

STATE OF PENANG HERITAGE BILL 2011

ARRANGEMENT OF CLAUSES

PART I

PRELIMINARY

Clause

1. Short title and commencement
2. Interpretation
3. Application of National Heritage Act 2005

PART II

PENANG HERITAGE COUNCIL

4. Establishment of Penang Heritage Council
5. Functions of Council
6. Membership of Council
7. Secretary
8. Terms of office
9. Revocation of appointment and resignation
10. Vacation of office
11. Allowance
12. Meetings
13. Council may invite others to meetings
14. Establishment of committee

2

Bill

PART III

STATE HERITAGE COMMISSIONER

Clause

- 15. State Heritage Commissioner
- 16. Functions of Commissioner
- 17. Power of Commissioner

PART IV

CULTURAL HERITAGE AND NATURAL HERITAGE

Chapter 1

Tangible cultural heritage and natural heritage sites

- 18. Designation of heritage site
- 19. Adjacent and nearby site
- 20. Power to enter site
- 21. Notice of designation of heritage site
- 22. Objection
- 23. Hearing
- 24. Decision of Commissioner
- 25. Appeal
- 26. Heritage site as State Heritage
- 27. Notice to local planning authority

Chapter 2

Intangible cultural heritage

- 28. Declaration of intangible cultural heritage

Penang Heritage

3

PART V

STATE HERITAGE

Clause

- 29. Declaration of State Heritage
- 30. Ownership or possession of State Heritage
- 31. State Heritage Register

PART VI

MANAGEMENT, PRESERVATION AND CONSERVATION OF STATE HERITAGE

Chapter 1

Heritage site

- 32. Notice to sell heritage site
- 33. Change of ownership of heritage site
- 34. Care of heritage site
- 35. Application for planning permission
- 36. Financing preservation and conservation works
- 37. Conservation management plan

Chapter 2

Intangible cultural heritage

- 38. Conservation of intangible cultural heritage

PART VII

ENFORCEMENT

- 39. Appointment of enforcement officers
- 40. Authority card

WARTA KERAJAAN NEGERI PULAU PINANG

48

4

Bill

Clause

41. Obstruction of search, *etc.*
42. Power of investigation
43. Power to enter and inspect heritage site
44. Search and seizure with warrant
45. Seizure of thing, *etc.*
46. Notice of seizure
47. Search of persons
48. Power to require attendance of persons acquainted with case

PART VIII

MISCELLANEOUS

49. Entrance fee
50. Prosecution
51. Conduct of prosecution
52. Offences in respect of heritage site
53. General penalty
54. Cost of repair, *etc.*
55. Offences by body corporate
56. Compounding of offences
57. Public Authorities Protection Act 1948
58. Regulations

A BILL

intituled

An Enactment to provide for the management, preservation and conservation of cultural heritage and natural heritage for the state of Penang, and for matters connected therewith.

[]

ENACTED by the Legislature of the State of Penang as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Enactment may be cited as the State of Penang Heritage Enactment 2011.

(2) This Enactment shall come into operation on a date to be appointed by the State Authority by notification in the *Gazette*.

Interpretation

2. In this Enactment, unless the context otherwise requires—

“building” means a building or group of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;

"Register" means the State Heritage Register established and maintained under section 31 containing a list of State Heritage items;

"area" includes site of works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view;

"Council" means the Penang Heritage Council established under section 4;

"monument" means architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;

"enforcement officer" means any officer appointed by the State Authority under section 39;

"authorized officer" means any officer duly authorized in writing by the Commissioner;

"conservation management plan" means a plan for conservation prepared under section 37;

"restoration" means the process of accurately recovering the form and details of a structure or part of a structure and its setting, as it appeared at some period in time, by removing the latter work and replacing the missing original work, and includes—

- (a) full restoration which involves both exterior and interior;
- (b) partial restoration which involves the exterior, interior, or any partial combination and is adopted when only parts of

Penang Heritage

7

a structure are important in illustrating cultural values at its level of historic significance, or contribute to the values for which the area was designated; and

- (c) adaptive restoration which involves all or a portion of the exterior restoration with the interior adapted to a modern functional use;

“reconstruction” means the process of accurately reproducing by new construction, the form and detail of a vanished structure, or part of it, as it appeared at some period in time and includes full or partial reconstruction;

“preservation” means halting further deterioration, decay or a state of dilapidation and providing structural safety and well being but does not contemplate significant rebuilding and includes—

- (a) techniques of arresting or slowing the process of deterioration, decay or state of dilapidation of an item or structure;
- (b) improvement of structural conditions to make a structure safe, habitable, or otherwise useful; and
- (c) normal maintenance and minor repairs that do not change or adversely affect the fabric or historic appearance of a structure;

“rehabilitation” means the process of returning a property to a state of utility through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic architecture;

“conservation” includes preservation, restoration, reconstruction, rehabilitation and adaptation or any of its combination;

"owner", in relation to any land, means the registered owner or the holder by customary tenure of the land;

"occupier" includes any person who occupy, manage or having control of any movable or immovable property;

"Commissioner" means the State Heritage Commissioner appointed under section 15;

"Commissioner of Heritage" means the Commissioner of Heritage appointed under the National Heritage Act 2005 [Act 645];

"local authority" means any municipal council or city council, as the case may be, established under the Local Government Act 1976 [Act 171];

"local planning authority" shall have the same meaning assigned to it by the Town and Country Planning Act 1976 [Act 172];

"heritage site" means any tangible cultural heritage or natural heritage site which has been declared as a heritage site under section 18;

"cultural heritage" includes tangible or intangible form of cultural property, structure or artifact and may include a heritage matter, object, item, artifact, formation structure, performance, dance, song or music which has aesthetic, archaeological, architectural, cultural, historical, scientific, social, spiritual, linguistic or technological value pertinent to the historical or contemporary way of life of the community of Penang, on or in land but excluding natural heritage;

"tangible cultural heritage" includes area, monument and building;

"intangible cultural heritage" includes any form of expressions, languages, lingual utterances, sayings, musically produced tunes, notes, audible lyrics, songs, folk songs, oral traditions, poetry, music, dances as produced by the performing arts, theatrical plays, audible compositions of sounds and music, and martial arts that have existed in relation to the heritage of a Penang community;

Penang Heritage

9

"State Heritage" means any tangible cultural heritage site, intangible cultural heritage or natural heritage site declared as a State Heritage under section 29;

"natural heritage" includes natural features of any area which may consist of earthly physical or biological formations or group of such formations, geological or physiographical features, mountains, rivers, streams, rock formation, sea shore or any natural sites of outstanding value from the point of view of nature, science, history conservation or natural beauty including flora and fauna in the state of Penang.

Application of National Heritage Act 2005

3. Nothing contained in this Enactment shall in any manner affect or derogate from the provisions of the National Heritage Act 2005, and in the application of any provision of this Enactment to any person, the provision shall apply subject to the provisions of that Act and, accordingly, in the event of any conflict or inconsistency between any provision of this Enactment and that Act, the provisions of that Act shall prevail.

PART II**PENANG HERITAGE COUNCIL****Establishment of Penang Heritage Council**

4. The Penang Heritage Council is established.

Functions of Council

5. The functions of the Council shall be to—

- (a) advise the State Authority on any matters relating to the preservation, conservation and protection of cultural heritage or natural heritage, and matters relating to implementation of this Enactment;

10

Bill

- (b) propose the formulation of policies on cultural heritage or natural heritage to the State Authority;
- (c) consult and coordinate with the Commissioner of Heritage on matters relating to preservation, conservation and protection of cultural heritage or natural heritage;
- (d) monitor and coordinate with the local planning authority in relation to the development plan for heritage site;
- (e) monitor and propose any improvemant to the guidelines and conservation management plant for the State Heritage;
- (f) carry out study or research on cultural heritage or natural heritage; and
- (g) perform any other functions which may be directed to it by the State Authority for the proper and effective implementation of this Enactment for the purpose of management, preservation and conservation of cultural heritage or natural heritage.

Membership of Council

6. The Council shall consist of the following members:

- (a) a Chairman who is the Chief Minister;
- (b) three members of the State Executive Council;
- (c) the State Secretary or his representative;
- (d) the State Financial Officer or his representative;
- (e) the Director of Town and Country Planning or his representative;
- (f) the President of Penang Island Municipal Council or his representative;

Penang Heritage

11

- (g) the President of Seberang Perai Municipal Council or his representative;
- (h) the State Heritage Commissioner;
- (i) the Curator of Penang State Museum and Art Gallery or his representative;
- (j) the General Manager of Georgetown World Heritage Incorporated or his representative; and
- (k) not less than five members appointed by the State Authority.

Secretary

7. The Commissioner shall appoint any public officer to be the Secretary to the Council.

Terms of office

8. Subject to such conditions as may be specified in his instrument of appointment, a member appointed under paragraph 6(k) shall, unless he sooner resigns or vacates his office or his appointment is sooner revoked, hold office for a term not exceeding two years and may be eligible for reappointment.

Revocation of appointment and resignation

9. (1) The appointment of any member appointed under paragraph 6(k) may, at any time, be revoked by the State Authority without assigning any reasons for the revocation.

(2) A member appointed by the State Authority may, at any time, resign his office by giving a written notice addressed to the State Authority.

Vacation of office

10. The office of a member of the Council shall be vacated if he—

- (a) dies;
- (b) becomes a bankrupt;
- (c) has been convicted of any offence and sentenced to imprisonment for a term not less than two months;
- (d) is of unsound mind or is otherwise incapable of performing his duties; or
- (e) absents himself from three consecutive meetings of the Council without the leave of the Chairman, or in the case of the Chairman, without the leave of the State Authority.

Allowance

11. Every member of the Council may be paid such allowance as the State Authority may determine.

Meetings

12. (1) The Council shall meet at least once in every three months for the performance of its functions.

(2) The quorum of the Council at any meeting shall be at least half of the members of the Council.

(3) If, on any question to be determined by the Council there is an equality of votes, the Chairman shall have a casting vote.

(4) In the event of the Chairman being absent or unable to act due to illness or any other causes, any member of the Council may be elected by the members present to preside over the meeting.

Penang Heritage

13

(5) Subject to this Enactment, the Council may determine the procedures of its meetings.

Council may invite others to meetings

13. (1) The Council may invite any other persons to attend any meeting or deliberation of the Council for the purpose of advising it on any matter under discussion, but any person so attending shall have no right to vote at the meeting or deliberation.

(2) Any person invited to any meeting or deliberation of the Council under subsection (1) may be paid such allowance as the State Authority may determine.

Establishment of committee

14. (1) The Council may establish any committee as it considers necessary or expedient for the performance of its functions.

(2) A committee may control its own procedure.

(3) A committee shall be subject to and act in accordance with any direction given to it by the Council.

PART III

STATE HERITAGE COMMISSIONER

State Heritage Commissioner

15. The State Authority may appoint a public officer to be the State Heritage Commissioner for the proper carrying out of the provisions of this Enactment.

Functions of Commissioner

16. The functions of the Commissioner shall be to—

(a) ensure that this Enactment is administered, enforced, given effect to, carried out and complied with;

- (b) declare any cultural heritage and natural heritage as State Heritage;
- (c) coordinate with the Council in relation to the administration, preservation and conservation of heritage;
- (d) advise the local planning authority, any body or other agencies in relation to the administration, preservation and conservation of heritage;
- (e) establish and maintain a State Heritage Register;
- (f) promote and facilitate any research relating to heritage;
- (g) supervise and monitor the process of preservation and conservation of the State Heritage;
- (h) organize programmes, exhibition and promotion on tourism in relation to preservation and conservation of State Heritage;
- (i) formulate and issue policies, guidelines or directives in relation to management, preservation and conservation of heritage and, shall be in accordance with the policies and directions of the Commissioner of Heritage; and
- (j) perform any other functions under this Enactment as directed by the State Authority from time to time.

Power of Commissioner

17. The Commissioner shall have all such powers as may be necessary for, or in connection with, or incidental to, the performance of his functions under this Enactment.

Penang Heritage

15

PART IV

CULTURAL HERITAGE AND NATURAL HERITAGE

Chapter 1

*Tangible cultural heritage and
natural heritage sites*

Designation of heritage site

18. (1) The Commissioner may with the approval of the State Authority, designate any site which has natural heritage or tangible cultural heritage value to be a heritage site.

(2) For the purpose of subsection (1), the Commissioner may consult with the Council before obtaining the approval of the State Authority.

Adjacent and nearby site

19. (1) Where a site has no tangible cultural heritage or natural heritage value but the Commissioner is satisfied that it should be designated as a heritage site because of its proximity to and for the protection and enhancement of another site designated as a heritage site under section 18, the Commissioner may designate such site as a heritage site.

(2) Any designation made under subsection (1) shall be revoked if the designation of that other site is revoked.

Power to enter site

20. (1) The Commissioner or any authorized officer may at any time enter any site to inspect, survey, investigate or to carry out any work necessary for the purpose of designating the site as a heritage site.

(2) The Commissioner or any authorized officer shall give a notice in writing not less than fourteen days from the date of the entry to the owner or occupier of the site.

(3) Where the owner or occupier of the site objects to such entry under subsection (1) on religious ground, the Commissioner or any authorized officer shall not enter such site unless with the direction in writing from the State Authority.

(4) The Commissioner may enter into any arrangement with the owner or occupier of the site for any loss or damage suffered or alleged to have been suffered by the owner or occupier by reason of such entry.

(5) Any person who obstructs or refuse to allow the Commissioner or any authorized officer to enter any site under subsection (1) commits an offence.

Notice of designation of heritage site

21. (1) When a Commissioner has decided to designate a site to be a heritage site, he shall give a written notice to the owner or the occupier of the site of his decision.

(2) The Commissioner shall, as soon as possible, after giving notice under subsection (1)—

(a) cause to be published in the *Gazette* and a local newspaper in the national language—

(i) a notice to designate the site as a heritage site, and

(ii) any other matters constituting or relating to the designation which in his opinion is desirable to be published; and

(b) file a notice to designate the site as a heritage site at the land office where the site is situated.

Objection

22. An owner or the occupier of the site or any other person affected or likely to be affected by the designation of the site as a heritage site may make an objection to the decision of the designation of the site by giving a notice of objection to the Commissioner within thirty days from the date of publication of the notice under paragraph 21(2)(a).

Hearing

23. (1) When the Commissioner received any objection notice under section 22, the Commissioner shall fix a date, time and place to hear such objection and shall inform in a prescribed form to the objecting party at least twenty one days before the hearing date.

(2) Upon receipt of the notice under subsection (1), the objecting party shall appear before the Commissioner and give reasons for such objection.

Decision of Commissioner

24. (1) Where the Commissioner, after hearing the objection under section 22 and subject to section 25, if any, is satisfied the site has natural heritage or tangible cultural heritage value, the Commissioner may—

- (a) designate the site as a heritage site; and
- (b) give the owner or the occupier of the site a written notice of his decision.

(2) As soon as possible after the decision is made under subsection (1), the Commissioner shall—

- (a) cause to be published in the *Gazette* and a local newspaper in the national language—
 - (i) a notice that site has been designated as a heritage site; and

(ii) any other matters constituting or relating to the designation which in his opinion is desirable to be published; and

(b) file a notice in the land office where the heritage site is situated notifying that the site has been designated as a heritage site.

(3) If the Commissioner decided not to proceed with the proposed designation of the site, the Commissioner shall immediately notify the owner or the occupier of the site and the land office where the site is located in writing of his decision, with or without assigning any reason.

Appeal

25. (1) Any person who is aggrieved by the decision of the Commissioner under subsection 24(1) may, within thirty days from the date of such decision appeal in writing to the State Authority.

(2) The State Authority may affirm, reverse or vary the decision appealed against and, in confirming, reversing or varying the decision, may impose such terms or conditions as he deems just or necessary.

(3) Before making any decision under subsection (2), the State Authority may refer the matter to the Council.

(4) Where the State Authority affirms the decision of the Commissioner, the Commissioner shall designate the site as a heritage site.

(5) The decision of the State Authority under this section shall be final.

Heritage site as State Heritage

26. The Commissioner may, with the approval of the State Authority, declare any heritage site which has been designated under this Chapter to be a State Heritage.

Penang Heritage

19

Notice to local planning authority

27. The Commissioner shall notify the local planning authority where the State Heritage is located to enable the authority to take into consideration any matters, policies, strategies or action plans in relation to the interest of the State Heritage in preparing any development plan in that area under the Town and Country Planning Act 1976.

Chapter 2

Intangible cultural heritage

Declaration of intangible cultural heritage

28. (1) The Commissioner may, with the approval of the State Authority, declare any intangible cultural heritage in the state of Penang to be a State Heritage.

(2) Any person may propose to the Commissioner any intangible cultural heritage to be declared as the State Heritage.

PART V

STATE HERITAGE

Declaration of State Heritage

29. (1) The commissioner may, with the approval of the State Authority, by notification in the *Gazette*, declare any tangible cultural heritage site, intangible cultural heritage or natural heritage site as a State Heritage.

(2) In making a declaration under subsection (1), the Commissioner may consider the following matters:

(a) the historical importance of the State;

- (b) the design or aesthetic characteristics;
- (c) the innovation or scientific or technical achievements;
- (d) the social or cultural relationship of society;
- (e) the potential to educate, illustrate or provide scientific investigation in relation to the cultural heritage and natural heritage in the state of Penang; or
- (f) the uniqueness of the cultural heritage or natural heritage.

(3) Where the site is on an alienated land or belongs to any person other than the State Government, the owner, custodian or trustee of that site, shall be notified at least thirty days prior to the date of the proposed declaration.

(4) Where the declaration under subsection (1) involves an intangible cultural heritage and copyright still subsists in such works, the consent of the copyright owner shall be obtained before any declaration is made.

Ownership or possession of State Heritage

30. Any State Heritage which is owned or possessed by a person other than the State Government may remain in the possession of its owner, custodian or trustee.

State Heritage Register

31. (1) The Commissioner shall establish a register known as the State Heritage Register which contains the lists of tangible cultural heritage site, intangible cultural heritage and natural heritage site which have been declared as the State Heritage under section 29.

Penang Heritage

21

(2) The Commissioner shall maintain and ensure that the Register is kept up to date from time to time and in good condition.

(3) Any person may request for any information contains in the Register and the Commissioner may provide the information and impose prescribed fee for such information.

PART VI

MANAGEMENT, PRESERVATION AND
CONSERVATION OF STATE HERITAGE

Chapter 1

Heritage site

Notice to sell heritage site

32. An owner of a heritage site who intent to sell the whole or any part of the heritage site, shall notify the Commissioner in writing of any information on the agreement within twenty eight days from the date of the signing of the agreement.

Change of ownership of heritage site

33. (1) Any person who purchase or acquire any heritage site shall, within twenty eight days from the date of completion of the purchase or acquisition, notify the Commissioner in writing of—

(a) his name and address; and

(b) whether he intents to occupy the site.

(2) Any person who has notified the Commissioner of any information under subsection (1) shall, within twenty eight days of any change to the information provided, notify the Commissioner in writing of the change.

Care of heritage site

34. (1) The owner or occupier of a heritage site shall ensure that the site is always in a good condition.

(2) The owner or occupier of a heritage site shall permit the Commissioner, any authorized officer or enforcement officer to enter the site for the purpose of carrying out any conservation, repair or maintenance works as he deems expedient or necessary.

(3) Where the Commissioner is satisfied that reasonable steps are not being taken for properly preserving the heritage site, he may carry out such repair works, after giving to the owner or occupier of the site a fourteen days notice in writing of his intention to do so, and all costs and expenses incurred while carry out the works shall be reimbursed by the owner or the occupier of the site.

Application for planning permission

35. (1) The local planning authority shall coordinate and seek the advice from the Commissioner before giving any planning permission or development order involving a heritage site.

(2) An application made under subsection (1) shall contain the following matters:

(a) sufficient particulars to identify the monument or building in relation to the application, including its layout plan, measured building plan and photographs of its angle, including the exterior and interior of such monument or building;

(b) such other plans and drawings to describe the work in the application;

(c) measures that have been taken to secure the safety of the heritage site and the neighbouring land; and

Penang Heritage

23

(d) such other particulars as may be required by the Commissioner.

(3) For the purpose of paragraph 2(c), neighbouring land means—

(a) any adjoining land within a distance of two hundred metres from the boundary of the land to which an application under this section relates;

(b) any land separated from the land to which an application made under this section relates by any road, lane, drain or reserved land, the width of which does not exceed twenty metres and which would be adjoining the land to which the application relates had they not been separated by such road, lane, drain or reserved land; or

(c) any land located within a distance of two hundred metres from the boundary of the land to which an application under this section relates.

(4) The Commissioner shall advise the local planning authority to impose any condition when approving planning permission or a development order involving a heritage site which may include—

(a) requiring the compliance with any conservation guidelines and procedures issued by the State Authority;

(b) requiring the payment of any damage caused to any heritage site after the works authorized by the planning permission or the development order are completed; or

(c) requiring the protection and preservation of any specific features of the heritage site.

(5) Where the planning permission is given, the Commissioner shall liaise, co-operate and coordinate with the local planning authority to ensure that any terms and conditions imposed on the owner or occupier of the heritage site relating to the conservation of heritage are complied with.

(6) Any person who contravenes any condition imposed under subsection (4) commits an offence.

Financing preservation and conservation works

36. (1) An owner of a heritage site may apply to the Commissioner for any grant or loan for the purpose of carrying out any preservation and conservation works on the site.

(2) For the purpose of subsection (1), the Commissioner shall consider the application from the owner of the heritage site by taking into account any matter that he thinks relevant for purpose of preservation and conservation of the site, and submit his proposal to the Council for approval.

(3) The Council may, after considering the proposal submitted to it, either approve it, in whole or in part or reject it.

(4) The Council through the Commissioner shall submit the approved application to the State Authority for the assent of the State Authority, and upon the assent being given the Commissioner shall disburse a grant or loan for preservation and conservation works.

(5) When giving its assent, the State Authority may impose such conditions as it deems appropriate on the owner.

Conservation management plan

37. (1) The Commissioner shall, after consultation with the Council, prepare a conservation management plan for the purposes of—

- (a) promoting the conservation or reconstruction of a heritage site; and

Penang Heritage

25

- (b) ensuring proper management of a heritage site, including the use and development of all buildings, monuments and areas in the heritage site and the preservation of living environments.

(2) The Commissioner shall from time to time—

- (a) submit the conservation management plan to the local planning authority;
- (b) advice and coordinate with the local planning authority for the implementation of the conservation management plan and its guidelines; and
- (c) review any conservation management plan.

Chapter 2

Intangible cultural heritage

Conservation of intangible cultural heritage

38. (1) The Commissioner may establish a guideline for the purpose of preservation and conservation of the intangible cultural heritage in the state of Penang.

(2) The owner or custodian of a heritage object in the form of an intangible cultural heritage shall take all necessary steps to develop, identify, transmit, cause to be performed and facilitate the research on the intangible cultural heritage according to the guidelines and procedures as may be prescribed.

PART VII

ENFORCEMENT

Appointment of enforcement officers

39. (1) The State Authority may, from time to time, appoint among public officers and officers of the local authority such number of

enforcement officers as may be necessary to assist the Commissioner in performing its functions and exercising its powers under this Enactment.

(2) All enforcement officers appointed under subsection (1) shall be subjected to the direction and general control of the Commissioner, perform the functions and exercise the powers given to them under this Enactment.

Authority card

40. (1) The State Authority shall issue to each enforcement officer an authority card which shall be signed by the Commissioner.

(2) Whenever such enforcement officer exercises any of the powers under this Enactment, he shall, on demand produce to the person against whom he is acting or from whom he seeks any information the authority card issued to him under subsection (1).

Obstruction of search, etc.

41. Any person who—

(a) obstructs or delays any enforcement officer in effecting any entrance which he is entitled to effect under this Enactment, or in the execution of any duty imposed or power conferred by this Enactment; or

(b) fails to comply with any lawful demand of an enforcement officer in the execution of his duty under this Enactment,

commits an offence.

Power of investigation

42. An enforcement officer shall have all powers to investigate any offence under this Enactment.

Power to enter and inspect heritage site

43. (1) Any enforcement officer or any authorized officer may at any reasonable time, enter and inspect any heritage site for the purpose of exercising any power of inspection, and enquiry or other matters related to it.

(2) For the purpose of subsection (1), the owner or occupier of a heritage site shall permit the inspection and provide reasonable facilities and assistance to the officers in discharging their duties.

Search and seizure with warrant

44. (1) If it appears to a Magistrate, upon written information on oath and after such enquiry as he considers necessary, that there is reasonable cause to believe that—

(a) any heritage site has been used or are about to be used for; or

(b) there is any necessary evidence at the heritage site for the conduct of an investigation into,

the commission of an offence under this Enactment, the Magistrate may issue a warrant authorizing the enforcement officer, at any reasonable time by day or by night and with or without assistance, to enter the heritage site, if need be by force.

(2) A warrant issued under subsection (1) may authorize the enforcement officer to search the heritage site for, and to seize and remove from the heritage site—

(a) any material, book, document or other things in respect of which an offence has or is suspected to have been committed; and

- (b) any material, book, document or other things that is reasonably believed to furnish evidence of the commission of the offence.

(3) An enforcement officer acting under subsection (1) or (2) may—

- (a) break open any outer or inner door of the heritage site or any fence, enclosure or other obstruction to the heritage site, in order to effect entry into the premises;
- (b) remove by force any obstruction for such entry, search, seizure or the removal as he is empowered to do under subsection (1) or (2); and
- (c) detain every person found at the heritage site until the search has been completed.

Seizure of thing, etc.

45. Without prejudice to subsection 44(2), any material, book, document or other things that an enforcement officer reasonably suspects has been used or will be used in the commission of any offence under this Enactment may be seized and detained by the enforcement officer.

Notice of seizure

46. (1) Where any seizure is made under this Part, the enforcement officer making the seizure shall prepare a list of every material, book, document or other things seized and of the place in which it is found and shall sign the list.

(2) The list prepared in accordance with subsection (1) shall be delivered immediately to the owner or the occupier of the heritage site where the seized material, book, document or other things is found.

Penang Heritage

29

(3) Where the seizure is made in or at any heritage site which is unoccupied, the enforcement officer making the seizure shall post a list of the things seized conspicuously at the heritage site.

(4) Where any material, book, document or other things is seized otherwise than in or from heritage site, the enforcement officer making the seizure shall give a notice in writing of the seizure and the grounds of the seizure to the owner of the seized material, book, document or other things by submitting a copy of such notice to the owner in person or by post at his place of business or residence.

(5) A notice under subsection (4) may not be given where the seizure is made in the presence or with the knowledge of the owner.

Search of persons

47. No person shall be searched except by another person of the same gender, and such search shall be conducted with strict regard to decency.

Power to require attendance of persons acquainted with case

48. (1) The enforcement officer making an investigation under this Enactment may, by order in writing, require the attendance before himself of any person who appears to him to be acquainted with the facts and circumstances of the case, and such person shall attend as required.

(2) If any such person refuses to attend as required by an order made under subsection (1), the enforcement officer may report his refusal to a Magistrate who shall issue a warrant to secure the attendance of such person as may be required by the order.

PART VIII

MISCELLANEOUS

Entrance fee

49. (1) An owner of a heritage site may, with the approval and subject to any condition as the Commissioner may impose an amount as may be prescribed, charge an entrance fee into the heritage site.

(2) Where the Commissioner has contributed towards the expenses of preservation and conservation of any heritage site, the Commissioner may impose a levy on the entrance fee received by the owner of the heritage site.

Prosecution

50. No prosecution for any offence under this Enactment or any regulations shall be instituted except by or with the consent in writing of the Public Prosecutor.

Conduct of prosecution

51. Proceedings in respect of any offence under this Enactment or any regulations may with the consent of the Public Prosecutor, be conducted by an enforcement officer.

Offences in respect of heritage site

52. (1) No person shall, without the approval in writing of the Commissioner—

- (a) dig, construct, excavate, build, plant trees, quarry, irrigate, burn lime or deposit earth or refuse, on or at the heritage site or conservation area;

Penang Heritage

31

- (b) demolish, disturb, obstruct, modify, mark, pull down or remove any building or monument at any heritage site;
- (c) erect any building or structure abutting upon a monument at any heritage site;
- (d) destroy the relation of a building and its environment that is incompatible with the character of the neighbourhood at any heritage site;
- (e) extract, remove or transport, or permit the extraction, removal or transportation of any material originating from the land which constitutes a natural heritage or cultural heritage;
- (f) clear any area or interfere with, destroy or remove any tree, undergrowth plant, weed, grass or vegetation at any state heritage site; or
- (g) do any activity or action that would likely cause damage to the adjacent and surrounding lands which have been registered as the heritage site.

(2) Any person who, without lawful authority, contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

General penalty

53. Any person who commits an offence under this Enactment or any regulations made under this Enactment where no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Cost of repair, etc.

54. Where the offence committed under this Enactment caused damage to, demolition or destruction of a heritage site or heritage material, the court may order the person to pay, in addition to any penalty that may be imposed under section 52 or 53, the costs of the damage of the heritage material or the cost of the repair, restoration or reconstruction of the site.

Offences by body corporate

55. Where an offence under this Enactment has been committed by a body corporate, any person who at the time of the commission of the offence was a General Manager or other similar officer of the body corporate or who was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of body corporate or was assisting in such management, shall, as well as the body corporate, be deemed to have committed that offence unless he proves that the offence was committed without his knowledge, consent or connivance and that he took reasonable precautions and had exercised due diligence to prevent the commission of the offence.

Compounding of offences

56. (1) The Commissioner may, with the consent in writing of the Public Prosecutor, compound any offence committed by any person under this Enactment or any regulations made under this Enactment, by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding fifty percent of the maximum fine for such offence, within the time specified in the offer.

(2) An offer under subsection (1) may be made at any time after the offence was committed, but before any prosecution has been instituted.

Penang Heritage

33

(3) If the amount specified in the offer under subsection (1) is not paid within the time specified in the offer or within such extended period as the Commissioner may grant, prosecution for the offence may be instituted at any time against the person to whom the offer was made.

(4) Where an offence has been compounded under subsection (1) no prosecution shall be instituted after that in respect of the offence against the person to whom the offer to compound was made and where possession has been taken of any books, records or other documents or any other things, such books, records, documents or things may be released subject to such conditions as may be imposed in accordance with the conditions of the compound.

Public Authorities Protection Act 1948

57. The Public Authorities Protection Act 1948 [Act 198] shall apply to any action, suit, prosecution or proceedings against any members of the Council or other officers in respect of any act, neglect or default done or committed by him in such capacity.

Regulations

58. (1) The State Authority may make regulations as may be expedient or necessary for carrying out the purposes of this Enactment.

(2) Without prejudice to the generality of subsection (1), the State Authority may prescribe—

- (a) the criteria for determination a heritage site;
- (b) any matters regarding the heritage conservation management plan;
- (c) guidelines and procedures for the preservation and conservation of State Heritage;

- (d) the conditions and restrictions including the payment and amount of fees that may be imposed under this Enactment;
- (e) procedures on appeal or compounding of offences;
- (f) any manner and form to be used; and
- (g) any other matters which are required or allowed to be prescribed by this Enactment, or are necessary or proper to be prescribed for the performance or enforcement of the provisions of this Enactment.

EXPLANATORY STATEMENT

This State of Penang Heritage Enactment Bill 2011 ("the proposed Enactment") seeks to provide for the management, preservation and conservation of cultural heritage and natural heritage for the state of Penang, and for matters connected therewith.

PART I

- 2. Part I of the proposed Enactment contains preliminary matters.
- 3. *Clause 1* contains the short title and empowers the State Authority to appoint the date of coming into operation of the proposed Enactment.
- 4. *Clause 2* contains the definitions of certain words and expressions used in the proposed Enactment.
- 5. *Clause 3* provides that where there is inconsistency between the National Heritage Act 2005 and the proposed Enactment, the former shall prevail.

PART II

- 6. Part II of the proposed Enactment contains provisions relating to the establishment of the State of Penang Heritage Council ("the Council").
- 7. *Clause 4* provides for the establishment of the Council.
- 8. *Clause 5* contains the provision of the functions of the Council under the proposed Enactment.

Penang Heritage

35

9. *Clause 6* contains the provision on the membership of the Council.
10. *Clause 7* seeks to provide for the appointment of a Secretary to the Council.
11. *Clause 8* provides for the tenure of office of the members appointed by the State Authority.
12. *Clause 9* provides for the revocation of appointment of members of the Council and their resignation.
13. *Clause 10* sets out the situations in which the officer of a member of the Council is vacated.
14. *Clause 11* provides for the payment of allowance to members of the Council.
15. *Clauses 12 and 13* provide for the procedure of meetings of the Council and empowers the Council to invite other people to its meetings.
16. *Clause 14* empowers the Council to establish committees to assist the Council.

PART III

17. Part III of the proposed Enactment provides for the appointment, functions and power of the State Heritage Commissioner ("the Commissioner").
18. *Clause 15* provides for the appointment of the Commissioner.
19. *Clauses 16 and 17* provide for the functions and power of the Commissioner under the proposed Enactment.

PART IV

20. Part IV of the proposed Enactment provides for the procedure of the designation of tangible cultural heritage and natural heritage as heritage site and matters on intangible cultural heritage.
21. *Clause 18* empowers the Commissioner to designate any site which has natural heritage or tangible cultural heritage value to be a heritage site.
22. *Clause 19* provides that any adjacent or nearby site may also be designated as a heritage site due to its proximity with any heritage site.

36

Bill

23. *Clause 20* empowers the Commissioner or any authorized officer to enter any site for the purpose of designating a heritage site.

24. *Clause 21* sets out the procedures need to be taken by the Commissioner when he decides to designate a particular site as a heritage site.

25. *Clause 22* requires any person who is affected by the designation of a heritage site to make an objection to the Commissioner.

26. *Clause 23* requires the Commissioner to conduct a hearing when there is an objection on the designation of a heritage site.

27. *Clause 24* requires the Commissioner, after conducting a hearing and is satisfied the site is of heritage value, shall proceed to designate it as a heritage site and shall publish his decision by a notification in the *Gazette* and a local newspaper in a national language.

28. *Clause 25* provides that a person who is aggrieved with the decision of the Commissioner may make an appeal to the State Authority within a period of thirty days from such decision, and the decision of the State Authority shall be final.

29. *Clauses 26* and *28* empower the Commissioner, with the approval of the State Authority, to declare any heritage site and any intangible cultural heritage as a State Heritage, whilst *Clause 27* is in relation to the requirement of a notification to the local planning authority on the location of a heritage site.

PART V

30. Part V of the proposed Enactment contains provisions on the State Heritage.

31. *Clause 29* empowers the Commissioner, with the approval of the State Authority, declare any cultural heritage and natural heritage as State Heritage. For the purpose of such declaration, the Commissioner shall take into consideration on matters such as the historical importance and the uniqueness of the heritage.

32. *Clause 30* provides for the ownership of any object or matters which has been declared as State Heritage to remain with the owner, custodian or its trustee.

33. *Clause 31* provides for the establishment of a State Heritage Register and the duty of the Commissioner to maintain the Register.

PART VI

34. Part VI of the proposed Enactment contains the provisions on the management, preservation and conservation of State Heritage.

Penang Heritage

37

35. *Clause 32* imposes a duty on the owner of a heritage site who intent to sell the site to notify the Commissioner of the particulars of the sales agreement.

36. *Clause 33* provides that a person who purchase or acquire any heritage site shall notify the Commissioner about his particulars.

37. *Clause 34* imposes a duty on the owner or occupier of a heritage site to ensure that the site is always in good condition and to permit the Commissioner to carry out any work necessary for conservation, repair or maintenance.

38. *Clause 35* deals with the responsibility of the Commissioner and local planning authority in approving an application by the owner or the occupier of a heritage site for planning permission or development order on the heritage site.

39. *Clause 36* allows the owner or the occupier of the heritage site to apply for a grant or loan from the State Authority for the purpose of carrying out the preservation and conservation works on the site.

40. *Clauses 37 and 38* empower the Commissioner to prepare a conservation management plan for heritage site and guidelines on preservation and conservation on intangible cultural heritage respectively.

PART VII

41. Part VII of the proposed Enactment contains provisions on the enforcement officer and the power imposed to him.

42. *Clauses 39 and 40* provide for the appointment of enforcement officers and the issuance of authority card respectively.

43. *Clause 41* makes an offence for any person who obstructs or delays the enforcement officers from doing his job, or fail to comply with any demand from the enforcement officer.

44. *Clause 42* empowers an enforcement officer to investigate any offence under the proposed Enactment.

45. *Clause 43* empowers the enforcement officer to enter and inspect any heritage site.

46. *Clauses 44 to 48* deal with the procedures on search and seizure with warrant, search of persons and power to require attendance of person acquainted with case.

38

Bill

PART VIII

47. Part VIII of the proposed Enactment contains general provisions.
48. *Clause 49* requires the owner or the occupier of a heritage site to obtain the approval of the Commissioner before imposing any entrance fee to any heritage site.
49. *Clauses 50 and 51* require consent of the Public Prosecutor for institution and conduct of prosecution of offences under the proposed Enactment.
50. *Clause 52* sets out the offences in respect of a heritage site.
51. *Clause 53* deals with the general penalty for offences committed under the proposed Enactment or any regulations made under it.
52. *Clause 54* provides that any person who causes damage to or demolish a heritage site or heritage material shall pay for the cost of repair to such site or material.
53. *Clause 55* provides for the offences committed by body corporate.
54. *Clause 56* empowers the Commissioner to compound any offence committed by any person under the proposed Enactment.
55. *Clause 57* provides for the application of the Public Authorities Protection Act 1948 to the members of the Council or other officers.
56. *Clause 58* empowers the State Authority to make regulations for carrying out the purposes of the proposed Enactment.

FINANCIAL IMPLICATION

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

PENANG

Dated 14 April 2011

[PSUKPP/08/0752/3 Klt.2; PUNPP 352/100/1/1/23]

DATO' FAIZA BINTI ZULKIFLI
State Legal Adviser
Penang