

MOTU KOITA ASSEMBLY

THE TUNA BAY SPECIAL COASTAL MANAGEMENT BY-LAW 2021

Notice is hereby given that the Motu Koita Assembly has enacted by way of a resolution the Motu Koita Assembly Act 2007, the Tuna Bay Special Coastal Management By-Law 2021 contained hereinafter,

To provide for measures to protecting and managing the coastal zone with primary focus on the Tuna Bay area as shown in the Map enclosed as Schedule "A": to provide for measures to aligning development within the coastal zone with the objects of the Environment Act 2000 to provide for measures for protecting the natural environment of the coastal zone; to provide for measures for providing public access to the coastal zone, to establish the Local Council Coastal Management Committee, to give effect to the Local Council Coastal Management Programme and to provide for matters connected herewith.

PREAMBLE

WHEREAS the Environment Act 2000 affords coastal Local Councils powers to administer certain matters, aspects or functions of the aforesaid Act , such as matters contained in Sections 39 of the said Act.

AND WHEREAS the Local Council has legislative and executive competence relating to the matters such as, but not limited to local level development planning, building regulations and standards, waste management, use and access to beaches, and nuisances, as pertaining to the coastal zone.

NOW THEREFORE , the Motu Koita Council , acting in terms of the Section 44 Organic Law on Provincial and Local Level Governments (Law-making Powers of Local Level Governments) and Section 39 of the Environment Act 2000 and the Local Level Government Administration Act 2007 hereby make the following By-law:

CHAPTER 1 INTERPRETATION

1. Definitions

In this By-law unless the context indicates otherwise-

"Act" means the Environment Act 2000/Protected Area Act

"authorized official" means a person authorized to implement the provisions of this By-law, including but not limited to-

(a) peace officers as contemplated under the Village Court Act;

- (b) local or metropolitan police officers as contemplated in the Police Act; and
- (c) such employees, agents, delegated nominees, representatives and service providers of the Local Council as specifically authorized by the Local Council in this regard: Provided that for the purposes of search and seizure, where such person is not a peace officer or a police officer, such person must be accompanied by a peace officer or a police officer;

“CCDA” means Climate Change Development Authority;

“CEPA” means Conservation and Environment Protection Authority;

“coastal area” means land that constitute the coastal zone within the coastal Local Council area;

“coastal zone” means a coastal zone as defined in the Act;

“Coastal Management” includes-

- (a) the regulation, management, protection, conservation and rehabilitation of the coastal environment;
- (b) the regulation and management of the use and development of the coastal zone and coastal resources;
- (c) monitoring and enforcing compliance with laws and policies that regulates human activities within the coastal zone, and
- (d) planning in connection with the activities referred to paragraphs (a), (b) and (c);

“Coastal planning scheme” means a scheme that-

- (a) reserves defined areas within the coastal zone to be used exclusively or mainly for specified purposes; and
- (b) prohibits or restricts any use of the areas contemplated in paragraph (a) in conflict with the terms of the scheme;

“coastal protection zone” means a coastal protection zone contemplated in Section --- of the Act;

“Conservation Areas Act” means the Conservation Areas Act 1978;

“constitution” means the Constitution of the Independent State of Papua New Guinea 1975;

“council manager” means the Manager of the Local Council;

‘development’ in relation to land, means any processes initiated by a person to change

the use, physical nature or appearance of that place and includes-

- (a) the construction, erection, alteration, demolition or removal of a structure or a building;
- (b) a process to rezone, subdivide or consolidate land;
- (c) changes to the existing or natural topography of the coastal zone; and
- (d) the destruction or removal of indigenous or protected vegetation;

“fisheries management act” means the Fisheries Act 1998;

“forestry act” means the Forestry Act 1991 (as amended);

“integrated development plan” ” means a plan contemplated under the Motu Koita Assembly Act;

“littoral active zone “ means any land, forming part of, or adjacent to, the seashore that is-

- (a) unstable and dynamic as a result of natural processes; and
- (b) characterized by dunes, beaches, sand bars, and other forms composed of unconsolidated sand;
 - (i) unvegetated, or
 - (ii) only partly vegetated;

“Local Council” means the Motu Koita Assembly;

“Local Coastal Management Committee” means the Committee established under the By-law with the responsibility of management of the coastal zone.

“Local Level Government Administration Act” means the Local Level Government Administration Act 1997;

“Maritime Zones Act” means the Maritime Zones Act 2015;

“Motu Koita Assembly Act” means the Motu Koita Assembly Act 2001;

“National Capital District Commission Act” means the National Capital District Commission Act 2001;

“NCDC” means National Capital District Commission;

“NMSA” means National Marine Safety Authority’

“NFA” National Fisheries Authority;

“person” means a natural or corporate person;

“protected areas act” means the Protected Area Act of 2021.

“Seashore” means the seashore as defined in the Act;

“Waste” means the wastes as defined in the Act.

2. Interpretation of the By-law

In the event of a conflict in interpretation between the English version of the By-law and the translated version, the English version prevails.

CHAPTER 2 OBJECTS OF BY-LAW

3. Object of By-law

The objects of the By-law are:

- (a) fulfill the responsibilities and duties to the Local Council by the Act;
- (b) ensure sustainable use and development of the coastal area by aligning local government planning with the Act;
- (c) establish the Motu Koita Coastal Management Committee and give effect the Local Council Coastal Management Programme,
- (d) promote the protection of the natural environment of the coastal zone, and
- (e) promote fair and equitable access to the coastal zone by members of the public.

CHAPTER 3 APPLICATION

4. Application of By-law

(1) Subject to any applicable law, this by law applies in respect of all-

- (a) activities being undertaken or performed; or
- (b) objects, things, substances and land situated, within the coastal area of the Local Council area, and is binding on all persons to the extent applicable..

- (2) Any law or Schedule to which reference is made in this By-law is applicable as amended from time to time

5. Applicable Laws

This By-law must be read in conjunction with all applicable legislation, including but not limited to-

- (a) Climate Change Management Act 2015,
- (b) Conservation Areas Act 1978,
- (c) Conservation and Environment Protection Authority Act,
- (d) Environment Act 2000,
- (e) Fauna (Protection and Control) Act 1966,
- (f) Fisheries Management Act 1996,
- (g) Forestry Act 1991,
- (h) Land Act 1996,
- (i) Land Registration Act 1991,
- (j) Local Level Government Administration Act 1997,
- (k) Maritime Zones Act 2015,
- (l) Motu Koita Assembly Act 2007,
- (m) National Capital District Commission Act 2001, and
- (n) National Maritime Safety Authority Act 2003.

CHAPTER 4 LOCAL COUNCIL MANDATE AND ROLE IN INTEGRATED COASTAL MANAGEMENT.

6. Local Council Mandate and Role in Integrated Coastal Management

The role and mandate of the Local Council in integrated coastal management includes but is not limited to ensuring-

- (a) that the Local Council give full effect and value to the principles underlying the Act;
- (b) proper management and control of the coastal zone for the common good of all,
- (c) The Local Council upholds and aligns itself to the principle of cooperative governance-
 - (i) between itself and other spheres of government and organs of state, and
 - (ii) within various departments of the Council, on all matters concerning integrated coastal management.

- (d) that development in the coastal zone takes place in a manner on a scale that promotes and supports integrated coastal management,
- (e) that access to the coastal zone and portion or component thereof is affectively regulated and managed,
- (f) that the natural assets occurring with the Council's coastal zone, are regulated, conserved and protected for both the current generation, and future generation.

7. Local Council Administrative Capacity related to Integrated Coastal Management

- (1) The Local Council must monitor all matters assigned to it by the Act and by this By-law relating to the integrated coastal management within its area of jurisdiction and within its competence.
- (2) The Local Council must secure and ensure the administrative capacity to administer, implement and enforce the provisions of-
 - (a) this By-law;
 - (b) the Act which assigns duties, powers or functions to the Local Council;
 - (c) the Local Council Coastal Management Programme; and
 - d) decisions of the Local Council Coastal Management Committee to the extent such decisions are approved or adopted by the Council as contemplated in Section 10(2)
- (3) The Local Council must manage the coastal zone in an innovative and integrated manner ensuring that the Council's environmental, economic, and social benefits inked to the coastal zone are utilized to their full extent.
- (4) In discharge of its local planning functions relating to any part of the coastal zone , the Local Council must ensure that appropriate balance is maintained between the Council's built, rural and wilderness areas.
- (5) Subject to any By-law on beaches and other applicable laws, the Council must provide reasonable public access to beaches and coastal areas: Provided that a people first and sustainable approach to the use and development of the coastal zone is adopted.

8. Local Council Coastal Management Committee.

- (1) The Council must establish a Local Council Coastal Management Committee as contemplated in the Act.

- (2) The Council Manager must invite nominations from the public for the appointment of competent persons to serve as members of the Coastal Management Committee.
- (3) The invitation contemplated in subsection (2) must set out the minimum requirements and the eligibility criteria for its nomination and appointment sought.
- (4) The Local Council Coastal Management Committee must consist of -
 - (a) persons with expertise in fields relevant to coastal management;
 - (b) representatives of the management authorities of coastal or marine protected areas with the Council area;
 - (c) other government institutions with particular interest in nature and conservation, and
 - (d) representative of the Port Authority.
- (5) The representatives of the following persons may be considered for nomination contemplated in subsection (2)-
 - (a) communities or organizations with a particular interest in contributing to effective coastal management;
 - (b) person whose livelihood or business rely on use of coastal resources;
 - (c) environmental interest groups; and
 - (d) research organizations or institutions.
- (6) The Local Council Local Coastal Management Committee must consist of at least 12 members.
- (7) At least two thirds of the membership of the Local Council Coastal Management Committee must be fulltime employees of the Local Council.
- (8) The position of Chairperson of the Local Council Coastal Management Committee must be held by a suitably competent person who is a full time employee of the Local Council: Provided that this does not prevent any member of the Committee from chairing any meeting of Forum of the Committee in the absence of the Chairperson or as and when it is arranged as such by the members of the Committee.
- (9) The appointment of a person as a member of the Local Council Coastal

Management Committee must be for a fixed term which may not exceed five years.

- (10) Notwithstanding the provisions of subsection (9) , the Local Council Manager may at his or her discretion, extend or renew the appointment of any member of the Local Council Coastal Management Committee;
- (11) Notwithstanding the provisions of subsection (10), a member of the Local Council Coastal Management Committee may not serve for more than two consecutive terms.
- (12) Notwithstanding anything in this Section, the Local Council Manager may at any time terminate the membership of any member of the Local Council Coastal Management Committee as a result of poor performance, misconduct or other basis valid in law for such termination.

9. Role of the Local Council Coastal Management Committee.

The role of the Local Council Coastal Management Committee is contemplated in section of the Act , and includes but is not limited to the, following:

- (a) promoting integrated coastal management within the areas of jurisdiction of the Local Council,
- (b) ensuring the co-ordinated and effective implementation of the Act and the Local Council Coastal Management Programme;
- (c) providing advice and support to the Local Council on matters concerning integrated coastal management;
- (d) providing advice and support to the Local Council on the development, finalization, reviewing and amendment, as the case may be , of the Local Council Coastal Management Programme;
- (e) monitoring and reporting on the implementation of the Local Council Coastal Management Programme;
- (f) promoting a coordinated, inclusive and integrated approach to coastal management within the Local Council area by providing a forum for dialogue, cooperation and co-ordination between the key organs of state and other persons involved in coastal management within the area of jurisdiction of the Local Council.
- (g) promoting the achievement of the integrated coastal management objectives of the Local Council in line with the Local Council's Integrated Development Plan, Special Development Framework, and any other Local Council plans, tools, programmes or policies that affect the coastal management; and

- (h) performing any coastal governance function delegated to it by the Local Council.

10. Powers of the Local Council Coastal Management Committee

- (1) In performing any function and discharging any role as contemplated in Section 9 of this By-law the Local Council Coastal Management Committee must where applicable and necessary make recommendation to the Local Council relating to=

- (a) land use and development of the coastal zone;
- (b) access to the coastal zone or any part thereof;
- (c) the use of any public place in the coastal zone by members of the public;
- (d) the protection of the natural environment of the coastal zone;
- (e) the protection of the natural resources of the coastal zone;
- (f) the implementation of the Local Council Coastal Management Programme;
- (g) the delineation of costal set-back lines on the relevant maps and tools of the Local Council;
- (h) coastal access land, and
- (i) any other matter or activity which is connected with the coastal zone.

- (2) A recommendation contemplated in subsection (1) is not binding on any person unless, and to the extent, subject or approved by the Local Council through a Local Council resolution.

- (3) If in an adopted or approved recommendation as contemplated in subsection (2) is likely to have an adverse effect:

- (a) on any development or land use right of any person; or
- (b) the use of any public place by members of the public; the Local Council must follow the consultation and public participation process contemplated in Section 25 of the Motu Koita Assembly Act.

11. Cooperative Governance and Integrated Coastal Management.

- (1) The Council must, in administering and implementing this By-Law, give effect to and promote effective cooperative governance, which includes-
 - (a) the promotion of integrated decision making between and within all relevant spheres of government and organs of state, and other parties concerned with coastal management;
 - (b) the promotion of a coordinated approach to integrated coastal management between the Council and other local level governments managing adjoining coastal zones;
 - (c) supporting and promoting the initiatives and objectives of the National Marine Management Programme and the National Capital District Coastal Management Programme.
- (2) The Council must endeavor to promote cooperative governance within the various departments and decision making bodies of the Council itself, as contemplated by this by-law.

CHAPTER 5

Local Council Coastal Management Programme

12. Local Council Coastal Management Programme

- (1) The Local Council must prepare and adopt a Local Council Coastal Management Programme of the Council as provided for under Section 3 of the Motu Koita Assembly Act .
- (2) The Local Council Coastal Management Programme must-
 - (a) identify and delineate the geographic area of the coastal zone of the Council area;
 - (b) identify and show all land and areas which the Council must delineate or designate for any purpose contemplated in the Act;
 - (c) identify active measures aimed at coordinating and aligning Local Council planning within the coastal zone with the Act;
 - (d) set out the principles to be applied in Council's planning and development within the coastal zone;
 - (e) prescribe the rules and guidelines relating to access to the coastal zone;
 - (f) prescribes rules and guidelines relating to public access to public places within the coastal zone;

- (g) and set out the general strategy of the Council relating to the management of the coastal zone as contemplated in the Act.

13. Contents of the Local Council Coastal Management Programme

The Local Council Coastal Management Programme must contain details on matter-

- (a) as contemplated in section 12 of this By-law,
- (b) as contemplated in section 49 of the Act, and
- (c) which give effect to the promotion of the effective management of the coastal zone.

14. Public Participation

- (1) The Local Council must in all relevant cases , take all reasonable measures to effect public participation as contemplated in sections 48 and 53 of the Act, read with the public participation requirement contemplated in Section 50 of the Motu Koita Assembly Act.
- (2) The provision of subsection (1) also applies to any material review or amendment of the Local Council Coastal Management Programme.

15. Alignment with Provincial and National Coastal Management Programmes.

- (1) The Local Council Coastal Management Programme must be consistent with-
 - (a) National Coastal or Marine Management Programme;
 - (b) Provincial Coastal/Marine Management Programme;
 - (c) Other marine resource management programmes as contemplated in specific legislations.
- (2) In the event of a conflict between the Coastal Management Programme and one or more of the-
 - (a) National Coastal/Marine Management Programme;
 - (b) Provincial Coastal/Marine Management Programme; and
 - (c) Other national marine resource management legislations or protocols;then either one or all of the tools contemplated in paragraphs (a) to (c) , as the case may be, prevail to the extent of the inconsistency.

16. Local Council Statutory Spatial Tools and Instruments .

- (1) Every instrument and tool of the Local Council relating to planning and development land use, which affects the coastal zone, such as but not limited to, the Integrated Development Plan must-
 - (a) be consistent with the-
 - (i) Local Council Coastal Management Programme;
 - (ii) Provincial Coastal Management Programme;
 - (iii) National Coastal Management Programme;
 - (b) Make reference to the provisions of the programmes contemplated in paragraph (a) that-
 - (i) specifically apply to such instrument or tool, or
 - (ii) affects such instrument or tool; or
 - (iii) is affected by such instrument or tool.
 - (c) give effect to the programmes contemplated in paragraph (a) to the extent applicable; and
 - (d) take into account the international best practices and obligations.
- (2) In the event that neither the Provincial Coastal Management Plan nor the National Coastal Management Plan are in effect, every Local Council instrument and tool contemplated in subsection(1) must be aligned exclusively to the Local Council Coastal Management Programme, to the extent applicable.
- (3) In the event that either the Provincial Coastal Management Programme, or the National Coastal Management Programme comes into effect after the adoption of the Local Council Coastal Management Programme by the Council as contemplated in Section 18, the Local Council Coastal Management Programme must be amended in so far as it may be inconsistent with the Provincial Coastal Management Programme or the National Coastal Management Programme, as the case may be.
- (4) The Local Council may establish and implement a Coastal Planning Scheme that facilitates the coastal management objectives as contemplated in Section 36 of the Motu Koita Assembly Act.
- (5) The Coastal Planning Scheme contemplated in subsection (4) may form, and be enforced as part of, any land use scheme adopted by the Council:

Provided that-

- (a) the land use scheme of the Council is not inconsistent with a Coastal Planning Scheme established in terms of the Act; and
- (b) in the event of conflict between the land use scheme of the Council that has been established after the commencement of the Act and the Coastal Planning Scheme established in terms of the Act, the latter prevails.

17. Legal Effect of Local Council Coastal Management Programme.

The Local Council Coastal Management Programme contemplated in section 12 is not binding on any person unless to the extent, adopted or approved by the Council.

18. Amendment and Review of the Local Council Coastal Management Programme.

The Review of the Coastal Management Programme must occur as contemplated in Section 39 of the Act.

19. Prohibition of Activities inconsistent with Local Council Coastal Management Programme.

Unless authorized by law all conduct or activities inconsistent with the Local Council Coastal management Programme are prohibited and in some instances attract both civil and criminal offences as contemplated in, but not limited to, chapters 11 and 12 of this By-law.

CHAPTER 6

LOCAL COUNCIL MANDATE AND ROLE IN INTEGRATED COASTAL MANAGEMENT.

20. Local Council mandate and responsibility.

- (1) The Local Council must take all reasonable measures to promote and ensure the achievement of the provisions of Section 39 of the Act with Section 21(2) of this By-law in such a manner as to ensure the-
 - (a) preservation of the ecological integrity of the coastal zone;
 - (b) mitigation of the effects of natural disasters including climate change; and
 - (c) sustainable use of the coastal zone's spatial capacity.

- (2) The measures contemplated in subsection (1) must be taken within the context of cooperative governance as contemplated in section 11 of this By-law.

21. Powers to Regulate, Control and Restrict Activities in Coastal Protection Zone.

- (1) The Local Council has the power to control, regulate and restrict any activity within the coastal protection zone, excluding areas contemplated in Section 29 of this By-law.
- (2) The Local Council must regulate, control or restrict any activity in the coastal zone in order to-
- (a) protect the ecological integrity, natural character, and the economic, social and aesthetic value of coastal public property;
 - (b) avoid increasing the effect or severity of natural hazards in the coastal zone;
 - (c) protect people, property and economic activities from risks arising from coastal processes including the risk of sea level rise;
 - (d) maintain the functioning of the littoral active zone;
 - (e) maintain the productive capacity of the coastal zone by protecting the ecological integrity of the coastal environment; and
 - (f) make land near the seashore available to organs of the state and other authorized persons for performing rescue operations or temporary depositing objects or materials washed up by the sea or tidal wave, as contemplated in Section 25 of the Motu Koita Assembly Act.

22. Prohibited Conduct.

A person may not perform an act or omission that harms or may harm the coastal protection zone.

23. Development within Coastal Protection Zone.

A person may not develop on land within the coastal protection zone, except in accordance with the requirements of the Programme

**CHAPTER 7
ACCESS TO COASTAL PUBLIC PROPERTY.**

24. Local Council Mandate and Responsibility.

- (1) The Local Council must -
 - (a) designate coastal access land as contemplated in Section 25 of the Motu Koita Assembly Act.
 - (b) ensure the proper regulation and maintenance thereof as contemplated in Section 25 of the Motu Koita Assembly Act.
- (2) The Local Council may determine or adjust the boundaries of the coastal access in accordance with Section 25 of the Motu Koita Assembly Act.

25. Designation of Coastal Access land.

The designation and withdrawal of the designation of coastal access land must take place in compliance with the Programme, read with Section 39 of the Act.

26. General provision relating to conduct within Coastal Public property.

- (1) An act or omission in contravention of this by-law or any other By-law associated with coastal public property is prohibited and may attract both civil and criminal liability.
- (2) The Local Council is empowered to regulate, control or restrict any activity with the coastal access land that may impede upon the duty to fulfill its mandate as contemplated by this By-law and the Act.

CHAPTER 8 PROTECTION OF THE COASTAL ENVIRONMENT

27. General Environment Protection in Coastal Zone.

- (1) The Local Council must within its competence as required by the constitution, applicable national legislation and applicable provincial legislation, take all reasonable measures to-
 - (a) manage and control activities which may have a detrimental effect on the natural environment and natural resources of the coastal zone;
 - (b) give effect to the provisions of the Programme, the act and any other law which seeks to protect the natural environment and natural resources of the coastal zone;
- (2) The provision of Section 41 of the Act apply to the extent applicable, to establish a duty of care on any person, whose activity, conduct or omission may cause, cause or has caused a significant pollution and environmental degradation on the coastal environment,

- (3) The Local Council may erect any notice on any part of the coastal zone in terms of which specific conduct or activities are restricted or prohibited.

28. Coastal Protected Areas.

- (1) Coastal protected areas may include but are not limited to the following-
- (a) Marine protected area declared in terms of the Marine Living Resources Act;
 - (b) special nature reserves, national parks, nature reserves wilderness areas and protected environment as contemplated by the Conservations Areas Act, the Fauna (Protection and Control) Act and the Maritime Zones Act.
 - (c) World Heritage Sites declared in terms of the World Heritage Convention;
 - (d) specially protected forest areas, forest nature reserves and forest wilderness areas declared in terms of the Forestry Act;
- (2) The Local Council may not permit or cause the development and use of any coastal or marine protected areas as contemplated in subsection (1) in contravention to any law contemplated in that subsection or any other applicable law.
- (3) The Local Council must enforce compliance with this By-law on any land that falls within the coastal zone;

29. Powers to regulate, control and restrict development in coastal zone.

- (1) No development or use of land maybe permitted on any part of the coastal zone, unless development or use of land is in compliance with the requirement of the Programme.
- (2) The Local Council may adopt a Coastal Planning Scheme as contemplated in Section 25 of the Motu Koita Assembly Act to manage development and land use with the coastal zone, and to restrict any activity within such area or part thereof.
- (3) The Coastal Planning Scheme contemplated in subsection (2) may be incorporated within any pre-existing land use scheme of the Council.
- (4) The Local Council, must in writing, issue a compliance notice to any person who undertakes any development activity in contravention with the provisions of this By-law, the Programme or the Act, requiring such person to comply with the provisions of the notice, this By-law of the Act.

CHAPTER 9

COASTAL SET-BACK LINES AND COASTAL BOUNDARIES

30. Delineation of Coastal setback lines on maps for zoning schemes

- (1) Where a coastal management line has been established and contemplated in Section 39 of the Act, the Council must delineate such coastal management line on any map that form part of the land use schemes that are applicable to the said coastal area.

CHAPTER 10 ENFORCEMENT

31. Compliance Notice

The Council must issue a compliance notice to any person who has contravened any provision of this By-law, requiring such person to comply with the notice in a manner and within the time specified in the notice.

32. Local Council remedial work and recovery of costs

The Council to the extent it deems practicable and necessary, act in order to avert or remedy any harm on the coastal zone caused by a person who has contravened any provision of this By-law, and may recover any associated costs from such person.

CHAPTER 11 OFFENCES AND PENALTIES

33 Offences

(1) A person is guilty of an offence if he or she

- (a) contravenes any provision of this By-law;
- (b) contravenes any conditions, restrictions or prohibitions imposed in terms of this By-law;
- (c) fails to comply with the terms of any notice or signage displayed in terms of this By-law;
- (d) threatens, resists, hinders, obstructs or uses foul, abusive and insulting language towards or at an authorized official in the exercise of any duty or function in terms of this By-law; or
- (e) fails to obey any lawful instruction or direction given to him or herein terms of this By-law.

(2) A person is guilty of a continuing offence if he or she continues with an offence

after notice has been served on him or her in terms of this By-law requiring him or her to cease committing such offence, or after he or she has been convicted of such offence.

34. Penalties

- (1) Any person who commits an offence in terms of this By-law, is on conviction liable to imprisonment for a period not exceeding three years or to payment of a fine not exceeding K10,000, or both such fine and imprisonment.
- (2) In addition to imposing a fine and imprisonment, a court may order any person convicted of an offence under this By-law to-
 - (a) remedy the harm caused which will be his or her account;
 - (b) perform or undertake community service work which will benefit the coastal environment, which includes but is not limited to , entering into a corporate responsibility agreement with the Council to the court's satisfaction; and
 - (c) pay damages for any harm or loss suffered or incurred by any person who is party to the proceedings, which order has the force and effect of a civil judgement.
- (3) In the case of a continuing offence, the guilty person is liable to a fine of K1000 or one month imprisonment for each day of which the offence continues.

CHAPTER 12 GENERAL PROVISIONS

35. Appeal

- (1) A person whose rights are affected by a decision made by the Council in terms of this By-law may appeal against that decision in terms of the appeals provision contained with the Motu Koita Assembly Act by giving notice of the appeal and reasons thereof to the Council Manager within 21 days of the date of the notification of the decision.
- (2) The Local Council Manager is obliged to promptly submit the appeal to the appropriate appeal authority.
- (3) The appeal authority must commence with hearing of the appeal within six weeks from the date of lodgement and must decide the appeal within a reasonable time.
- (4) The appeal authority must confirm, vary or revoke the decision, but no such revocation or variation of a decision may detract from any rights that may have accrued as a result of the decision.

- (5) The appeal authority must furnish written response for its decision on all appeal matters.
- (6) Appeals lodged are done so in terms of the Motu Koita Assembly Act.
- (7) Where a conviction has been affirmed by a court of law and the accused wishes to appeal such conviction, the appeal must take place in term of the court's appeal process and not in terms of subsections (1) to (5).

36. Delegation

- (1) Subject to the Constitution and applicable national and provincial laws, any
 - (a) power excluding a power referred Section 39 of the Act;
 - (b) function; or
 - (c) duty,
conferred, in terms of this By-law upon the Council, or on any of the Council's other political structures, political office bearers, councilors or staff members, may be delegated or sub-delegated by such political structure, political office bearer, councilor or staff member to an entity within or a staff member employed, by the Council.
- (2) the delegation in terms of subsection(1) must be effected in accordance with the system of delegation adopted by the Council in accordance with Section 24 of the Motu Koita Assembly Act , subject to the criteria section out in Section 25 of the said Act.
- (3) Any delegation contemplated in this Section must be recorded in the register of delegation, which must contain information on the-
 - (a) entity or person issuing the delegation or sub-delegation;
 - (b) recipient of the delegation or sub-delegation, and
 - (c) conditions attached to the delegation or sub-delegation.

37. Short Title

This By-law is called the Motu Koita Assembly: The Tuna Bay Special Coastal Management Area By-Law 2021 and takes effect six months from the date of publication thereof or such earlier date as may be determined by the publication of a commencement notice in the National Gazette.