

[Legal Notice No. 142]

PROVINCIAL GOVERNMENT ACT 1981
(No. 7 of 1981)

THE ISABEL PROVINCE RURAL WATER SUPPLY
PROTECTION ORDINANCE 1993

AN
ORDINANCE
TO

PROTECT RURAL WATER SUPPLIES AND OTHER WATER
SOURCES.

Enacted by the Provincial Assembly.

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Short Title
and commence-
ment.

1. This Ordinance may be cited as the Isabel Province Rural Water Supply Protection Ordinance 1993 and must come into effect following passage by the Isabel Provincial Assembly, assent by the Minister in accordance with section 32 of the Provincial Government Act 1981 and publication in the Solomon Islands Gazette.

Interpre-
tation.

2. 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;
- “Customary land” means any land lawfully owned, used or occupied by a person or community in accordance with current customary usage;
- “Environmental Health Officer” and “Officer” means the provincial employee designated by the Executive as having the prime responsibility for the rural water supply in Isabel Province;
- “Executive” means the Isabel Provincial Executive;
- “Land” includes land covered by water;
- “Owner” 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 groups and any body or persons whether incorporated or not;
- “Protected Water Supply Area” means an area established under sections 4 or 7;
- “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 known place of residence or business of the person;
- “Village Chief” means the person who according to custom is regarded as the head of the village or other local community which uses the Water Supply System and where there is no such customary head of a village or local community, means

a person regarded by the people within the village or community as their leader in relation to the matter concerned;
 “Village Committee” means a committee appointed by the people residing in the village or local community to manage the affairs of that village and local community, and where such village committee has not been appointed, means the Village Chief;
 “Water Supply” means a water supply in a rural area and includes lakes, springs, streams, rivers, rainwater, bores and wells;
 “Water Supply System” means a system for the distribution of water to a village or other local community for human consumption and use and includes a water supply and all dams, pipes, fitting and fixtures relating to the development and distribution of that water supply.

3. The purpose of this Ordinance is to - Purpose.
- (a) protect Water Supply Systems from contamination and other adverse effects; and
 - (b) assist villages and other local communities to protect which are not part of the Water Supply System water supplies from contamination and other adverse effects.
4. (1) For each Water Supply System within the Province, the Environmental Health Officer must, in consultation with the Village Chief and the owner or owners of any affected land - Protection of Water Supply Systems.
- (a) designate an area of land surrounding the Water Supply System as a Protected Water Supply Area; and
 - (b) establish the rules which are to apply to the use of that area if those differ from the rules set out in the First Schedule.
- (2) When determining the location and size of each Protected Water Supply Area, and the rules to apply to the use of such area, the Officer must take into account -
- (a) the rainfall catchment area for the water supply forming part of the Water Supply System; and
 - (b) the area required to protect that water supply from contamination or other adverse effects; and
 - (c) existing activities and potential future activities in the area which may be affected by the designation; and
- (3) No Protected Water Supply Area may be designated pursuant to subsection (1) without the written consent of the Village Chief and the owner or owners of the land within the Protected Water Supply Area.

Application
to protect
other water
supplies.

5. (1) An application may be made to the Environmental Health Officer to declare an area surrounding a water supply which is not part of a Water Supply System to be a Protected Water Supply Area.

(2) Applications under subsection (1) must be in form 1 in the Second Schedule, or to like effect, and must include:

- (a) a description of the water supply for which protection is sought; and
- (b) a description of the proposed Protected Water Supply Area; and
- (c) the rules which are proposed to apply to the use of the Protected Water Supply Area if those differ from those set out in the First Schedule; and
- (d) the signature of the Village Chief; and
- (e) the signature of every owner of land within the proposed Protected Water Supply Area, or person authorised to sign on behalf of such owner, provided that subject to subsection (5), where there is any customary land within the proposed Protected Water Supply Area.
 - (i) The application must be signed by 3 bona fide representatives of each customary landholding group; and
 - (ii) The application must contain a description of the consultation undertaken pursuant to subsection (5).

(3) An application made under subsection (1) must be lodged at the Area Council office or Assembly office and must be accompanied by -

- (a) a plan showing the boundaries of the proposed Protected Water Supply Area; and
 - (b) any application fee which is required by the Area Council.
- (4) No person must sign any application under subsection (2)(e) 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.

Amendment
to, or
removal of,
Protected Water
Supply Areas.

6. (1) In order to better protect a Water Supply System from contamination or other adverse effects, the Environmental Health Officer may, subject to subsection (3); amend a Protected Water Supply Area established under section 4 by -

- (a) changing the rules that apply to the use of the area; or
 - (b) increasing or decreasing the area of land to which the Protected Water Supply Area status applies.
- (2) If a Water Supply System ceases to be used for human consumption and is unlikely to be used for human consumption in the future, the Environmental Health Officer may, subject to subsection (3), remove the Protected Water Supply Area status from the affected land.
- (3) No amendments to, or removal of, a Protected Water Supply Area may be made under subsections (1) or (2) without the consent of the Village Chief and the owners of the land affected.
- (4) Any owner of land which is a Protected Water Supply Area approved under section 7, may apply to the Environmental Health Officer to make amendments to, or remove a Protected Water Supply Area.
- (5) An application under section (4) must be in form 2 in the Second Schedule, or to like effect, and must contain -
- (a) a description of the land to which the Protected Water Supply Area status applies; and
 - (b) Where the application seeks an amendment to the rules applying to a Protected Water Supply Area; or the area of land affected by the Protected Water Supply Area, the amendments sought; and
 - (d) the matters set out in sections 5(2)(d) and (e).

7. (1) After the receipt of an application lodged under sections 5 or 6, the Officer must approve the application, provided that he or she is satisfied that the requirements set out in those sections have been fully complied with.

Approval of
Protected
Water Supply
Area.

(2) Any approval granted under this section must have no bearing whatsoever over the issue of ownership of any land.

8. (1) Following a Protected Water Supply Area being designated under section 4, approved under section 7, or amended under section 6, the Officer must as soon as practicable -

Notification.

- (a) serve a notice in form 3 in the Second Schedule, or to like effect, on the Area Council, the public officer or provincial employee in charge of policing within the Province, and the Village Chiefs within the Area Council's area of jurisdiction; and
- (b) hold a public meeting in the Village where the Water Supply System is located to describe the designated Protected Water Supply Area and the rules applying to the use of it; and

(c) if the Officer considers it necessary, mark the boundary of the Protected Water Supply Area with appropriate signage.

(2) The establishment of a Protected Water Supply Area under sections 4 or 7 will have full legal force irrespective of any failure to carry out the notification required under subsections (1)(b) and (c).

Commencement.

9. (1) A Protected Water Supply Area established under sections 4 or 7 or amendments approved under section 6 must come into effect 1 month after the notice is served pursuant to subsection 8(a).

Compensation.

10. Compensation of the owners of the land affected by any Protected Water Supply Area by the users of the water supply must be decided by agreement between the owners of the land the Village Chief and the Government of the Province shall not be liable to pay any such compensation.

Establishment of Record.

11. (1) The Officer must, as soon as practicable, establish and maintain at the Assembly offices, a Record of Protected Water Supply Areas, which must -

- (a) define as accurately as practicable the boundaries of each Protected Water Supply Area; and
- (b) state the rules which are to apply to the use of each Water Supply 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 Protected Water Supply Area notice and any other information required to enter the notice on the Register.

Offences.

12. (1) Any person who contravenes any of the rules applying to a Protected Water Supply Area is guilty of an offence under this Ordinance and is liable to the penalties set out in section 14.

(2) It is not an offence under this section -

- (a) for persons with crops planted in a Protected Water Supply Area at the date when it comes into effect to maintain and harvest those crops for up to 6 months immediately after the Area is declared; and

- (b) for persons to take materials from a Protected Water Supply Area for use as custom house materials or for custom medicines; and
- (c) for persons to collect fruit and nuts from a Protected Water Supply Area; and
- (d) for persons to carry out any other customary activities in a Protected Water Supply Area which do not, and which are not likely to, result in contamination or other adverse effect on the Water Supply.

13. 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 -

Liability of
company
officers.

- (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.

14. (1) Where the person committing the offence is an individual and the activity constituting the offence was not being carried out for monetary benefit, that person is liable to imprisonment for a term not exceeding 3 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.

Penalties.

(2) Where the person committing the offence is an individual and the activity constituting the offence was being carried out for a monetary benefit, that person is liable to imprisonment for a term not exceeding 1 year or a fine not exceeding \$10,000, 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.

(3) Where the person committing the offence is a body corporate, that person is liable to 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 the officer of the company is also be liable under section 13 to imprisonment for a term not exceeding 2 years.

(4) In addition to the penalties set out in subsections (1), (2), and (3) every person who damages or contaminates a water supply or Water Supply System in any way is liable for the cost of repairing or cleaning up such damage or contamination.

- Enforcement. 15. (1) The primary responsibility of enforcing the rules governing the use of the Protected Water Supply Area is with the users of the Water Supply.
- (2) It is lawful for any user of the Water Supply, 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.
- Jurisdiction to impose penalties. 16. The Magistrates Court will have jurisdiction to impose the penalties set out in section 14 as may be amended by ordinance or regulation from time to time.
- Defences. 17. (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 for an offence under this Ordinance, if the offender has fully paid any penalty for the offence imposed by a Village Chief.
- Payment of fines. 18. (1) Unless specified otherwise in this Ordinance, all fines must be paid to the Government of the Province.
- (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 Village Committee to be used for the benefit of the village.
- (4) Where determining what portion of a fine must be paid to the Village Committee under subsection (3) the Court must take into account the amount of damage suffered by the village as a result of the offence.
- Civil liability. 19. This Ordinance does not affect any civil right to claim for damages.
- Grant of other rights. 20. 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 Protected Water Supply Area.
- Regulations. 21. The Assembly may make regulations for the better carrying out of the purposes of this Ordinance including regulations to amend the penalties prescribed under section 14.

Passed by the Isabel Provincial Assembly this day of 1993.

D. DARA
Clerk to Assembly

Assented to this day of 1993.

Minister for Provincial Government

FIRST SCHEDULE

ACTIVITIES PROHIBITED IN A PROTECTED WATER SUPPLY AREA

Cutting of any tree which is over 2 metres in height.

Clearing or cultivation of any land, removal of any topsoil or any earthworks of any purposes.

Keeping animals.

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

Use of diversion of water for any purpose other than the distribution of the water for use of people residing in the village or local community benefiting from the water supply.

Defecating or urinating in, or in a place likely to result in the contamination of, the water supply.

Any other activity which is, or is likely to, result in the contamination of the water.

SECOND SCHEDULE

Form 1

APPLICATION FOR PROTECTED WATER SUPPLY AREA

1. Description of the water supply for which protection is sought.
2. Description of the boundaries of the proposed Protected Water Supply Area.
3. Rules proposed to apply to the Protected Water Supply Area (if these differ from those in the First Schedule).
4. Name and signature of the Village Chief.
5. Name of the owner(s) of the land or the customary land holding group(s).
6. Name(s) and signature(s) of owner(s) of land, or 3 bona fide representatives of each customary land holding group (whichever applies).
7. 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)

FIRST SCHEDULE - continued

Form 2

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

To: (Name of Area Council)

1. Description of the boundaries of the Conservation Area.
2. Date when the Term last expired for the Conservation Area.
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. Description of the area of land which is sought to be removed or added to the Conservation Area (where applicable).
6. The reasons why the application should be granted.
7. Name of the owner(s) of the land or the customary land holding group(s).
8. Name(s) and signature(s) of the owner(s) of land, or 3 bona fide representatives of each customary land holding group (whichever applies).
9. 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)