



LANDOWNERS' ADVOCACY AND LEGAL SUPPORT UNIT
PUBLIC SOLICITOR'S OFFICE

How to protect special places on your land and sea in the Western Province



What are protected areas?

Many communities already have traditional protected areas or tambu sites on land and sea, and have a great deal of knowledge about managing these areas and their resources.

There are also some laws that allow the community, non-government organisations (NGOs) and the Government to protect and manage special places on land and sea as “formal protected areas”.

Legally protected areas can help to support the traditional system, especially for serious infringements; and can provide a tool to formalise and enforce rules and community rights.

There are several national and provincial laws available for protecting land and sea in the Western Province.

1. Protected Areas Act (national)

Areas of land and sea can only be formally protected *if* landowners agree to it.

A Protected Area does not affect the ownership of the land – the customary owners remain the same.

There is flexibility with how you can protect your area – different communities can have different rules and objectives depending on what they want for their land and sea. For example, areas can be set up to conserve biodiversity and allow the sustainable use of resources for the sustainable livelihood needs of local communities and customary owners.

What is the process for customary owners wanting to apply for protection?

Step 1: The landowners carry out consultations

- Consultations must be held within the landowning tribe to reach a consensus or resolution about listing the area as a Protected Area.
- The tribal leader must then notify the leaders of all neighbouring tribes and communities of their plans and hold village meetings with them to get wider support for their plans.
- The tribal leaders of the landowning tribe and the leaders of neighbouring tribes (where appropriate) must sign a written agreement about the proposal, including a map showing the proposed boundaries of the Protected Area.

Step 2: The Director establishes a management committee

- Members of the management committee can include community members and landowners.
- The committee can be established after the Director seeks written nominations from the community, or once an existing management arrangement is recognised by the Director.

Step 3: The management committee develops a management plan

- The management committee must prepare a management plan for the proposed Protected Area. It will include rules for the Area and exemptions from the broad prohibitions in the Act.
- The management plan needs to be consistent with the objectives of the Act and the type of Protected Area that the area is going to become.
- It needs to contain some specific information such as zoning; what activities are restricted; implementation, enforcement and public awareness programs; and proposed penalties.
- When preparing the plan, the management committee should consult with customary owners, local communities, NGOs, chiefs and traditional leaders, and the Government.

Step 4: The landowners submit an application to the Director

The application must include an application form, the management plan, the agreement between the landowners and the neighbouring tribes (including a map of the boundaries of the area).

Step 5: The Director carries out consultations

The Director must do various things including meeting and consulting with landowners and other people affected by the Protected Area, verifying who has rights and interests in the area, carrying out a field study, and putting a public notice about the proposed area in a newspaper.

Step 6: People write to the Director either supporting or objecting to the proposal

The timeframe that people have to write to the Director about the proposed Protected Area will be set out in the newspaper notice (see Step 5). It must be at least 30 days.

Step 7: The Director makes a recommendation and the Minister decides whether to declare the area to be a Protected Area.

The area can only be declared as a Protected Area if it meets one of the four criteria specified in the Act, such as:

- it has significant cultural or biological resources, or
- it contains the habitat of plants or animals of national or international importance.

If the boundary of the area is in dispute the area cannot be declared.

What can people do in a Protected Area and what can't they do?

Activities that may damage the environment such as large-scale logging and mining, dragging nets on the sea floor, or discharging waste or pollution into marine protected areas, are prohibited.

Other activities are prohibited unless they are authorised in the management plan or by the management committee. These include agriculture, hunting, taking firewood, removing live coral, and building. In some Protected Areas, sustainable use of resources by landowners is allowed. A breach of these is an offence, so they can be enforced by the police and in court.

The management plan will include exemptions to the activities prohibited above and any other rules about what activities are restricted in the Protected Area, and what penalties will apply.

How are the rules enforced?

Inspectors and rangers can be appointed to enforce the rules. You can also get help from the police and apply to the Director for help with a court order.

- Inspectors can do a range of things, such as assisting in management and protection, and issuing infringement notices.
- Rangers need to be over 18 and be a member of the local community or tribe or working for the NGO managing the area. They can do things such as board and search vessels, seize specimens or equipment used in an offence, require a person to rectify a minor breach of the Act or a permit, and order a person to stop doing an activity.

2. Western Province Resource Management Ordinance

This Ordinance allows for the creation of Customary Land Resource Management Orders, which provide for the protection of natural resources in a particular area of land and/or sea.

What is the process for customary owners wanting to apply for protection?

Step 1: The landowners make a request to the Provincial Executive

The applicants must submit an application form, a map with the proposed boundaries, details on what can or cannot be done in the area, and other details such as what plants and animals need special protection. The application can only be made by all people (or their representatives) who are entitled to make rules for the area according to customary law.

Step 2: The Provincial Executive endorses the request

This needs to be done within one month of the Provincial Executive receiving the request, if all procedural requirements have been met.

Step 3: The Provincial Executive notifies the public and public makes objections

If someone thinks that the people who made the request are not the true customary landowners, they can write a letter of objection to the Appropriate Committee, Provincial Secretary and the applicants. This must be done within one month of the person getting notice.

Step 4: The Appropriate Committee (and potentially the Local Court) hold a hearing

If a person lodges an objection, the Committee will decide whether the applicants are the true customary landowners of the land. If the applicants disagree with the decision, they can appeal to the Local Court.

Step 5: The Provincial Executive makes the Order by publishing it in the Gazette

The Provincial Executive can only do this if the applicants have been found to be the persons who are entitled to make rules for the area according to customary law.

What can people do in a Protected Area and what can't they do?

It depends on what rules are set out in the Order. The Order can prohibit or restrict certain activities. Under the Order it may be permissible to take certain plants and animals for purposes such as food or custom. A breach of any rule is an offence, which means the police can help enforce them.

3. Western Province Fisheries Ordinance

This Ordinance provides for the establishment and management of Marine Protected Areas ("MPA") over any area of Provincial waters and adjoining land.

What is the process for customary owners wanting to apply for protection?

Step 1: Customary group or NGO submits application to the Provincial Minister of Fisheries

It needs to be in writing and include the reasons for why the group wants the area protected. The application should indicate the area deserves special protection because of at least one of these reasons:

- the biodiversity of an area needs to be monitored and protected;
- it is an area of significant biodiversity that is at risk; and/or
- certain species within the area are considered to be at risk .

If a customary group needs help preparing the application it should approach the Provincial Secretary who will find an NGO to help.

Step 2: Provincial Executive carries out consultation and negotiates landowner consent

- A marine protected area can only be declared if the customary groups consents.
- If a group other than a customary group has applied for the marine protected area, the Provincial Executive must discuss and negotiate the proposal with the relevant customary groups.
- Consent can be given by the customary groups with conditions (e.g. that traditional fishing practices may continue).

Step 3: Provincial Minister of Fisheries makes a recommendation to the Provincial Executive, and the Provincial Executive decides whether to declare the MPA

What can people do in a Marine Protected Area and what can't they do?

Unless conditions have been agreed to for the establishment of the Area, people are not allowed to do the following in a marine protected area: fish or hunt any specimen or fish, collect coral or shells, disturb any wreck, dredge or quarry any sand, mud or rocks, discharge any polluting substance; otherwise disturb the ecology of the area, or construct any building or jetty (without authorisation).

Breach of these rules is not an offence, so they can be difficult to enforce for the police or in court.

Other questions?

Please contact us on lalsu@psd.gov.sb or the following if you need further information or advice.

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