

## **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**

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**1. Short Title and commencement** - 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 1986 and publication in the Solomon Islands Gazette.

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

"Area Council" means the local representative body established under the Isabel Province Area Council Ordinance 1991 for the 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 ordinary spring tides and land covered by freshwater:
- "Owner" or "Owners"** in relation to a registered interest in land, means the person or 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 within such village or local community as their leader in relation to the matter concerned".

**3. Purpose** - 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.

**4. Making an application** - (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)(b); and
- (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) may 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 reasonable application fee which is required by the Area Council.
- (4) No person may 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 a person able to speak on behalf of the customary land holding group; and
  - (b) That person has consulted, as fully as reasonably practicable, with all persons with customary rights over the affected land.

**5. Declaration of Conservation Area - (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.

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

- (a) Whether or not making 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 persons 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.

**6. Amendment to, or removal of, Conservation Area status -** (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)(a) or (b) must be made within 6 months of the expiry of the Term of the Conservation Area.

(3) Where no application is made under subsections (1)(a) or (b) within 6 months of the expiry of the Term of a Conservation Area, a further Term will 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 -

(a) A description of the land to which the Conservation Area status applies; and

(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) may 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, 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 sections 5(2)(a) and (b).

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

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

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

- (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 a 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 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 sections 5 or 6 will have full legal force irrespective of any failure to carry out the notification required under subsections (1) and (2).

**9. Establishment of Record -** (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 Areas, which must -

- (a) Define as accurately as practicable the boundaries of each Conservation Area; and
- (b) State the rules which 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.

**10. Ownership disputes -** (1) The Executive may 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 section 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)(d), three bona fide representatives of each correct owner of the land may at any time, notwithstanding subsection 6(2), apply to remove, or make amendments to, the Conservation Area under subsection 6(1).

**11. Offences -** (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 is not 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.

**12. Liability of company officers -** 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.

**13. Penalties -** (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 is 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 is 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 is liable to a fine not exceeding \$100,000, and, if the offence is a continuing one, to a further fine not exceeding \$1000 for every day or part of a day during which the offence continues, and the officers of the company are also 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
- (b) 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. Enforcement -** (1) The primary responsibility for enforcing the rules governing the use of a Conservation Area is with the owner or owners of the land.

(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. Jurisdiction to impose penalties -** The Magistrates Court will have full jurisdiction under this Ordinance to impose the penalties set out in section 13, as may be amended by ordinance or regulation from time to time.

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

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

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

(2) All fines imposed 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 the affected land.

(4) When determining what portion of a fine will 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.

**18. Civil liability -** This Ordinance does not affect any civil right to claim for damages.

**19. Grant of other rights -** 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.

**20. Regulations -** 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    day of                      1993**

**Clerk to Assembly**

**Assented to this    day of                      1993**

**Minister for Provincial Government**



**FIRST SCHEDULE**

**Form 1**

**APPLICATION FOR CONSERVATION AREA**

1. Full description of the boundaries of the proposed Conservation Area including any markers, and a sketch of the area.
2. Rules the applicant suggests for the Conservation Area (if these differ from those in the Second Schedule).
3. Length of time the applicant wishes the Conservation Area to stay in effect (where not 30 years).
4. Full names and addresses of owner(s) of land or customary land holding group(s) and description of what land they have an interest in.
5. Signature(s) of owner(s) of land, or 3 bona fide representatives of each customary land holding group (whichever applies).
6. Description of any discussions or meetings held regarding the application (if the application affects customary land).
7. Description of any ownership disputes in relation to the 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.

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Chairman of Area Council

[Date]

[Full name of applicant and address where applicant can be contacted]

FIRST SCHEDULE - continued

Form 2

APPLICATION FOR AMENDMENT TO, OR REMOVAL OF,  
CONSERVATION AREA STATUS

1. Description of the boundaries of the Conservation Area.
2. Date when the Term last expired for the Conservation Area (if applicable).
3. Whether amendments are sought to the rules and/or Term applying to the Conservation Area, or whether land is sought to be removed or added to the Conservation Area.
4. Amendments proposed to the rules and/or Term applying to the Conservation Area (where such amendments are sought).
5. Full description of the area of land which is sought to be removed or added to the Conservation Area including any markers and a sketch of the area (where applicable).
6. The reasons why the application should be granted.
7. Full names and addresses of owner(s) of land or customary land holding group(s) and description of what land they have an interest in.
8. Signature(s) of owner(s) of land, or 3 bona fide representatives of each customary land holding group (whichever applies).
9. Description of any discussions or meetings held regarding the application (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.

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Chairman of Area Council

[Date]

[Full name of applicant and address where applicant can be contacted]

**SECOND SCHEDULE**  
**ACTIVITIES PROHIBITED IN A CONSERVATION AREA**

**Cutting of any tree which is over 2m in height, except where such tree is to be used for the construction of a customary building.**

**Clearing or cultivation of any land for any purpose.**

**Access for the reconnaissance, prospecting or mining of any minerals (including oils and gases).**

**Earthworks of any kind.**