

(Legal Notice No. 100)

PROVINCIAL GOVERNMENT ACT 1981
THE CHOISEUL PROVINCE PRESERVATION OF
CULTURE ORDINANCE 1997

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

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PART I
PRELIMINARY

1. Citation and Commencement - This Ordinance may be cited as the Choiseul Province Preservation of Culture Ordinance 1997 and shall come into force when it has been approved by the Minister in accordance with Section 32 of the Provincial Government Act 1981 and published in the Solomon Islands Gazette.

2. Objects of Ordinance - The purpose of this Ordinance is to provide for the preservation of traditional artifacts and culturally significant areas in Choiseul Province.

3. Interpretation - In this Ordinance unless the context requires otherwise:

“Act” means the Provincial Government Act 1981.

“Appointed Representatives” means the representatives of a Customary Owner, appointed in accordance with current customary practice.

“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 Chief Committee and a Village Committee.

“Authorised Officer” means any police officer, culture officer, environment officer, tourism officer, area constable, village organiser, chief or any person appointed in writing by Provincial Secretary to be an authorised officer for the purposes of this Ordinance.

“Customary Land” has the meaning ascribed to it in the Land and Titles Act Cap. 93.

“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.

“Developer” means any person who undertakens a Development Activity as defined in this Ordinance.

“Development Activity” means any undertaking or operation or works which modifies, disturbs or alters in a substantial way any land in the Choiseul Province, including, but not limited to excavation activities, building activities, roading activities, engineering activities, logging activities, blasting activities, mining activities or agricultural activities.

“Executive” means the Choiseul Provincial Executive established under Section 22 of the Act.

“Export” means the selling, supplying or transporting of any object from within Choiseul Province, outside the Province whether to another part of Solomon Islands or overseas.

“Land” means and includes land, reefs and lagoons in Choiseul Province.

“Landowners” in relation to customary land means the Customary Owner or Owners or their authorised representatives and in relation to registered land it means the registered owner.

“National Museum” means the Solomon Islands National Museum in Honiara.

“Order” means an order of the Executive declaring a place to be a Protected Place.

“Person” means any person, persons, company, public body as herein defined, association, co-operative and any other body of persons.

“Protected Place” means a place associated with human activity in the past or in the present and of historical, cultural or archaeological significance declared as a Protected Place in accordance with this Ordinance.

"Province" means Choiseul Province.

"Public Body" includes any Provincial Government, Area Council, Town Council, Department of the Government and any undertaking by or of the Government.

"Traditional Artifact" means 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, weapons, tools, musical instruments, custom money, ritual objects, skulls, bones, statuettes or figures fashioned from wood, clay, bone, coral or stone.

"Traditional artifact" does not include any article or object made for gift or sale or export as souvenirs, curios or mementos.

PART II PROTECTION OF TRADITIONAL ARTIFACTS

4. Offences relating to traditional artifacts -

(1) Subject to subsections (2) and (3) of this section, 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 artifacts; or

(c) displays or offers for sale any object which they falsely purport to be a traditional artifact; or

(d) does anything likely to result in the removal of a traditional artifact from Choiseul Province; shall be guilty of an offence.

(2) Section 4(1)(a) and (c) shall not apply to:

(a) a person with a right to donate a traditional artifact who 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.

(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. Penalties - Any person convicted of an offence under this Part is liable to:

(a) Where the person committing the offence is an individual, to a fine of up to \$1,000 and imprisonment for up to one year or to both a fine and imprisonment;

(b) Where the person committing the offence is a company, to a fine of up to \$5,000 and the officers of the body corporate will also be liable under section 15 of this Ordinance to imprisonment for a term of up to one year.

(c) in addition to the penalties set out in subsections (a) and (b) of this section the court:

(i) shall order the confiscation of the traditional artifact and its return to the place and or persons from whence it came or

if such cannot be readily established, to the Executive for safe keeping on behalf of the people of the Province.

- (ii) may order that 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.

PART III PROTECTED PLACES

6. Declaration of Protected Places -

(1) The Executive may by Order declare any place associated with human activity in the past which is of historical cultural or archeological significance situated in Choiseul Province to be a Protected Place.

(2) 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.

7. Request for Order -

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

(2) A request for an Order shall be made to the Provincial Secretary at Provincial Government Offices, Taro, Choiseul Province in the form set out in Schedule I and shall be accompanied by the fee set from time to time by the Executive.

(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 one month of receipt of the request of the grounds of rejection.

(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.

(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 Landowners.

(6) The notice of objection under subsection (5) of this section must be served on the applicants and the Provincial Secretary.

(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 Register of Lands.

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

(9) The Appropriate Committee, having heard the applicants and objectors, shall decide whether the applicants are the Customary Owners 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.

(10) If the applicants are of the opinion:

(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) That 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.

(11) If:

(a) There is no objection within the time specified in subsection (5) of this section; 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 subsection (10) of this section; or

(d) The Local Court has decided on an application under subsection (10) of this section 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.

(12) The Order shall be in the form set out in Schedule 2.

(13) An Order shall not be evidence of ownership of land.

8. Publication and Publicity -

(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.

(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.

(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.

(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.

(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.

9. Variation or Revocation of Protected Places Order -

(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.

(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.

(3) If the Provincial Secretary is not satisfied that the request complies with section 9(1) he shall reject it and notify the applicants in writing of the grounds for rejection.

10. Previous Protected Places.

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.

11. Offences under Part III -

(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 fine of up to \$1,000 or a term of imprisonment for up to one year or to both such fine and imprisonment and the Executive may cancel the variation or revocation Order and restore the Protected Place Order.

(2) Any land 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 \$1,000 or a term of imprisonment for up to one year or to both a penalty and imprisonment.

(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.

(4) (a) Where a person committing an offence under section 11(3) is an individual, that person shall be liable on conviction to a fine of up to \$1,000 and imprisonment for up to one year or to both such fine and imprisonment; and

(b) Any person being an individual convicted of an offence under section 11(3) shall be liable to pay such sum not exceeding \$5,000 as the court deems just to the Executive for payment to the landowners of the Protected Place by way of restitution for the damage caused.

(5) (a) Where the person committing an offence under section 11(3) is a company that person shall be liable on conviction to a fine of up to \$5,000 and the officers of the body corporate will also be liable under section 15 of this Ordinance to imprisonment for a term of up to one year; and

(b) Any person, being a company, so convicted shall be liable to pay such sum not exceeding \$10,000 as the Court deems just to the Executive for payment to the Landowners of the Protected Place by way of restitution for the damage caused.

12 Defences It is not an offence under this section:

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

(b) for individuals to use a Protected Place as temporary shelters in time of emergency if this is not tambu under custom;

(c) for the landowner(s) 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 archeological objects or remains within the Protected Place;

(d) for individuals with suitable professional qualifications and with the prior written authorisation of the landowner(s) and the Executive to carry out excavation or archeological deposits or undertake survey work within any Protected Place.

PART IV - DEVELOPMENT ACTIVITIES

13. Development Activities and Procedures -

(1) Any person who wishes to undertake any development activity on any land must prior to the commencement of that activity:

(a) consult the register of protected places;

(b) arrange at the expense of the developer for the area where it is proposed such development activity shall take place to be surveyed for the purpose of identifying, locating, marking and recording all places of historical, cultural or archeological significance. Such survey must be carried out with the written consent of the landowner(s) and under the supervision of an Authorised Officer;

(c) arrange at the expense of the developer for a report of the said survey to be submitted 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(s) or his Appointed Representative.

- (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 landowner(s) or an Authorised Officer have not so requested;
 - (b) require the developer prior to commencement of the development activity at the developer's expense to arrange for an area to be systematically excavated by a professional archeologist and details of the area and the findings of the excavations to be fully documented to the satisfaction of an authorised Officer;
 - (c) require the developer prior to commencement of the development activity to arrange for an independent report from a professional archeologist 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 enactment or law or policy governing the development activity and in this case none of the sites identified in the report may hereafter be declared as a Protected Place without the consent of the developer.

(3) Any person undertaking development activities which have already commenced on the date this Ordinance comes into force must be given written notice signed by an Authorised Officer requiring that person to arrange the survey and submit the report pursuant to subsections (1)(b) and (c) of this Section within four months from the date of the notice or such longer period of time as the Authorised Officer agrees in writing.

(4) Any person who fails to conduct the survey as required under subsection (1)(a) of this Section and/or fails to submit the report as required under subsection (1)(b) of this Section or who returns a report that that person knows to be false or inaccurate or who fails to include a site or sites of historical, cultural or archeological significance of which that person is aware is guilty of an offence.

(5) Any person convicted of an offence under this Section is liable to:

(1) (a) Where the person is an individual, to a fine not exceeding \$5,000.00 or imprisonment of up to two years or both such fine and imprisonment; AND

(b) payment of such sum not exceeding \$10,000.00 as the court deems just to the Executive for payment to the affected landowner(s) by way of restitution for any damage caused.

(2) (a) Where the person is a company, to a fine not exceeding \$10,000 and the officers of the body corporate will also be liable under section 15 to imprisonment for a term of up to two year; AND

(b) payment of such sum not exceeding \$20,000 as the court shall deem just to the Executive for payment to the landowner(s) by way of restitution for any damage caused.

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

(7) This Section does not prohibit any landowner(s) from making a private arrangement between the landowner(s) and the developer and any other person for the protection of a place of historical, cultural or archeological significance.

PART V - TAMBU SITES

14. Offence to enter Tambu Sites

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.

(a) Any individual person guilty of an offence under this section shall be liable to a fine of up to \$1,000.

(b) Where an offence under this section is committed by a director, manager, secretary, or other employee or by a representative of a company whilst engaged in carrying out the business of that company, he or she shall be liable to a fine of up to \$2,000.

PART VI
MISCELLANEOUS

15. Offences by individuals of body corporate etc.

Where a body corporate, association or co-operative commits an offence under this Ordinance with the consent or connivance of or because of neglect by an individual, the individual is guilty of the same offence and liable to the same penalties as the body corporate, association or co-operative if at the time of the offence.

(a) the individual is or was a director, manager, secretary or other senior officer of the body corporate, association or co-operative; OR

(b) the individual is or was purporting to or holding out that that individual is such an officer; or

(c) the individual is or was a member of a body corporate association or co-operative which is managed by its members.

16. Powers of landowners police officers and Authorised Officers -

(1) 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 of historical, cultural or archeological object or remains if the landowner, police officer or Authorised Officer has reasonable grounds for belief that such traditional artifact or historical, cultural or archeological object or remains is in possession of a person in breach of this Ordinance and to retain such traditional artifact or historical, cultural or archeological object or remains until such time as due enquiries have been completed PROVIDED HOWEVER that if there has been no breach of this Ordinance then such traditional artifact or historical, cultural or archeological object or remains must be returned to the person from whom it was seized. No claim or action can be made or brought for damages or compensation relating to such seizure and retention.

(2) Any person who obstructs or impedes any landowner, police officer or Authorised Officer acting in due exercise of that person's power under this Ordinance is guilty of an offence.

(3) Any person convicted of an offence under this Section is liable to a fine not exceeding \$1,000.00 or to imprisonment for up to three months or to both such fine and imprisonment.

17. Confiscating -

Where any person is convicted of an offence under this Ordinance and any traditional artifact or historical, cultural or archeological object or remains has been seized or confiscated then upon such conviction the thing so seized or confiscated becomes the property of the Choiseul Provincial Executive and upon the expiration of the time for taking an appeal from the conviction, the Executive shall in its absolute discretion either return the thing seized or confiscated to its original owner(s) or

donate it to the National Museum; any national cultural centre, any Provincial or local museum or cultural centre approved by the Executive.

18. No bar to Civil Claims -

This Ordinance does not bar any civil claims or relieve any person from liability for damages for any person(s) or property injured or damaged unless otherwise provided.

**SCHEDULE 1
PROTECTED PLACE ORDER REQUEST**

AN APPLICATION affecting the land area in Choiseul 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 it is not appealed against successfully, it will be gazetted in the Solomon Islands Gazette.

It will then become part of the law of Choiseul 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.

Name	Signature	Title (if any)
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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 Choiseul Province Preservation of Cultural Ordinance 1997 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(s) on day of 199

SCHEDULE 2
FORM OF PROTECTED PLACE ORDER

THE (description of land) PROTECTED PLACE ORDER

Choiseul Provincial Executive declare the land described in the appendix and shown outlined in red on the attached plan to be a Protected Place under the Choiseul Province Preservation of Culture Ordinance 1997.

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 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 Protected Place Order;
- by any means undertake or cause to be undertaken any activity whether inside or outside a Protected Place which disturbs, 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, disturbed, defaced, damaged or destroyed or interfered with any historical, cultural or archaeological objects remains in a Protected Place;
- remove, move, destroy, damage or deface or cause to be 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.

PASSED BY THE CHOISEUL PROVINCIAL ASSEMBLY THIS
TWENTY-NINTH DAY OF OCTOBER 1997.

M. Saru Jopa

.....
(Clerk to the Assembly)

ASSENTED TO BY THE MINISTER THIS TWENTY-THIRD
DAY OF JULY 1999.

J. Waipora

.....
(Minister of Provincial Government)

THE PROVINCIAL GOVERNMENT ACT 1981

CHOISEUL PROVINCE INVESTMENT AUTHORITY
(AMENDMENT) ORDINANCE 1997

AN ORDINANCE TO AMEND THE CHOISEUL PROVINCE
INVESTMENT AUTHORITY ORDINANCE 1995

1. This Ordinance may be cited as the Choiseul Province Investment Authority (Amendment) Ordinance 1997, and shall come into effect after assent has been granted by the Minister in accordance with Section 32 of the Provincial Government Act 1981 and on the expiry of the term of such members of the Authority in post as the date of assent.
2. The Choiseul Province Investment Authority Ordinance 1995 is amended in the following manner.
3. Paragraph 1 of Schedule II is deleted in its entirety and replaced by the following new paragraph.

“ 1(1) The Authority shall consist of the following members:

- (a) The Premier and
- (b) five (5) other members, all of whom shall have experience in either commerce, industry, agriculture, finance or administration;
- (c) four (4) ex-officio members, who shall be: