

***SUPPLEMENT* to the Solomon Islands Gazette**

Friday 9th February, 1996

S.I. No. 7

[Legal Notice No. 13]

PROVINCIAL GOVERNMENT ACT 1981
(No. 7 of 1981)

THE MALAITA PROVINCE PRESERVATION OF CULTURE
ORDINANCE 1995

AN ORDINANCE TO
PROVIDE FOR THE PRESERVATION OF TRADITIONAL
ARTIFACTS AND CULTURALLY SIGNIFICANT LAND
AREAS IN MALAITA PROVINCE.

ENACTED BY THE MALAITA PROVINCIAL ASSEMBLY
THIS 30TH DAY OF NOVEMBER 1995.

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

MATTHEW EDWARD MAEFAI
Clerk to the Malaita Provincial Assembly

Assented to by the Honourable Minister for Provincial Government
and Rural Development this 1st day of February 1996.

ALLAN QURUSU
Minister for Provincial Government & Rural Development

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PART I - PRELIMINARY

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| <p>1. This Ordinance is called the Malaita Province Preservation of Culture Ordinance 1995 and shall come into force on approval by the Minister in accordance with Section 32 of the Provincial Government Act 1981 and publication in the Solomon Islands Gazette.</p> | <p>Short title and commencement.</p> |
| <p>2. The purpose of this Ordinance is to provide for the preservation of traditional artifacts and culturally significant areas in Malaita Province.</p> | <p>Objects of the Ordinance.</p> |
| <p>3. In this Ordinance, unless the context otherwise requires:</p> <p>“Act” means the Provincial Government Act 1981.</p> <p>“Appointed Representatives” means the representatives of a Customary Owner, appointed in accordance with current customary practice.</p> <p>“Appropriate Committee” means an established committee having customary respect and knowledge of traditional and customary usage of customary land, and includes a Community Leaders Committee, a Chiefs Committee and a Village Committee.</p> <p>“Authorised Officer” means any police officer, culture officer, environment officer, tourism officer, area constable, village organiser, chief or any person appointed in writing by the Provincial Secretary to be an authorised officer for the purposes of this Ordinance.</p> <p>“Customary land” has the meaning ascribed to it in the Land and Titles Act Cap. 93.</p> <p>“Customary Owner” means the person or persons who is or are according to current customary usage regarded as the owner or owners of the land and who has or have authority to exercise primary rights over customary land.</p> <p>“Developer” means any person who undertakes development activity.</p> <p>“Executive” means the Malaita Provincial Executive.</p> <p>“export” means the selling, supplying or transporting of any object from within Malaita Province, outside the Province whether to another part of Solomon Islands or overseas.</p> <p>“Landowner” in relation to customary land means the Customary Owner or its appointed representatives and in relation to registered land means the registered Owner.</p> <p>“National Museum” means the Solomon Islands National Museum.</p> | <p>Interpretation.</p> |

- “Order” means an order of the Executive declaring a place to be a Protected Place.
- “Province” means Malaita Province.
- “person” means any person and includes any public body, company, association or body of persons whether corporate or unincorporate.
- “Protected Place” means a place associated with human activity in the past or present and of historical, cultural or archaeological significance, declared as a Protected Place in accordance with this Ordinance.
- “Public Body” includes any Provincial Government, Area Council, Town Council, Government Department.
- “Registered Owner” in relation to registered land means the person in whose name the land is registered.
- “traditional artifact” includes any article or object made or existing for traditional or custom use including but not limited to personal and other adornments, household utensils, fish hooks, fishing or hunting equipment, shell money, weapons, tools, musical instruments, custom objects, skulls, bones, statuettes or figures fashioned from wood, clay, bone, coral or stone and does not include any article or object made for gift or sale or export as a souvenir or memento.

PART II - PROTECTION OF TRADITIONAL ARTIFACTS

Offences in relation to traditional artifacts.

- 4.1 Subject to subsections 4.2 and 4.3, any person who:
- (a) buys or sells or offers to buy or sell or in any way deals with a traditional artifact; or
 - (b) disturbs, damages, destroys, defaces, moves or removes or causes to be disturbed, damaged, destroyed, defaced, moved or removed any traditional artifact; or
 - (c) displays or offers for sale any object which they falsely purport to be a traditional artifact;
 - (d) does anything likely to result in the removal of a traditional artifact from Malaita Province;
- shall be guilty of an offence.
- 4.2 Section 4.1 (a) and (c) shall not apply to:
- (a) a person with the right to sell or donate a traditional artifact who sells or donates that traditional artifact to the National Museum, any national cultural centre, any Provincial or local museum or cultural centre approved by the Executive;

- (b) a person who has written authority from the National Museum, any national cultural centre, any Provincial or local museum or cultural centre approved by the Executive to buy or acquire a traditional artifact to contribute to the collection of the authorising institution;
- (c) a Solomon Islander who buys or sells or otherwise deals with a traditional artifact in accordance with custom.

4.3 Section 4.1 (b) and (c) shall not apply to:

- (a) a person who has the written authority of the Executive and the Landowners if appropriate, to remove any traditional artifact for the purpose of preservation, protection or examination of that traditional artifact and who provides to the Executive written details of the origin of the artifact, the location from which it is to be removed, the date it is to be removed, its destination and the purpose of the removal;
- (b) a Solomon Islander who moves or removes a traditional artifact solely for custom use or purpose.

5. Any person convicted of an offence under this Part is liable to:

- (a) a penalty of up to \$1,000 and imprisonment for up to 1 year or to both a penalty and imprisonment; and
- (b) the confiscation of the traditional artifact by the Executive.

Penalties for offences under Part II.

PART III - PROTECTED PLACE ORDERS

6.1 The Executive may make Protected Place Orders ("Orders").

6.2 A Protected Place Order is an order providing for protection of a particular area of land associated with human activity in the past which is of historical, cultural or archaeological significance.

6.3 An Order may only be made if all the procedural requirements of this Ordinance have been satisfied, and:

- (a) The boundaries of the land are clearly defined; and
- (b) The Executive are satisfied that the request has been made by the Registered Owner or the Customary Owner or its Appointed Representatives; and
- (c) The contents of the proposed Order are not contrary to the national interest; and
- (d) The proposed Order is clear and unambiguous.

Protected Place Orders.

Request for
Order.

7.1 A request for an Order may be made at any time in relation to any defined area of land by the Landowner.

7.2 A request for an Order shall be made to the Provincial Secretary at Provincial Government Offices Auki Malaita Province in the form set out in Schedule 1 and shall be accompanied by the fee set from time to time by the Executive.

7.3 Upon receiving a request for an Order, the Provincial Secretary shall consider the request and:

- (a) if satisfied that it complies in all respects with the requirements of this Ordinance he shall approve it and within one month of receipt of the request, deliver it to the Secretary of the Area Council to whose area it relates;
- (b) if not satisfied that it complies with the requirements of this Ordinance he shall reject it and notify the applicants within 1 month of receipt of the request of the grounds for rejection.

7.4 Upon receipt of the request endorsed with the approval of the Provincial Secretary, the Area Council Secretary shall immediately arrange for a copy of the request to be displayed in a conspicuous place in each village within the area affected by the request. The Area Council Secretary will sign each of the copies to be displayed and mark it with the date on which it is put on display.

7.5 Within one calendar month of the date the request is first displayed in any village, any person may give written notice of objection that the applicants are not the Landowner.

7.6 The notice of objection under 7.5 must be served on the applicants and the Provincial Secretary.

7.7 The register shall be conclusive proof of the identity of the Registered Owner of registered land and any objection in respect of registered land shall be decided by the Provincial Secretary in accordance with the advice of the Registrar of Lands.

7.8 The objectors and the applicants shall be entitled to be heard by the Appropriate Committee where the land is Customary Land.

7.9 The Appropriate Committee, having heard the applicants and objectors, shall decide whether the applicants are the Customary Owner or its Appointed Representatives and shall record their decision and send a copy to the applicants, the objectors, the Area Council Secretary and the Provincial Secretary.

7.10 If the applicants think:

- (a) That the Appropriate Committee nominated by the objector is not qualified to decide who is the Customary Owner and/or its Appointed Representative: or
- (b) The the Appropriate Committee's decision is wrong, they may within 21 days after receipt of the decision, apply to the local court for a ruling on either or both of these questions.

7.11 If:

- (a) There is no objection within the time specified in 7.5; or
 - (b) An objection has been made in respect of registered land and has been determined by the Provincial Secretary; or
 - (c) The Appropriate Committee has decided that the applicants are the Customary Owners or their Appointed Representatives and no application has been made to the Local Court within the time specified in 7.10; or
 - (d) The Local Court has decided on an application under 7.10 that the applicants are the Customary Owners or their Appointed Representatives,
- the Provincial Secretary shall present the request for an Order to the next meeting of the Executive and the Executive may make the Order.

7.12 The Order shall be in the form set out in Schedule 2.

7.13 An Order shall not be evidence of ownership of land.

8.1 The Provincial Secretary shall arrange for publication in the Gazette of all Protected Place Orders made by the Executive and the Order shall come into effect on the date when it is made even if that is before the date of publication.

Publication and
and publicity
for Protected
Place Order.

8.2 The Provincial Secretary shall serve a copy of the Order on the Landowner, the Area Council Secretary and relevant authorised officers within 21 days of the Order being made by the Executive.

8.3 On receipt of an Order, the Area Council shall, as soon as practicable:

- (a) notify all Chiefs and Village Organisers in their area that the Order has been made; and
- (b) display a copy of the Order in a place where it can be seen by people likely to be affected by it; and
- (c) take measures to ensure that such people are aware of the Order.

8.4 On receipt of the Order, the Landowner shall mark the boundaries of the land affected and take measures to ensure that people likely to be affected by it are aware of and understand the Order.

8.5 The Provincial Secretary shall establish and maintain a register of Protected Place Orders which shall contain a copy of every Order and plan showing the area affected and which shall be open to the public on payment of a reasonable fee.

Variation or
revocation of
Protected
Place Orders.

9.1 An Order may be varied or revoked by an order of the Executive published in the Gazette in the following circumstances:

- (a) A request for the variation or revocation must be made by the Landowner;
- (b) The request for variation or revocation must be made in writing to the Provincial Secretary and must specify a date, not less than six months from the date of the request on which the variation or revocation is to take place;
- (c) The variation must not increase the area of land subject to the Order except in respect of land where ownership is not disputed;
- (d) The Landowner must certify that the purpose of the variation or revocation is so that the place can be used as a settlement for occupation by the landowner and his tribe line or clan.

9.2 If the Provincial Secretary is satisfied that the request complies with section 9.1 he shall present it to the next meeting of the Executive who may resolve to vary or revoke the Order with or without conditions.

9.3 If the Provincial Secretary is not satisfied that the request complies with section 9.1 he shall reject it and shall notify the applicants in writing of the grounds for rejection.

10. Places already protected under any law are deemed Protected Places declared under this Ordinance and shall be included in the register maintained under this Ordinance.

Previous
Protected
Places.

11.1 Any landowner who makes any false or misleading statement in a request under section 9 or who uses or permits the Protected Place or former Protected Place to be used for any purpose other than settlement or occupation by his people following a revocation or variation Order or who fails to comply with any of the terms and conditions imposed by the Executive under section 8 is guilty of an offence and liable to a penalty of up to \$1000 or a term of imprisonment for up to 1 year or to both a penalty and imprisonment and the Executive may cancel the variation or revocation Order and restore the Protected Place Order.

Offences
under Part
III.

11.2 Any landowner or any other person using a Protected Place for settlement or occupation without first obtaining a variation or revocation of the Protected Place Order is guilty of an offence and liable to a penalty of up to \$1000 or a term of imprisonment for up to 1 year or to both a penalty and imprisonment.

11.3 Any person who:

- (a) by any means undertakes or causes to be undertaken any activity whether inside or outside a Protected Place which disturbs, damages, defaces or destroys the Protected Place;
- (b) moves or removes, disturbs, defaces, damages, destroys or in any way interferes with or causes to be moved, removed, defaced, damaged or destroyed or interfered with any historical, cultural or archaeological remains in a Protected Place;
- (c) removes, moves, destroys, damages or defaces or causes to be removed, moved, destroyed, damaged or defaced any posts, pegs, markers or monuments marking a Protected Place,

is guilty of an offence and liable to a penalty of up to \$1000 and imprisonment for up to 1 year or both a penalty and imprisonment.

12. It is not an offence under this Part:

- (a) for Solomon Islanders exercising customary rights within the Protected Place to use the Protected Place for its custom purpose;

Defences.

- (b) for persons to use a Protected Place as a temporary shelter in times of emergency if this is not tambu under custom;
- (c) for the Landowner of a Protected Place or for authorised officers to carry out activities necessary to preserve the status quo of the Protected Place or to prevent damage to or deterioration or destruction of historical, cultural or archaeological objects or remains within the Protected Place;
- (d) for qualified persons with the prior written authorisation of the landowner and the Executive to carry out excavation of archaeological deposits or undertake survey work within any Protected Place.

PART IV - DEVELOPMENT ACTIVITIES

Development
activities
and
procedure.

13.1 Any person shall, before carrying out any development activities on any land:

- (a) consult the register of protected places;
- (b) at his own expense, carry out a survey of the land for the purpose of identifying, locating, marking and recording all places of historical, cultural or architectural significance. The survey shall be carried out with the written consent of the Landowner in consultation with the Landowner and under the supervision of an authorised officer;
- (c) at his own expense, prepare and submit a written report to the Executive. The report shall contain a map or maps clearly identifying the boundary of the site to be developed and all sites which are or appear to be of cultural, historical or archaeological significance and which are within the boundary or may be affected by the proposed development. If the Landowner or the authorised officer wish any place to be declared a Protected Place under Part III then the report shall contain a written request for such a Protected Place Order. The report and each map it contains shall be signed by the developer, the Authorised Officer and the Landowner or his Appointed Representative.

13.2 The Executive may:

- (a) make an Order declaring any place identified in the report as being of cultural, historical or archaeological significance a Protected Place, even if the report contains no request for such an Order;

- (b) require the developer prior to commencement of the development activity to arrange, at this own expense, for any area to be systematically excavated by a professional archeologist and details of the area and the findings of the excavation to be fully documented to the satisfaction of the authorised officer;
- (c) require the developer prior to commencement of development activity to arrange at his own expense for a report from an independent archaeologist for the purpose of advising the Executive in respect of the proposed development area;
- (d) authorise the developer to proceed with the development activity subject only to the provisions of any other law or policy and once this authorisation is given none of the sites identified in the report may be declared a Protected Place without the consent of the developer.

13.3 Any person undertaking development activities which have already commenced in the date this Ordinance comes into effect shall be given written notice signed by an authorised officer requiring that person to arrange the survey and submit the report under this section within four (4) months from the date of the notice of such longer period as the authorised officer agrees in writing.

13.4 Where any person has been convicted of an offence under this section the Executive may require the development activity to cease immediately until such time as the provisions of this section have been complied with.

13.5 This section does not prohibit any landowner from making private agreement with the developer and any other person for the protection of a place of historical, cultural or archaeological significance.

14.1 Any person who fails to comply with any of the provisions contained in this Part is guilty of an offence and liable on conviction to a penalty of up to \$1000 and imprisonment for up to 1 year.

Offences
under
Part IV.

PART V - TAMBU SITES

15. It is an offence to enter any tambu site except in accordance with the express permission of the Landowner or person with customary power to give such permission. Any one guilty of an offence under this section shall be liable to a penalty of up to \$1,000.

Offence to
enter tambu
sites.

PART VI - GENERAL

Confiscation
of
artifacts.

16. Where an offence has been committed under Part II the traditional artifact may be confiscated.

Inquiry by
authorised
officer.

17. It shall be lawful for any landowner, police officer or authorised officer:

- (a) to make enquiries at all reasonable times to ascertain whether any offence under this Ordinance is being or has been committed;
- (b) to seize any traditional artifact or historical, cultural or archaeological object or remains if he has reasonable grounds to believe that it is in the possession or control of a person in breach of this Ordinance and to retain it until such time as due enquiries have been completed PROVIDED HOWEVER that if there has been no breach of this Ordinance then it must be returned to the person from whom it was seized. No claim or action may be brought for damages or compensation relating to such seizure or retention.

No effect
on civil
liability.

18. This Ordinance does not affect any civil claims or any liability for damages under Civil law.

Assistance
for
landowners.

19. A Landowner may report any offence affecting his land or property under this Ordinance to the Province and the Province shall assist the landowner by:

- (a) investigating the report;
- (b) providing a copy of any written report of its investigations;
- (c) informing the landowner if it decides to prosecute the person alleged to have committed the offence;
- (d) informing the landowner of the date of any such prosecution;
- (e) informing the landowner of the result of any such prosecution;
- (f) providing any of the above information to the public solicitor at the request of the landowner.

SCHEDULE 1

PROTECTED PLACE ORDER REQUEST

AN APPLICATION affecting the land area in Malaita Province including/not including* the reefs/lagoons adjacent to the land. (*Delete as applicable.)

1. The boundaries of the land are described as follows and as marked and outlined in red on the plan attached. (Remember to attach a properly marked plan.)

Description of boundaries:

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2. The grounds on which we request the Executive to make a Protected Place Order are as follows:

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3. We do/do not [delete as applicable] want the defence for persons indigenous to Solomon Islands provided in this Ordinance to apply to offences against this Order.

4. We acknowledge that we are aware that if this request is approved by the Executive and is not appealed against successfully, it will be gazetted in the Solomon Islands Gazette. It will then become part of the law of Malaita Province and there will be penalties for not obeying it. Once an Order is made then it cannot be changed unless the Executive agrees to repeal it.

5. We are all the Landowners or their Appointed Representatives.

6. We enclose the application fee.

We certify that we have discussed this request for a Protected Place Order with the communities which will be affected by it and that we substantially have their agreement to it.

SIGNED by the Customary Owner or the Registered Owner or their Appointed Representatives on behalf of the land owning group/tribe.

<u>Name</u>	<u>Signature</u>	<u>Title (if any)</u>
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For Official Use Only

I have considered this request for a Protected Place Order relating to land.

I am/am not *[delete as applicable]* satisfied that the request complies in all respects with the Malaita Province Preservation Of Culture Ordinance 1995 and I therefore approve/reject *[delete as applicable]* the request.

If the request is rejected the reasons are as follows:

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Signed by the Provincial Secretary.....

Dated..... day of 199.....

I, Secretary to the Area Council hereby certify that I have displayed this Protected Places Order Request approved by the Provincial Secretary in village on day of 199.....

SCHEDULE 2

FORM OF PROTECTED PLACE ORDER

THE (description of land) PROTECTED PLACE ORDER

Malaita Provincial Executive declare the land described in the appendix and shown edged red on the attached plan to be a Protected Place under the Malaita Province Preservation of Culture Ordinance 1995.

It is an offence to;

- use or permit the Protected Place or former Protected Place to be used for any purpose other than settlement or occupation by his people following a revocation or variation Order or to fail to comply with any of the terms and conditions imposed by the Executive;
- use a Protected Place for settlement or occupation without first obtaining a variation or revocation of the Protected Place Order;
- by any means undertake or cause to be undertaken any activity whether inside or outside a Protected Place which disposes, damages, defaces or destroys the Protected Place;
- move or remove, disturb, deface, damage destroy or in any way interfere with or cause to be moved, removed, defaced, damaged or destroyed or interfered with any historical, cultural or archaeological remains in a Protected Place;
- remove, move, destroy, damage or deface or cause to be removed, moved, destroyed, damaged or defaced any posts, pegs, markers or monuments marking a Protected Place.

There are limited defences for authorised people and Solomon Islanders.