
[Legal Notice No. 192] / 93

PROVINCIAL GOVERNMENT ACT 1981

THE ISABEL PROVINCE CONSERVATION AREAS
ORDINANCE 1993

AN ORDINANCE TO PROVIDE FOR THE PROTECTION OF
LAND FOR CUSTOM AND CONSERVATION PURPOSES.

ENACTED BY THE PROVINCIAL ASSEMBLY.

ARRANGEMENT OF SECTIONS

Section

1. Short title and commencement.
2. Interpretation.
3. Purpose.
4. Making an application.
5. Declaration of Conservation Area.
6. Amendment to, or removal of, Conservation Area status.
7. Commencement.
8. Notification of declaration.
9. Establishment of Record.
10. Ownership disputes.
11. Offence.

12. Liability of company officers.
13. Penalties.
14. Enforcement.
15. Jurisdiction to impose penalties.
16. Defences.
17. Payment of fines.
18. Civil Liability.
19. Grant of other rights.
20. Regulations.

1. This Ordinance may be cited as the Isabel Province Conservation Areas Ordinance 1993 and will come into effect following passage by the Isabel Provincial Assembly, assent by the Minister in accordance with section 32 of the Provincial Government Act 1988 and publication in the Solomon Islands Gazette.

Short title
and commence-
ment.

2. In this Ordinance, unless the context requires otherwise -

Interpretation.

“Area Council” means the local representative body established under the Isabel Province Area Council Ordinance 1991 for area concerned;

“Assembly” means the Isabel Provincial Assembly;

“Conservation Area” means an area established under section 5;

“Customary land” means any land lawfully owned, used or occupied by a person or community in accordance with current customary usage;

“Executive” means the Isabel Provincial Executive;

“Land” includes land covered and uncovered by the effect of ordinary spring tides and land covered by freshwater;

“Owner” or “Owners” relation of a registered interest in land, means the persons in whose name the interest is registered; In relation to customary land, means the person or persons who is or are, according to current customary usage, regarded as the owner or owners of the land;

“Person” means any person and includes any public body, company or association, customary land or right holding group and any other body of persons whether incorporated or not;

“Province” means Isabel Province;

“Provincial Employee” means any person holding a paid position in the service of the Province and who is not a public officer;

“Public Officer” means any person from time to time posted to the Province and holding a paid position in the public service;

“Serve” means either:-

- (a) Delivering personally to the person; or
- (b) Delivering or sending by prepaid post to the usual or last know place of residence or business of the person;

“Term” in relation to a Conservation Area means the period of time during which Conservation Area status may not be amended or removed pursuant to section 6;

“Village Chief” means the person who according to custom is regarded as the head of the village or other local community concerned and where there is no such customary head of a village or local community, means a person regarded by the people with in the village or community as their leader in relation to the matter concerned”.

Purpose,

3. The purpose of this Ordinance is to assist owners of land to protect and manage their land and land based resources for conservation, custom, spiritual and amenity purposes.

Making an application.

4. (1) Any owner of land may apply to the Executive for a declaration that part or all of the land be set aside as a Conservation Area.

(2) An application under subsection (1) must be form 1 in the First Schedule, or to like effect, and must include -

- (a) A description of the land for which Conservation Area status is sought; and
- (b) The rules which are proposed to apply to the use of the Conservation Area, if these differ from the rules set out in the Second Schedule; and
- (c) The Term of the Conservation Area if this is not 30 years; and
- (d) The signature of every owner of land within the proposed Conservation Area, or person authorised to sign on behalf of such owner or owners, provided that subject to subsection (4), where there is any customary land within a proposed Conservation Area -

- (i) The application must be signed by 3 bona fide representatives of each customary land holding group owning land within the proposed Conservation Area; and

- (ii) The application must contain a description of the consultation undertaken pursuant to subsection (4); and The signature of the Chairman of the Area Council certifying
- (e) The signature of the Chairman of the Area Council certifying that to the best of his or her knowledge the application complies with subsection (d)(i).
- (3) An application made under subsection (1) must be lodged at either the Area Council office or the Assembly office and must be accompanied by -
 - (a) A plan defining as accurately as practicable the boundaries of the proposed Conservation Area; and
 - (b) Any application fee which is required by the Area Council.
 - (4) No person must sign any application under subsection (2)(d)(i) as a bona fide representative of a customary land holding group unless -
 - (a) That person is according to custom regarded as personable to speak on behalf of the customary land holding group; and
 - (b) That person has consulted, as fully as reasonably practicable, with all person with customary rights over the affected land.

5. (1) After receipt of an application under section 4, the Executive may, subject to section 10, declare the land or any part of the land contained in the application to be a Conservation Area.

Declaration of
Conservation
Area.

(2) In deciding whether or not to make a declaration under subsection (1), the Executive must take into account -

- (a) Whether or not the making of the declaration will further the purpose of this Ordinance; and
- (b) Where the declaration would affect any customary land-
 - (i) The bona fides of the person who have signed the application as representatives of the affected customary land holding group or groups; and
 - (ii) The extent of consultation undertaken pursuant to section 4(4)(b).
- (3) A declaration under subsection (1) must state -
 - (a) The rules which are to apply to the use of the Conservation Area if they differ from those set out in the Second Schedule; and
 - (b) The Term which is to apply to the Conservation area if this is not 30 years.
- (4) Any declaration made under this section must have no bearing whatsoever over the issue of ownership of any land.

Amendment to,
or removal of,
Conservation
Area Status.

6. (1) Any owner of land which has Conservation Area status may apply to the Executive to -

- (a) Amend the rules or Term which apply to the Conservation Area; or
- (b) To remove part or all of the land from the status of Conservation Area; or
- (c) To include additional land within the Conservation Area.

(2) An application under subsections (1)(1) or (b) within the 6 months immediately after the expiry of the Term of the Conservation Area.

(3) Where no application is made under subsections (1)(a) or (b) within the 6 months immediately after the expiry of the Term of a Conservation Area, a further Term must apply to the Conservation Area for the purposes of subsection (2).

(4) An application under subsection (1) must be in form 2 in the First Schedule, or to like effect, and must contain -

- (b) Where the application seeks an amendment to the rules or Term applying to the Conservation area, the amendments sought; and
- (c) Where the application seeks to remove land from, or add land to, a Conservation Area, a description of the land proposed to be removed or added; and
- (d) The reasons why the application should be granted; and
- (e) The signatures required under sections 4(2)(d) and (e)

(5) An application under subsection (1) must be lodged at either the Area Council office or the Assembly office and must be accompanied by any application fee which is required by the Area Council.

(6) On receipt of an application under subsection (1), the Executive may by regulation, in accordance with the application, declare amendments to, or the removal of, the Conservation Area.

(7) In deciding whether or not to make a declaration under subsection (6), the Executive must have regard to -

- (a) The reasons stated in support of the application; and
- (b) The matters set out in subsections 5(2)(a) and (b).

Commencement.

7. (1) A Conservation Area will come into effect 1 month after a declaration is made under subsection 5(1) or at such later time as is stated in that declaration.

(2) Any amendments to, or removal, of a Conservation area must come into effect 1 month after a declaration is made under subsection 6(6) or at such later time as is stated in that declaration.

8. (1) Following the making of a declaration under section 5 or 6, the Executive must as soon as practicable -

Notificaiton of
declaration.

- (a) Publish notice of the declaration in the Solomon Islands Gazette; and
- (b) Serve a copy of the declaration on the applicant, the Area Council, and the provincial employee or public officer in charge of policing within the Province.

(2) On receipt of a notice under subsection (1)(b) -

- (a) The Area Council must, as soon as practicable -
 - (i) serve copy of the notice on all Village Chiefs within the Area Council's area of jurisdiction and display a copy of the notice within such area where it can be readily seen of by members of the public; and
 - (ii) Hold a public meeting in the village closest to the Conservation area to describe the Conservation Area and the rules applying to the use of it; and
- (b) The applicant must, as soon as practicable, mark the boundary of the Conservation Area with appropriate signage.

(3) A declaration made under section 5 or 6 will have full legal force irrespective of any failure to carry out the notification required under subections (1) and (2).

9. (1) The public officer or provincial employee in charge of Lands within the Province, must as soon as practicable, establish and maintain at the Assembly offices, a Record of Conservation Area, which must -

Establishment
of Record.

- (a) Define as accurately as practicable the boundaries of each conservation Area, and
- (b) State the rules wich are to apply to the use of each Conservation Area; and
- (c) Include maps marked with the places protected by this Ordinance.

(2) The Record established under subsection (1) must be open for public inspection at the Assembly offices during regular business hours.

(3) The Executive or its authorised officer must furnish to the Registrar of Titles a copy of every Conservation Area declaration and any other information required to enter the declaration on the Land register.

Ownership
disputes.

10. (1) The Executive must not declare any land to be a Conservation Area if it has knowledge of any dispute over the ownership of the land, unless bona fide representatives of all disputing owners have signed the application under subsection 4(2)(d).

(2) Where any customary land has been declared a Conservation Area and it is subsequently established by agreement between the affected parties, or by a court order, that the correct owner or owners of the land, or representatives of such owner or owners, did not sign the application under subsection 4(2)(a), three bona fide representatives of each correct owner of the land may at any time, notwithstanding subsection 6(1).

Offences.

11. (1) Subject to subsection (2), any person who contravenes, or permits a contravention of, any of the rules applying to the use of a Conservation Area, is guilty of an offence against this Ordinance and will be liable to the penalties set out in section 13.

(2) It will not be an offence under this section -

- (a) For persons with crops within a Conservation Area on the date the Conservation Area comes into effect, to maintain and harvest those crops for up to 6 months immediately following such date; or
- (b) For persons to use a vehicular road, which is operational on the date Conservation Area comes into effect, for up to 6 months immediately following such date.

Liability of
company officers.

12. Where a company commits an offence under this Ordinance, every director and every person concerned in the management of the Company, will be guilty of the same offence if it is proved -

- (a) That the act that constituted the offence took place with his or her authority, permission, or consent; or
- (b) That he or she knew or could reasonably be expected to have known that the offence was to be or was being committed and failed to take reasonable steps to prevent or stop it.

Penalties.

13. (1) Where the person committing the offence is an individual, and the activity constituting the offence was not carried out for monetary benefit, that person will be liable to imprisonment for a term not exceeding 6 months or a fine not exceeding \$500 and, if the offence is a continuing one, to a further fine not exceeding \$10 for every day or part of a day during which the offence continues; and

(2) Where the person committing the offence is an individual, and the activity constituting the offence was carried out for monetary benefit, that person will be liable to imprisonment for a term not exceeding 2 years or a fine not exceeding \$10,000, and, if the offence is a continuing one, to a further fine not exceeding \$100 for every day or part of a day during which the offence continues; and

(3) Where the person committing the offence is a company, that person will be liable to a fine not exceeding \$100,000, and, if the offence is a continuing one, to further fine not exceeding \$1000 for every day or part of a day during which the offence continues, and the officers of the body corporate will also be liable under section 12 to imprisonment for a term not exceeding 2 years.

(4) In addition to the penalties set out in subsections (1), (2) and (3), the Court may order that -

(a) Any property used in the commission of an offence and any proceeds from the offence be forfeit to the Crown; and

(c) Any business licence held by the offender, authorising the carrying out of any business activity within the Province, be suspended and that the offender be disqualified from obtaining a new licence for up to 5 years.

14. (1) The primary responsibility for enforcing the rules governing the use of a Conservation Area is with the owner or owners of the land.

Enforcement.

(2) It is lawful for any owner of the land, Police Officer, Village Chief, provincial employee or public officer, to make enquiries at all reasonable times to ascertain whether any offence under this Ordinance is being or has been committed.

15. The magistrates Court will have jurisdiction to impose the penalties set out in section 13, as may be amended by ordinance or regulation from time to time.

Jurisdiction to impose penalties.

16. (1) An offender under this Ordinance may agree to pay a penalty to a Village Chief of up to \$300.

Defences.

(2) It will be a defence to a prosecution for an offence under this Ordinance, if the offender has fully paid any penalty for the offence imposed by a Village Chief.

17. (1) Unless specified otherwise in this Ordinance, all fines must be paid to the Government of the Province.

Payment of fines.

(2) All fines paid under this Ordinance are recoverable as a debt due to the Province.

(3) Where a Court imposes a fine under this Ordinance, it must direct that at least half of the fine be paid to the owner or owners of affected land.

(4) When determining what portion of a fine must be paid to the owner or owners of the affected land under subsection (3) the Court must take into account the amount of damage suffered by such owner or owners as a result of the offence.

Civil Liability.

18. This Ordinance does not affect any civil right to claim for damages.

Grant of other rights.

19. No right may be granted, whether under any statute, subsidiary legislation, common law or customary law, to carry out an activity in contravention of the rules established for a Conservation Area.

Regulations

20. The Assembly may make regulations for the better carrying out of the purpose of this Ordinance including regulations to amend the penalties prescribed under section 13.

Passed By the Isabel Provincial Assembly this twelfth day of March 1993.

This Printed impression has been carefully compared by me against the Ordinance passed by the Isabel Provincial Assembly and found by me to be a true correct copy of the said Ordinance.

Clerk to the Provincial Assembly

Assented to by the Honourable Minister for Provincial Government this twenty-third day of June 1993.

ERIC SERI
Minister of Provincial Government

FIRST SCHEDULE

Form 1

APPLICATION FOR CONSERVATION AREA

To: (Name of Area Council)

1. Description of the boundaries of the proposed Conservation Area.
2. Rules proposed to apply to the Conservation Area (if these differ from those in the Second Schedule).
3. Term of the Conservation Area (where not 30 years).
4. Name of owner(s) of land or customary land holding group(s).
5. Name(s) and signature(s) of owner(s) of land, or 3 bona fide representatives of each customary land holding group (whichever applies).
6. Description of consultation undertaken (if the application affects customary land).

I (Name of Chairman of Area Council) certify that, to the best of my knowledge, the correct owner(s) of the land, or their bona fide representatives, have signed this application.

.....
Chairman of Area Council

(Date)

(Address for service of applicant)

SECOND SCHEDULE - continued

Form 2

APPLICATION FOR AMENDMENT TO, OR REMOVAL OF,
PROTECTED WATER SUPPLY AREA STATUS

1. Description of the boundaries of the Protected Water Supply Area.
2. Whether amendments are sought to the rules or area of the Protected Water Supply Area, or whether removal of the Protected Water Supply Area status from all of the land is sought.
3. Amendments proposed to the rules applying to the Protected Water Supply Area (where such amendments are sought).
4. Description of the part of the land, from which removal of, or to which the extension of, the Protected Water Supply Area status is sought (where applicable).
5. Name and signature of the Village Chief.
6. Name of the owner(s) of the land or the customary land holding group(s).
7. Name(s) and signature(s) of the owner(s) of land, or 3 bona fide representatives of each customary land holding group (whichever applies).
8. Description of consultation undertaken (if the application affects customary land).

(Date of application)

Approval by Environmental Health Officer

.....
(Date of approval)

(Address for service of applicant)

SECOND SCHEDULE - continued

Form 3

NOTIFICATION OF ESTABLISHMENT OF OR
AMENDMENTS TO, A PROTECTED WATER SUPPLY AREA

The following area has been set aside as a Protected Water Supply Area.

This area has been set aside to protect the “

“

The following activities are prohibited within the Protected Water Supply Area.

(List the prohibited activities).

The Protected Water Supply Area comes into effect on (state date when it comes into effect).

It is an offence to carry out any of the prohibited activities after that date.

Anyone carrying out a prohibited activity in a Protected Water Supply Area is liable to the following penalties:

- (a) An individual where the offence was not for monetary benefit - fine up to \$300 plus \$5 a day or up to 6 months imprisonment;
- (b) An individual where the offence was for monetary benefit - fine up to \$1000 plus \$10 a day or up to 1 year imprisonment
- (c) A body corporate - fine up to \$10,000 plus \$100 a day plus imp (3). A fine imposed under subsection (1) must be paid to the Committee of the Village which uses the affected Water Supply System, and if there is no Village Committee, imprisonment of company officers for up to 2 years.