the Bill makes provision for an authorised officer to serve a flood protection notice on an occupier or owner of an estate where it is necessary to execute works.

Clause 25 of the Bill prohibits deviation from an existing sea or river defence where the Board has not given such permission.

Clause 26 of the Bill makes provision for the proprietor of any right or interest in an estate who desires to secure the estate from inroads of the sea, a river or creek, or from being flooded by water, may apply to the Board for a loan to defray expenses for permanent works or an order authorising the Ministry to execute works.

Clause 27 of the Bill provides for the Minister to direct the terms of repayment of the loan.

Clause 28 of the Bill sets out the requirements for the Board where it is necessary to execute works to protect the foreshore of a local authority district.

Clause 29 of the Bill gives the Minister power to order the execution of the works under clause 28 where Parliament provides the necessary funds.

Clause 30 of the Bill gives the Ministry or Board the power to remove earth, cut wood, and take material of every kind from or on the plantation necessary for any of the works where works are being carried out for the protection of the estate.

Clause 31 of the Bill provides for a preferent lien to be placed on the estate where money was advanced by loan. Any debt is deemed due to the State.

Clause 32 of the Bill provides that production of a copy of an order or direction of the Minister, certified as a correct copy by the Permanent Secretary, or the production of the *Gazette* containing the official publication of an order or direction of the Minister under this Act, shall be conclusive proof of that order or direction having been made or given.

Clause 33 of the Bill gives an authorised officer power to serve a flood protection notice on the proprietor of an estate who refuses or neglects to do any work required in a reasonable time.

Clause 34 of the Bill allows the Board, subject to certain conditions, to propose to the Minister any area within it to be designated as a waterfront development zone.

Clause 35 of the Bill provides for construction and other development works to be done within a waterfront development zone.

Clause 36 of the Bill provides for the developer to be responsible for the proper maintenance and management of a waterfront development zone, inclusive of any conditions imposed.

Clause 37 of the Bill provides for regulations to be made under Part V.

Clause 38 of the Bill provides that the Access to Information Act 2011 applies in relation to official documents.

Clause 39 of the Bill requires the Board to disseminate information about its activities as widely as possible.

Clause 40 of the Bill provides for publication of documents produced by the Board.

Clause 41 of the Bill sets out the process for public consultations.

Clause 42 of the Bill provides for the appointment of authorised officers.

Clause 43 of the Bill gives an authorised officer power to enter any land necessary to carry out works.

Clause 44 of the Bill provides for the Board to carry out emergency works to avert inundation of any land.

Clause 45 of the Bill sets out the enforcement powers of an authorised officer, which includes investigation of an offence and service of a notice.

Clause 46 of the Bill requires that twenty-four hours' notice is given before entry by an authorised officer.

Clause 47 of the Bill creates the offence of making false statements and sets out the penalty of a fine of five hundred thousand dollars and to imprisonment for a period of three months where there is conviction.

Clause 48 of the Bill creates the offence of intentionally or recklessly delaying an authorised officer and sets out the relevant penalty.

Clause 49 of the Bill provides for the protection of authorised officers for prosecution where functions were performed in good faith.

Clause 50 of the Bill gives an authorised officer power to serve a flood protection notice in certain circumstances.

Clause 51 of the Bill sets out the content of a flood protection notice.

Clause 52 of the Bill sets out offences in relation to flood protection notices.

Clause 53 of the Bill sets out additional provisions in relation to flood protection notices, for example amending or withdrawing a notice.

Clause 54 of the Bill sets out the procedure for appealing a flood protection notice.

Clause 55 of the Bill requires the occupier to inform the Board of a change in ownership, where a flood protection notice has been served.

Clause 56 of the Bill provides for the steps to be taken where a person fails to comply with a notice.

Clause 57 of the Bill requires a person on whom a notice was served to inform the Board where the notice was complied with.

Clause 58 of the Bill provides that anyone who damages any sea or river defence, without authorisation commits an offence.

Clause 59 of the Bill makes it an offence to make any drain, trench or cutting in the earth that affects a sea or river defence.

Clause 60 of the Bill makes it an offence for any person without lawful authority to place anything in or about a sea or river defence that would affect its efficiency.

Clause 61 of the Bill provides that any person who removes any matter from within a defence zone commits an offence.

Clause 62 of the Bill provides that a person who has custody or control of cattle trespassing on a sea or river defence shall be liable on summary conviction to a fine of five hundred thousand dollars.

Clause 63 of the Bill provides that any item or equipment in connection with an offence shall be forfeited.

Clause 64 of the Bill provides that it may be a defence to prosecution for an offence under the Act where a person proves that any act charged as an offence was done in good faith for the purpose of averting the risk of inundation.

Clause 65 of the Bill creates a general penalty for offences.

Clause 66 of the Bill provides that a person is liable to the Government for any loss or damage caused by an offence.

Clause 67 of the Bill provides that where an offence is committed by discharge from a vessel, clearance of the vessel by customs shall be withheld.

Clause 68 of the Bill provides that prosecutions under the Act may be instituted un the Summary Jurisdiction Acts.

Clause 69 of the Bill provides for strict liability offences.

Clause 70 of the Bill provides for administrative penalty notices.

Clause 71 of the Bill sets out the service time for administrative penalty notices.

Clause 72 of the Bill provides for the form of the notice.

Clause 73 of the Bill provides the procedure where a person who has been served with an administrative penalty notice requires that a court deals with the matter.

Clause 74 of the Bill provides for an administrative penalty.

Clause 75 of the Bill provides for regulations.

Clause 76 of the Bill requires the Board to keep a register of the empoldered areas.

Clause 77 of the Bill provides for service of notices.

Clause 78 of the Bill provides the circumstances under which a declaration made by an authorised officer is deemed as served.

Clause 79 of the Bill provides for liability of persons acting as agents of another.

Clause 80 of the Bill provides that proceedings under the Act on behalf of the Board are free.

Clause 81 of the Bill provides that nothing in the Act shall apply to Transport and Harbours Department.

Clause 82 of the Bill provides that the Limitation Act, Cap. 7:01 shall not apply to proceedings instituted by the Board.

Clause 83 of the Bill saves existing sea and river defences under the Acts being repealed.

Clause 84 of the Bill saves permits and licences issued under the Acts being repealed.

Clause 85 of the Bill repeals the Sea Defences Act, Cap. 64:01 and the Sea Defence Act, Cap. 64:02.

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Hon. Juan Edghill, MP
Minister of Public Works