



## Allakkiq Legal note

Uunga  
To

Everyone in the planning network

Assinga uunga  
Copy to

Brevdato: 01-11-2017  
Sags nr. 2017 - 24844  
Akt id. 6518198  
J.nr. 26.70.

P. O. Box 1037  
3900 Nuuk  
Tel. (+299) 34 50 00  
Fax (+299) 34 63 50  
E-mail: oed@nanoq.gl  
www.naalakkersuisut.gl

### **The possibility of derogating from provisions determined on the basis of the Conservation Notice**

Danish Home Rule Order No. 31 of 30 October 1991 on handling conservation in town planning (Conservation Notice) imposes on the municipalities - to incorporate provisions for the preservation of the city's most valuable conservation areas based on the yellow town notes. Planning and land management, however, are not permanent issues: Buildings may burn down, decline due to lack of maintenance, etc. Like the desire to preserve a particular area, may change over time. This raises the question of, how government administration and municipal administrations could and should relate to, discrepancies between national interests in form of the yellow town notes on one side and factual matters in real life or the desired future development of the subarea concerned on the other side.

The Conservation Notice contains no dispensation provisions or any description of a possible procedure, which may be used if it is envisaged to depart from the provisions that have now been laid down for conservation purposes.

#### **Special conservation areas**

Section 2 of the Conservation Notice stipulates that the municipalities are to establish sufficiently clear guidelines in the overall provisions of the subareas to ensure that the national conservation interests are taken into account. The provisions are set out in the framework of a Master plan, which corresponds to what is called in the terminology of today for the overall provisions of a given subarea.

Section 20, subsection 5 of Greenland Government Act no. 17 of 17 November 2010 on planning and land use (the Planning Act) thus stipulates that the overall provisions for a subarea shall contain provisions on "protected or conservation worthy features, including protected or conservation worthy buildings, constructions or areas, protected nature areas as well as cultural heritage sites".

Thus, the wording of section 2 of the Conservation Notice appears to exclude that municipalities may choose to derogate pursuant to section 50 of the Planning Act from the conservation provisions laid down in accordance with section 2 in the Conservation Notice: First, the establishment of conservation provisions for the special conservation areas is a bound task for the municipalities in order to ensure that the country's strategic interests are met. In addition, the municipality may only grant exemptions, cf. section 50, from provisions of the detailed regulations.

If a municipality wishes to allow for a derogation from the conservation provisions, the municipality may choose to provide a town plan addendum that changes the overall provisions and allows for the changes envisaged. It is noted in this connection that the Conservation Notice was provided at a time when town plans and town plan addendums were to be politically approved by the Government. That is before this jurisdiction was transferred to the municipalities with the 2010-Act. In connection with town plan addendums that allows for a reduction of the national conservation interests, Naalakkersuisut has a right and obligation of opposition. Precisely because this is a possible breach of national interests, the adoption of a municipal plan proposal, which for example annuls one or more conservative buildings, requires the approval of changes to the national conservation interests from the Greenland Government.

The government administration should not later than at the hearing of the municipal plan proposal (but preferably as early as possible in the process), perform an internal assessment of whether it is possible to approve a change of national interests. As the Conservation Notice contains no dispensation provisions that could be delegated to the government administration, it may be assumed that the Minister should initially approve derogations from the national conservation interests.

An exception to the requirement for a political approval could in this context be updates on buildings that are registered as specially preserved if they burn down or may be declared condemnable due to lack of maintenance.

Although the individual minister is in principle responsible for their policy area, cf. Parliament Act no. 6 of 13 May 1993 on the accountability of Home Rule Government members, the question is if coherent country planning is essentially a discipline that can only be undertaken across sectors.

Against this background, it is recommended that the National Planning Department, prior to position by the minister, should send the proposed changes to the national conservation interests in public consultation. In addition to an assessment of whether the building or subarea in question is considered to be historical or architecturally valuable<sup>1</sup>, requests from the governments other affected authorities and any other interested parties should be obtained. Who should be heard in the individual case must

---

<sup>1</sup> See, for example, Guidance on the Conservation of Buildings, Built and Urban Areas, Greenland Home Rule Government 1990.

depend on a specific assessment, but should initially be the authorities who may be interested in a given conservation case. Typically, this could be:

- Greenland National Museum & Archives,
- Ministry of Industry, Labour, Trade and Energy and
- The "developer/contractor" who has expressed an interest in a development that does not comply with the conservation interest.

It is recommended that the National Planning Department provides a summary assessment of the pros and cons that the government's decision can be expected to imply. This applies to both the positive consequences of conservation, including both architectural, cultural, but also, for example, positive economic consequences in relation to tourism. However, the assessment should also look at the negative consequences that a retention of conservation considerations may possibly be expected in relation to the development of the city / society in general.

#### **Other conservation areas**

Section 3 of the Conservation Notice stipulates further that in the town planning, consideration must be given to the city's "other conservation-worthy urban areas". In connection with the planning, consideration must be given to determine the extent to which the areas are to be preserved so that the distinctive character of the areas is not lost.

From the wording of the provision, it is only stated that these are subareas in the cities that were built in the period 1950 to the late 1960s. In addition, it is assumed that the sub-areas in question are those designated as preservative in the yellow town notes together with the section 2 areas.

Contrary to section 2 areas, this does not seem to be a national conservation interest since the provision implies that it is within the jurisdiction of the municipal council to decide on the extent to which a preservation of the existing conditions should be ensured through the municipal planning. In principle, therefore, the individual municipality is free to amend or repeal the conservation provisions laid down pursuant to section 3 of the Conservation Notice. However, The Government still has the opportunity to raise objections pursuant to sections 11-13 of the Planning Act.

Nor in this situation is it possible for municipalities to derogate (cf. section 50 of the Planning Act) from the provisions laid down pursuant to section 3 of the Conservation Notice. The reason for this is that, pursuant to section 50, only the municipality's detailed provisions may be derogated. However, the actual merger of the town plan and local plans to one planning level isn't carried out before implementing the 2008-Regulation. Consequently, the provisions that according to the Conservation Notice must be laid down in the town planning, must thus be understood as meaning that the conservation provisions should correspond to the overall provisions of a subarea - which cannot be derogated from. Here too, the municipal council is required to provide

amendment to the municipal planning basis - but with the difference that this does NOT require approval by national authorities.

For discussion: The practical aspects of the consultation process must be uncovered – how are the local people to be heard? Can municipalities help with posting notices? Likewise, a way must be found to provide an update to the yellow town notes - so there is a place where you are sure that these are the current updated provisions.

derogation from conservation designation

Inussiarnersumik inuulluaqqusillunga  
With kind regards

Thomas Gaarde Madsen  
Toqq/direkte 345415  
thga@nanoq.gl