

[Legal Notice No. 155]

PROVINCIAL GOVERNMENT ACT 1981
(No. 7 of 1981)

THE TEMOTU PROVINCE
PRESERVATION OF CULTURE ORDINANCE 1993

AN
ORDINANCE
TO

PROVIDE FOR THE PRESERVATION OF TRADITIONAL
ARTIFACTS AND CULTURALLY SIGNIFICANT LAND
AREAS.

ARRANGEMENT OF SECTIONS

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1. This Ordinance may be cited as the Temotu Province Preservation of Cultural Ordinance 1989 and shall come into operation on the date assented to by the Minister in accordance with section 32 of the Provincial Government Act 1981.
 2. In this Ordinance:
“Assembly;” means the Temotu Provincial Assembly;
“Executive” means the Temotu Provincial Executive;

“National Museum” means the Solomon Islands National Museum administered by the Ministry of Education and Training;

“person” means any person and includes any public body, company or association, and anybody of persons corporate or unincorporate;

“protected place” means a site association with human activity in the past and of historical. Cultural or archaeological significance, declared as a protected place in accordance with this Ordinance;

“provincial employee” means any person holding a paid, position in the service of Temotu Province and not a public officer;

“public body” means includes any provincial assembly, area council, town council, department of the Government and any undertaking by or of the Government;

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

“traditional artifacts” includes any article, or the design, pattern, symbol or shape of any article traditionally or customarily used or intended for use in Temotu Province as personal or other adornment, as a household utensil, as money, as fishing or hunting equipment, as a weapon tool or musical instrument and any statuette or figure fashioned from wood, clay or stone and any article specifically made for sale as a curio. The Executive, by regulation, may designate specific items as traditional artifacts, which designation shall be conclusive, but shall not by its silence, exclude items which are otherwise within this definition.

3. Any person other than -

- (a) a person acting on behalf of the National Museum; or,
- (b) a person acting on behalf of a museum approved by resolution of the Assembly and who is named in and in possession of a letter of authority by the Clerk to the Assembly; or,
- (c) a person acting in accordance with customary procedure; or
- (d) any other person authorised by the Executive;

who buys or sells or offers to buy or sell any traditional artifact shall be guilty of an offence and on conviction shall be liable to

a fine not exceeding \$100 or, in default of payment of the fine, to imprisonment for a period not exceeding one month.

4. Any person who displays or offers for sale any object which they falsely purport to be a traditional artifact shall be guilty of an offence and on conviction shall be liable to a fine not exceeding \$100 or, in default of payment of the fine, to imprisonment for a period not exceeding one month.

5. (1) The Assembly may, by resolution, declare any place associated with human activity in the past and which in of historical cultural or archaeological significance to be a protected place.

(2) No declaration shall be made pursuant to subsection (1) without the written request of consent of the bona fide representative of the owners of the land in respect of which the declaration is to be made.

(3) Following the declaration, under this section or section 7, of any site as a protected place, the owners of that site shall be responsible for marking its boundaries so as to afford reasonable notice, to persons operating in the area of the protected place of the existence of the protected place.

6. The Executive shall as soon as practicable establish and maintain at the Assembly Offices a Register of Protected Places which shall define as accurately as possible the boundaries of each protected place the method by which the site boundaries have been marked and shall include maps marked with the places protected by this Ordinance and the Register shall be available for inspection during office hours.

7. (1) Where the landowners representatives have so requested or consented in writing and where the circumstances require, in the view of the Executive, immediate action for the protection of a place which would qualify as a protected place under this Ordinance the Executive may declare such a place to be a protected place.

(2) Any declaration made pursuant to subsection (1) must be approved by the next following meeting of the Assembly

(3) The failure of the Assembly to approve any declaration made by the Executive pursuant to subsection (1) of this section shall not operate to invalidate or prejudice any previous actions of the Executive, or of any officer or prejudice any previous actions of the Executive, or of any officer or employee designated by the Executive, by way of enforcement of this Ordinance in respect of any declared as a protected place by the Executive.

8. (1) Any person who by any means undertakes any activity whether inside or outside any protected place itself, which result in adversely disturbing or damaging the status quo of that protected place is guilty of an offence and is liable to the penalties set out in section 11 of the Ordinance.

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

- (a) for, persons, exercising customary rights within any protected place to use that protected place for its custom purpose;
- (b) for person to use any shelters, which have been declared as protected places, as temporary shelters in an emergency;
- (c) for the landowners of any protected place or for officers or employees of Temotu Province or of the National Museum to carry out activities necessary to preserve the status quo of that protected place or to prevent damage to historical or archaeological remains with that protected place; or,
- (d) for qualified persons to carry out any excavation of archaeological deposits within any protected place that has been sanctioned in writing by the landowners concerned, the Assembly and the National Museum.

9. (1) The Assembly with the approval of the landowner(s), may deregulate any area that has been declared as a protected place as follows -

(2) The Assembly may in exercising the discretion conferred by this section impose such conditions as it may deem appropriate.

(3) Any landowner making application for deregulation of a protected place under this section who is subsequently shown to have misled the Assembly, is guilty of an offence and is liable to the penalties set out in section 11 of this Ordinance.

10. (1) Any developer shall before commencing development operations of any land -

- (a) Consult the Registrar of Protected places;
- (b) Carry out an inspection of the land to identify, locate, and mark on maps, so that they may be easily identified, all sites which appear to be or are said by the landowners to be, of historical, cultural or archaeological significance.

(2) The inspection provided for in subsection (1) shall be carried out under the direction of the Executive, or a public officer or provincial employee designated by the Executive, and the developer shall pay all the costs in respect of the inspection.

(3) The developer shall report to the Executive in writing the results of the inspection provided for in subsection (1) hereto.

(4) Upon receipt of the report provided for in subsection (3) hereto, the Executive, or a public officer or provincial employee designated by it, shall advise the landowners of the contents of it and the landowners shall then have 21 clear days in which to give their consent to the registration as protected places of any sites identified in the report as being of historical, cultural or archaeological significance.

(5) If the landowners, within the specified time period, consent to the registration of all or any of the sites in question as protected places those sites shall be deemed to be protected places in terms of this Ordinance and enjoy the protection thereby afforded until a resolution to declare them as such has been before the Assembly.

(6) If the landowners do not respond within the specified time period or respond but do not give their consent to the registration of all or any of the sites in question as protected places, the developer activities shall be entitled to proceed forthwith with the development activities subject only to the provisions of any other enactment or law and none of the sites in question may thereafter be declared as a protected place pursuant to this Ordinance without the consent of the developer.

(7) Any person undertaking development activities which have already commenced on the effective date of this Ordinance shall have (4) months (or such greater period which the Executive, upon application of that person, may specify) within which to complete the inspection required by this section.

(8) The failure of any person to comply with the requirements of subsections (1), (3) of this section is an offence and shall render that person liable to the penalties set out in section 11 of this Ordinance.

(9) For the purpose of this section -

“developer” means any person carrying out development activities; and,

“development activities” means the carrying out of building, engineering, mining, logging and other development operations in, on, over or under any land by any person other than the owner of that land and includes such undertakings by public bodies.

11. (1) Any offence under section 8 is punishable by a fine not exceeding \$1,000.00 or imprisonment for a period not exceeding three months, or both such fine and imprisonment; and the cost related to the restoration of the protected place to its original state by the Province shall be recoverable as a civil debt.

(2) Any offence under section 9 is punishable by a fine not exceeding \$200.00 or, in default of payment, by imprisonment for a period not exceeding one month; and costs related to the restoration of the protected place to its original state by the Province shall be recoverable as a civil debt.

(3) Any offence under section 10 is punishable by fine not exceeding \$500.00 and to an addition fine of \$50.00 for each day during which the offence continues after notice of the same is given to the offender.

(4) Where a body corporate commits an offence under this Ordinance with the consent or connivance of, or because of neglect by, any individual, that individual commits the same offence if at that time -

- (a) he is a director, manager, secretary or similar officer of the body corporate;
- (b) he is purporting to act as such an officer; or
- (c) the body corporate is managed by its members of whom he is one.

12. (1) It shall be lawful for any landowner, police officer, area constable, member of the staff of the National Museum or any provincial employee or public officer, designated by the Executive, to make enquiries at all reasonable times to ascertain whether any offence under this Ordinance is being or has been committed.

(2) Any person who obstructs or impedes any landowner, police officer, area constable, provincial employee, public officer or member of The National Museum staff acting in due exercise of his powers under this Ordinance, is guilty of an offence and liable to fine not exceeding \$200.00 or, in default of payment to imprisonment for a period not exceeding three months.

13. This Ordinance and the imposition of any penalties thereunder shall not operate to bar other civil claims or relieve any person from liability which may exist to answer for damages in respect of any persons or property injured.

Passed by the Temotu Provincial Assembly this first day of April 1993.

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

HILDA DAMOLA
Clerk to the Temotu Provincial Assembly

Assented to by the Honourable Minister of Provincial Government,
this thirtieth day of June 1993.

CAIN ERIC SERI
Minister of Provincial Government
