



**ENVIRONMENTAL LAW AND POLICY IN SABAH:
FROM RIDGE TO REEF**

VOLUME 10: CULTURAL HERITAGE

DRAFT FOR PEER REVIEW

Disclaimer, Acknowledgements and Call for Inputs

Disclaimer: This legal brief is intended as a means to engage with the relevant law and policy, and should not replace a thorough reading of the official documents themselves, which can be found online.

Acknowledgements: The authors have striven to provide an easily accessible and accurate overview of the law. Many thanks to the anonymous reviewers who have provided their inputs.

Call for inputs: We welcome further comments on content, format, and the brief's potential development and uses. Please email Holly Jonas (holly@foreversabah.org) and Harry Jonas (harry@foreversabah.org).

Citation: Forever Sabah, 2015 (draft for peer review). *Environmental Law and Policy in Sabah: From Ridge to Reef. Volume 10: Cultural Heritage*. Forever Sabah: Malaysia.

Cover photo: Harry Jonas



OVERVIEW

There are three pieces of legislation that together provide the overarching regulatory framework for Sabah's Cultural Heritage. These include:

- **Cultural Heritage (Conservation) Enactment (1997),**
- **Land Ordinance (1930), and**
- **Land Acquisition Ordinance (1950).**

The next sections provide an overview of each law, details of the institutional arrangements, and set out the relevant case law. With the exception of the Cultural Heritage (Conservation) Enactment, all laws referenced in this brief are set out in chronological order and do not reflect their relative importance.

1. CULTURAL HERITAGE (CONSERVATION) ENACTMENT

Purpose

The *Cultural Heritage (Conservation) Enactment (1997)* provides the cornerstone of Sabah's cultural heritage-related legislation, and establishes provisions for the preservation and enhancement of the State's heritage. The Cultural Heritage (Conservation) Enactment has three major areas of focus. These include:

- Cultural Heritage Sites & Conservation Areas,
- Purchasing land, and
- Maintaining and repairing areas.

Cultural Heritage and Conservation Areas

The Yang di-Pertua Negeri has the power to establish a Cultural Heritage Site or Conservation Area upon the recommendation from the State Cultural Heritage Council (the Council).¹ Cultural Heritage Sites and Conservation Areas must meet the following requirements below:

Cultural Heritage Piece or Site	Any piece or site of cultural heritage whose character or appearance is desirable for preservation or conservation in order to enhance or ensure its value. ²
Cultural Conservation Area	Any conservation area that should be preserved or conserved as a conservation area for cultural heritage. ³

a. Restrictions on Cultural Heritage

It is restricted to do any of the following acts to any Cultural Heritage Site (or piece) without permission in writing from the Council:

¹ Cultural Heritage (Conservation) Enactment, 1997, section 4.

² Cultural Heritage (Conservation) Enactment, 1997, section 4(a).

³ Cultural Heritage (Conservation) Enactment, 1997, section 4(b).

- Demolish, disturb, modify, mark, pull down or remove the Cultural Heritage,
- Make any alteration, addition, repair, renovation, restoration, construction, reconstruction, remodeling and adaptation to the Cultural Heritage,
- Erect any building or wall abutting upon the Cultural Heritage, or
- Make any change including painting to the exterior of the Cultural Heritage.⁴

b. Restrictions on Cultural Conservation Areas

It is restricted to do any of the following acts to a Cultural Conservation Area without permission in writing from the Council or in certain situations that may require it:

- Erect any building or structure on such area, fell or destroy any tree standing in such area,
- Encroach on the area,
- Clear or break up cultivation or cultivate any part of the area, or
- Dig, excavate, quarry, irrigate, deposit earth, carry out reclamation work, or disturb the landscaping and physical features of the area.⁵

c. Penalties

Any person who violates a portion of the Enactment will be guilty of an offence and subject to a fine not more than fifty thousand ringgit or imprisonment not more than five years, or both.⁶

Purchasing land

The Council has the authority to have their Secretary coordinate the purchase, lease or acquisition of private property under the Land Acquisition Ordinance, discussed below.⁷

a. Acquiring private land

The Secretary can coordinate the removal of an entire section or a portion of the private property.⁸ The Secretary has the authority to provide compensation for any damage caused or land sold. The Yan di-Pertua will decide the compensation amount on any disputed issues of the Council.⁹ Any person who is not satisfied with the Council's decision may submit an appeal to the High Court thirty days after the decision is received.¹⁰

b. Obligation to acquire land

⁴ Cultural Heritage (Conservation) Enactment, 1997, section 9 (1), (a)-(d).

⁵ Cultural Heritage (Conservation) Enactment, 1997, section 9 (2), (a)-(d).

⁶ Cultural Heritage (Conservation) Enactment, 1997, section 17.

⁷ Cultural Heritage (Conservation) Enactment, 1997, section 13 (1), cross referenced in Land Acquisition Ordinance.

⁸ Cultural Heritage (Conservation) Enactment, 1997, section 13 (1)(a).

⁹ Cultural Heritage (Conservation) Enactment, 1997, section 13 (1)(b).

¹⁰ Cultural Heritage (Conservation) Enactment, 1997, section 13 (2).

If an owner of a Cultural Heritage Site or Conservation Area is unable to reasonably benefit from any building or portion of their land due to the restrictions stated above, the Council has a responsibility to acquire the building or area from the owner.¹¹

c. Purchase notice

In order for the Council to purchase the building or area, the owner must submit a purchase notice in the required form and manner.¹² The purchase notice should include a statement of facts, reasons for the claim, additional documents to support the claim and additional affidavits to provide proof of the facts and reasons.¹³

d. Investigating a purchase notice

After the purchase notice is submitted to the Council, it will investigate the claim to ensure its accuracy. The Council should determine if the building or area is incapable of *reasonable beneficial use*¹⁴ after looking over the statements and claims made in the notice. If the Council agrees that the owner cannot use the area or building for reasonable beneficial use then it should acquire the land.¹⁵ The Council has the authority to acquire the land for public purpose under the Land Acquisition Ordinance.¹⁶

Maintaining and repairing areas

a. Performing work or repairs

In order to perform any work on a Cultural Heritage Site or Conservation Area, the owner or person performing the work should consult with the Council to determine if the work changes the use of the area requiring additional consent.¹⁷ If a building or area within a Cultural Heritage Site requires urgent care, the Council can make an exception for the owner to perform the work immediately and may contribute to the cost of repairs.¹⁸ They Council may also agree to repair portions, or contribute to the cost of repairs, for building in a Conservation Area that is not specifically intended to be preserved but contribute to the overall appearance and preservation of the site.¹⁹

b. Repayment of repairs by Council

If the Council contributes any money towards the repairs on a Cultural Heritage Site the owner or person performing the repairs is required carry out the work in the

¹¹ Cultural Heritage (Conservation) Enactment, 1997, section 10 (1).

¹² Cultural Heritage (Conservation) Enactment, 1997, section 10 (1).

¹³ Cultural Heritage (Conservation) Enactment, 1997, section 10 (2).

¹⁴ '[R]easonable beneficial use', standard that the Council will use to determine the owners can use the building or area of land.

¹⁵ Cultural Heritage (Conservation) Enactment, 1997, section 10 (3).

¹⁶ Cultural Heritage (Conservation) Enactment, 1997, section 10 (4), crossed reference in Land Acquisition Ordinance.

¹⁷ Cultural Heritage (Conservation) Enactment, 1997, section 11.

¹⁸ Cultural Heritage (Conservation) Enactment, 1997, section 12 (1).

¹⁹ Cultural Heritage (Conservation) Enactment, 1997, section 12 (2).

specified manner requested by the Council.²⁰ If the repairs or work are not carried out the way the Council intended, the Council may give notice to the owner requiring him to repay the money given for the repairs.²¹ After notice is given, the owner has fourteen days to make an objection to the amount of repayment or the work that was performed.²² If the owner does not agree with the decision of his objection, he can appeal the decision. The Yang di-Pertua Negeri will make the decision for all appeals.²³

c. Owners of Cultural Heritage or Conservation Areas

Owners of a Cultural Heritage Site or Conservation Area are required to let authorized officers enter their site and complete any inspections, studies or necessary work.²⁴ The owner should be notified fourteen days before the entry, in writing. If the owner objects to the entry because of religious concerns, entry will not be permitted unless except when authorized by the Council in writing.²⁵

Special provisions for Cultural Heritage Site and Conservation Areas

a. Authorized officers

All authorized officers have the authority to inspect any Cultural Heritage Site or Conservation Area that may be in the possession of another person as long as the inspection is during a reasonable time and is approved in writing by the Council.²⁶ Authorized officers also have the authority to require a person to supply any information relating to Cultural Heritage Site or Conservation Area subject to preservation or conservation.²⁷

b. Immunity of the State

The State Government, Council, Secretary or State Government officer authorized in writing by the Council or Secretary cannot have an action brought against them for their performance under the Enactment that was made in good faith.²⁸

c. Power to make regulations

The Yang di-Pertua Negeri has the authority to make regulations in order to maintain and preserve a Cultural Heritage Site or Conservation Area.²⁹ The regulations can be established in order to uphold provisions of the Enactment or for any of the following reasons:

²⁰ Cultural Heritage (Conservation) Enactment, 1997, section 12 (3).

²¹ Cultural Heritage (Conservation) Enactment, 1997, section 12 (4).

²² Cultural Heritage (Conservation) Enactment, 1997, section 12 (5)(6), (a)-(b).

²³ Cultural Heritage (Conservation) Enactment, 1997, section 12 (8).

²⁴ Cultural Heritage (Conservation) Enactment, 1997, section 8 (2).

²⁵ Cultural Heritage (Conservation) Enactment, 1997, section 8 (3).

²⁶ Cultural Heritage (Conservation) Enactment, 1997, section 8 (1)(a).

²⁷ Cultural Heritage (Conservation) Enactment, 1997, section 8 (1)(b).

²⁸ Cultural Heritage (Conservation) Enactment, 1997, section 18.

²⁹ Cultural Heritage (Conservation) Enactment, 1997, section 23.

- Establish criteria for the Cultural Heritage Site in order to be declared for preservation or conservation,
- Prescribe conditions that the planning authority should observe through planning permission,
- Regulate or prohibit activities in a Conservation Area,
- Establish conditions and procedures of application for work or repair in any Cultural Heritage Site or Conservation Area,
- Establish offences and penalties for offences under the enactment that abide by the penalties section listed above,
- Provide measures necessary and expedient to ensure the maintenance, preservation or conservation and enhancement of a Cultural Heritage Site or Conservation Area, or
- Establish fees and regulate any matters required under the Enactment.³⁰

2. LAND ORDINANCE

Please note that there is a dedicated brief on the *Land Ordinance (1930)* and related legislation. This section only sets out information from the *Land Ordinance* that is relevant to cultural heritage.

Purpose

The *Land Ordinance (1930)* establishes Sabah's laws relating to the regulation and control of State land.

Alienated land

The Land Ordinance describes alienated land as land that is leased or disposed State land on behalf of the Government. Alienated land may require payment such as rent or another type of premium.³¹

3. LAND ACQUISITION ORDINANCE

Purpose

The *Land Acquisition Ordinance (1950)* establishes Sabah's laws for the acquisition of land by the Yang di-Pertua Negeri for the public.

Including alienated land in a Cultural Heritage Site or Conservation Area

The Yang di-Pertua Negeri has the power to acquire alienated land and use it for a public purpose.³² Cultural Heritage Site and Conservation Areas are considered land used for a public purpose.³³

³⁰ Cultural Heritage (Conservation) Enactment, 1997, section 23, (a)-(i).

³¹ Land Ordinance, 1930, section 4, "alienate".

³² Land Acquisition Ordinance (Cap. 69), section 3 (1).

Temporary occupation

The Yang di-Pertua Negeri has the power to determine if the State should temporarily occupy a piece of unoccupied land and use it for a public purpose.³⁴ If the Yang di-Pertua Negeri believes a piece of land is suitable for a public purpose he may give permission to complete the anticipated project. Temporary occupation of the land should not be longer than three years.³⁵

4. INSTITUTIONAL ARRANGEMENT

State Cultural Heritage Council

The State Cultural Heritage Council was established under the Cultural Heritage (Conservation) Enactment and is responsible for advising the State Government on policy matters, administration and management of Cultural Heritage and Conservation Areas.³⁶ The Council should include the following people:³⁷

- A Chairman (holding the position of Minister at the time),
- Deputy Chairman,
- Secretary of the Ministry,
- Secretary of Natural Resources,
- Director of Sabah Museum,
- Representative from the Heritage Trust of Malaysia, and
- Five other people who have experience in cultural heritage preservation and conservation.

State Government

The State Government is responsible for the control, enforcement, development, preservation and conservation of all Cultural Heritage Sites and Conservation Areas.³⁸

FREQUENTLY ASKED QUESTIONS

Who manages the World Heritage Site, Kinabalu Park?

Kinabalu National Park was one of the first recognized Parks in Sabah. Kinabalu Park was *Gazetted* in 1964 and is under the enforcement of the Parks Enactment (1984).³⁹ Kinabalu Park was established as a World Heritage Site in December of 2000.⁴⁰ UNESCO World

³³ [P]ublic purpose”, land used in connection with the conservation, improvement or exploitation of natural resources. Land Acquisition Ordinance (Cap. 69) section 2 (h).

³⁴ Land Acquisition Ordinance (Cap. 69), section 11 (1).

³⁵ Land Acquisition Ordinance, section 11 (2).

³⁶ Cultural Heritage (Conservation) Enactment, 1997, section 3 (1).

³⁷ Cultural Heritage (Conservation) Enactment, 1997, section 3 (2), (a)-(b).

³⁸ Cultural Heritage (Conservation) Enactment, 1997, section 5.

³⁹ Sabah Parks Board of Trustess, Kinabalu Park, http://www.sabahparks.org.my/eng/kinabalu_park/, 2014.

⁴⁰ Sabah Parks Board of Trustess, Kinabalu Park – World Heritage Site, http://www.sabahparks.org.my/eng/kinabalu_park/, 2014.

Heritage Sites are considered forests, mountains, lakes, deserts, monuments, buildings, complexes, or cities with special cultural or physical significance that are listed by the United Nations Educational, Scientific and Cultural Organization (UNESCO). UNESCO created the idea of World Heritage to protect sites of outstanding universal value.⁴¹ Although, Kinabalu Park is established as a World Heritage Site it is still managed and operated by designed officials of the Parks Enactment which include the Board of Trustees of Sabah Parks, the Director of Parks and Honorary Park Rangers and Wardens.⁴² Unlike a Cultural Heritage Site established with a particular significance to Sabah the World Heritage Site offers additional protection and recognition from the United Nations.

5. CASE LAW

The authors are grateful for any information about relevant case law.

⁴¹ United Nations Educational, Scientific and Cultural Organization, Introducing UNESCO, <https://en.unesco.org/about-us/introducing-unesco>.

⁴² Parks Enactment, 1984, section 24, 41, 41A.