



Consultancy Study on the Heritage Conservation Regimes in Other Jurisdictions

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Development Bureau
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CONSULTANCY STUDY ON THE HERITAGE CONSERVATION REGIMES IN OTHER JURISDICTIONS

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INTRODUCTION

1.1 Background

As announced by the Chief Executive in his Policy Address 2013, in light of experiences in the past few years, we should review the present policy on the conservation of privately-owned historic buildings to better meet the public's expectations.

The Development Bureau (DEVB) has invited the Antiquities Advisory Board (AAB) being the Government's advisor on heritage conservation, to assist in the policy review on historic buildings in Hong Kong. To facilitate the policy review and to have a more thorough understanding of the practices and experience in other jurisdictions on heritage conservation, the DEVB has commissioned the Chinese University of Hong Kong (CUHK) to conduct a consultancy study on the subject (the Study). The CUHK has engaged the University of Hong Kong as partner for the Study.

1.2 Objectives

The objectives of the Study are:

- to find out the practices and policy framework in heritage conservation in the selected jurisdictions (i.e. Australia, China, Canada, England, Japan, Macao, Singapore, and the United States of America); and
- to compare and analyse the heritage conservation regimes in those selected jurisdictions with those of Hong Kong.

The Study shall comprise two parts:

- **Part I** – a review of the prevailing legislations, policies and practices on the conservation of tangible heritage in the selected jurisdictions; and
- **Part II** – a comparison and analysis of the legislations, policies and practices of the selected jurisdictions with those of Hong Kong. Critical observations are included.

2

AUSTRALIA

2.1 Background

Australia uses the term 'conservation' to refer to all the actions involved in looking after a heritage place. The *Burra Charter* (1999) states this succinctly: "Conservation means all the processes of looking after a place so as to retain its cultural significance." Place has a very detailed definition and "... means site, area, land, landscape, building or other work, group of buildings or other works, and may include components, contents, spaces and views." Cultural significance, as defined in the charter, means "... aesthetic, historic, scientific, social or spiritual value for past, present or future generations."

A former colony of the United Kingdom, Australia is a sizeable country (island nation) with many jurisdictions – a national government and six states (each with its own state government and local governments) as well as various territories. The principal legislation related to heritage is the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and the *Australian Heritage Council Act 2003*.

For greater understanding of the Australian system, New South Wales (NSW) and Sydney are used as case study examples of the different policy aspects addressed in this chapter. The New South Wales encompasses some of the most populous cities in Australia; its long history has given it a sizeable amount of historical buildings which has led to the development of a constantly improving heritage protection system over the decades, making it a valuable system of reference for Hong Kong.

2.1.1 Heritage Designation system

The heritage designation system is tiered, with each level of government (national, state and local) creating its own list or series of lists of places of heritage value. There is sometimes overlap between the lists, but this seems to only reinforce the importance of specific heritage places.

National Level

At the national level, significant heritage places are identified and grouped (by type) into lists that then guide the protection of heritage values. The following groupings are used:

- World Heritage (heritage that is of outstanding universal value)
- National Heritage (natural and cultural places of outstanding heritage value to the nation)
- Indigenous Heritage (heritage of the aboriginal and Torres Strait Islander people)
- Commonwealth Heritage (indigenous and historic heritage places on Commonwealth lands and waters or under Australian government control)
- Historic Shipwrecks
- Movable Cultural Heritage (objects that are an important part of cultural heritage and must be protected from illegal sale and export)

- Overseas Places of Historic Significance
- State, territory and local lists¹

State Level (NSW)

At the state level, such groupings are not used; rather, a wide range of places and objects are part of the State Heritage Register (created in 1999). These items are legally protected and eligible for financial incentives from both the NSW and Commonwealth Governments.²

Local Level (Sydney)

At the local level (Sydney), a “database of heritage item inventories and conservation areas” is maintained and, importantly, identified in planning instruments.³

2.1.2 Definition of Heritage

National Level

At the national level, heritage is that which “includes places, values, traditions, events and experiences that capture where we’ve come from, where we are now and gives context to where we are headed as a community.” It “gives us understanding and conveys the stories of our development as a nation, our spirit and ingenuity, and our unique, living landscapes.” Simply put, “heritage is an inheritance that helps define our future.”⁴

National heritage, in particular, “comprises exceptional natural and cultural places that contribute to Australia’s national identity. National heritage defines the critical moments in our development as a nation and reflects achievements, joys and sorrows in the lives of Australians. It also encompasses those places that reveal the richness of Australia’s extraordinarily diverse natural heritage.”⁵

The National Heritage List, which was established under the *EPBC Act*, is “a list of places with *outstanding* natural, Indigenous or historic value to the nation.”⁶ On the other hand, the Commonwealth Heritage List, which was also established under the *EPBC Act*, is made up of “natural, Indigenous and historic heritage places which are either entirely within a Commonwealth area or outside the Australian jurisdiction and owned or leased by the Commonwealth or a Commonwealth Authority; and have one or more

¹ “National Heritage List Criteria”. Retrieved on 23 July 2013, under Department of Sustainability, Environment, Water, Population and Communities, Australian Government, website: <http://www.environment.gov.au/topics/heritage/about-australias-heritage/national-heritage/national-heritage-list-criteria>.

² “What is the State Heritage Register” in Environment & Heritage. Retrieved on 23 July 2013, under NSW Government, website: <http://www.environment.nsw.gov.au/heritage/listings/stateheritageregister.htm>.

³ “Heritage Conservation Areas and Building Contributions”. Retrieved on 23 July 2013, under the City of Sydney, website: <http://www.cityofsydney.nsw.gov.au/development/application-guide/heritage-conservation/heritage-conservation-areas-building-contributions>.

⁴ “About Australia’s heritage”. Retrieved on 23 July 2013, under Department of Sustainability, Environment, Water, Population and Communities, Australian Government, website: See: <http://www.environment.gov.au/topics/heritage/about-australias-heritage>.

⁵ “National Heritage List Criteria”. Retrieved on 23 July 2013, under Department of Sustainability, Environment, Water, Population and Communities, Australian Government, website: <http://www.environment.gov.au/topics/heritage/about-australias-heritage/national-heritage/national-heritage-list-criteria>.

⁶ *Ibid.*

Commonwealth heritage values." "The list can include places connected to defence, communications, customs and other government activities."⁷

State Level (NSW)

At the state level, heritage is defined, in reference to the State Heritage Register, as "places and objects of particular importance to the people of NSW."⁸ However, places and objects are seen in a broader context. As described by the state's Office of Environment and Heritage, "the whole of the NSW landscape, from Eden to Byron Bay and Sydney to Broken Hill, is a mosaic of cultural meaning. People are as much part of the landscape as the plants, natural resources and the animals. The attachment of people to the land and waters of NSW makes the whole environment special."⁹

Local Level (Sydney)

At the local level (Sydney), in addressing heritage conservation, reference is made to "beautiful buildings and landmarks. . . . that need to be treasured for future generations."¹⁰ More generally, at the local level, "heritage places or objects that are important for the community in a local government area are listed on the local environmental plan and managed by the local council."¹¹

2.1.3 Assessment of Heritage

National Level

At the national level, in regard to the National Heritage List, the Australian Heritage Council (the Council) is responsible for assessing places nominated for the list. If the nominated place meets one or more of the nine criteria for inclusion on the list, then the Council must so advise the Minister for Sustainability, Environment, Water, Population and Communities, who is responsible for the list. The Department of Sustainability, Environment, Water, Population and Communities compiles and maintains the list.

The National Heritage criteria against which the heritage values of a place are assessed are:

- the place has outstanding heritage value to the nation because of the place's importance in the course, or pattern, of Australia's natural or cultural history
- the place has outstanding value to the nation because of the place's possession of uncommon, rare or endangered aspects of Australia's natural or cultural history
- the place has outstanding heritage value to the nation because of the place's potential to yield information that will contribute to an understanding of Australia's natural or cultural history

⁷ "Commonwealth Heritage". Retrieved on 23 July 2013, under Department of Sustainability, Environment, Water, Population and Communities, Australian Government, website: <http://www.environment.gov.au/topics/heritage/about-australias-heritage/commonwealth-heritage>.

⁸ 'What is the State Heritage Register' in Environment & Heritage. Retrieved on 23 July 2013, under NSW Government, website: <http://www.environment.nsw.gov.au/heritage/listings/stateheritageregister.htm>.

⁹ 'The Cultures and the Heritage of NSW' in Environment & Heritage. Retrieved on 23 July 2013, under NSW Government, website: <http://www.environment.nsw.gov.au/nswcultureheritage/>.

¹⁰ 'Heritage Conservation'. Retrieved on 23 July 2013, under the City of Sydney, website: <http://www.cityofsydney.nsw.gov.au/development/application-guide/heritage-conservation>.

¹¹ 'Local Heritage' in Environment & Heritage. Retrieved on 23 July 2013, under NSW Government, website: <http://www.environment.nsw.gov.au/heritage/listings/local.htm>.

- the place has outstanding heritage value to the nation because of the place's importance in demonstrating the principal characteristics of:
 - a class of Australia's natural or cultural places
 - a class of Australia's natural or cultural environments
- the place has outstanding heritage value to the nation because of the place's importance in exhibiting particular aesthetic characteristics valued by a community or cultural group
- the place has outstanding heritage value to the nation because of the place's importance in demonstrating a high degree of creative or technical achievement at a particular period
- the place has outstanding heritage value to the nation because of the place's strong or special association with a particular community or cultural group for social, cultural or spiritual reasons
- the place has outstanding heritage value to the nation because of the place's special association with the life or works of a person, or group of persons, of importance in Australia's natural or cultural history
- the place has outstanding heritage value to the nation because of the place's importance as part of Indigenous tradition¹²

The cultural aspect of a criterion means the Indigenous cultural aspect, the non-Indigenous aspect, or both.

Importantly, the listing process for National Heritage includes detailed guidelines for the assessment of places.¹³ Some 154 pages in length, the *Guidelines for the Assessment of Places for the National Heritage List* offer a detailed procedure that includes a number of 'tests'.¹⁴ Emphasis is placed on establishing both heritage values as well as their level of significance. To help ensure the validity of the process, there is a strong relevance on comparative studies and systematic surveys. In addition, there is an assessment of both the authenticity and integrity of the nominated heritage place.

As noted in the aforementioned *Guidelines*, "it is . . . extremely important that National Heritage values identified in an assessment are described precisely. Particular attention is paid to identifying the scope of values. Values are described in plain English. In general technical language is not used. If the values are described in ways that are ambiguous or obscure this is most likely to cause significant difficulties in both management and compliance." (*Guidelines*, p. 7.)

There are 117 places on the National Heritage List, ranging from "Adelaide Park Lands and City Layout" to "Wurrwurrwy stone arrangements." It should be noted that places can be (and are) included on more than one list.

At the national level, in regard to the Commonwealth Heritage List, the Australian Heritage Council is also responsible for assessing places nominated for the list. If the nominated place meets one or more of the

¹² "National Heritage List Criteria". Retrieved on 23 July 2013, under Department of Sustainability, Environment, Water, Population and Communities, Australian Government, website: <http://www.environment.gov.au/topics/heritage/about-australias-heritage/national-heritage/national-heritage-list-criteria>.

¹³ Australian Heritage Council, *Guidelines for the Assessment of Places for the National Heritage List*, Canberra: Department of the Environment, Water, Heritage and the Arts, 2009. Retrieved on 23 July 2013, under Australian Heritage Council, Australian Government, website: www.environment.gov.au/heritage/ahc/publications.

¹⁴ 'National Heritage List Criteria'. Retrieved on 23 July 2013, under Department of Sustainability, Environment, Water, Population and Communities, Australian Government, website: <http://www.environment.gov.au/topics/heritage/about-australias-heritage/national-heritage/national-heritage-list-criteria>.

nine criteria for inclusion on the list, then the Council must so advise the Minister for Sustainability, Environment, Water, Population and Communities, who is responsible for the list.¹⁵

One of the major differences between the criteria for listing on the Commonwealth Heritage List as compared to the criteria for listing on the National Heritage List is that *significant* heritage value is cited rather than *outstanding* heritage value. The Commonwealth Heritage nine criteria against which the heritage values of a place are tested include:

- the place has significant heritage value because of the place's importance in the course, or pattern, of Australia's natural or cultural history
- the place has significant value because of the place's possession of uncommon, rare or endangered aspects of Australia's natural or cultural history
- the place has significant heritage value because of the place's potential to yield information that will contribute to an understanding of Australia's natural or cultural history
- the place has significant heritage value because of the place's importance in demonstrating the principal characteristics of:
 - a class of Australia's natural or cultural places
 - a class of Australia's natural or cultural environments
- the place has significant heritage value because of the place's importance in exhibiting particular aesthetic characteristics valued by a community or cultural group
- the place has significant heritage value because of the place's importance in demonstrating a high degree of creative or technical achievement at a particular period
- the place has significant heritage value because of the place's strong or special association with a particular community or cultural group for social, cultural or spiritual reasons
- the place has significant heritage value because of the place's special association with the life or works of a person, or group of persons, of importance in Australia's natural or cultural history
- the place has significant heritage value because of the place's importance as part of Indigenous tradition¹⁶

As previously mentioned, "the key difference (between the Commonwealth Heritage List and the National Heritage List) is the level or 'threshold' of significance required to be reached to meet the criteria. Heritage experts are able to 'test' a place for heritage value against these criteria."¹⁷

There are 397 places on the Commonwealth Heritage List, ranging from the ABC Radio Studios in Rockhampton, Queensland to York Park North Tree Plantation in Barton, Australian Capital Territory. It should be noted that places can be (and are) included on more than one list.

State Level (NSW)

At the state level, in regard to the State Heritage Register, the Heritage Council of NSW "makes decisions about the care and protection of heritage places and items that have been identified as being

¹⁵ 'Commonwealth Heritage'. Retrieved on 23 July 2013, under Department of Sustainability, Environment, Water, Population and Communities, Australian Government, website: <http://www.environment.gov.au/topics/heritage/about-australias-heritage/commonwealth-heritage>.

¹⁶ Commonwealth Heritage List criteria". Retrieved on 23 July 2013, under Department of Sustainability, Environment, Water, Population and Communities, Australian Government, website: <http://www.environment.gov.au/topics/heritage/about-australias-heritage/commonwealth-heritage>.

¹⁷ *Ibid.*

significant to the people of NSW.” This includes its responsibility to recommend to the Minister responsible for heritage “places and objects for listing on the State Heritage Register.” The seven criteria, as established in the *Heritage Act of NSW 1977* (and as amended in 1998), are as follows:

- an item is important in the course, or pattern, of NSW's cultural or natural history
- an item has strong or special association with the life or works of a person, or group of persons, of importance in NSW's cultural or natural history
- an item is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in NSW
- an item has strong or special association with a particular community or cultural group in NSW for social, cultural or spiritual reasons
- an item has potential to yield information that will contribute to an understanding of NSW's cultural or natural history
- an item possesses uncommon, rare or endangered aspects of NSW's cultural or natural history
- an item is important in demonstrating the principal characteristics of a class of NSW's cultural or natural places; or cultural or natural environments¹⁸

There is a diverse range of over 1,600 items on the State Heritage Register. The items include: “Aboriginal places, buildings, objects, monuments, gardens, natural landscapes, archaeological sites, shipwrecks, relics, streets, industrial structures, public buildings, shops, factories, houses, religious buildings, schools, conservation precincts, jetties, bridges and movable items, such as church organs and ferries.”¹⁹ There is also a State Heritage Inventory, which contains over 25,000 heritage items on statutory lists in NSW.²⁰

Local Level (Sydney)

At the local level, “heritage places or objects that are important for the community in a local government area are listed on the local environmental plan and managed by the local council.... Local councils identify, assess and manage heritage places and objects within their jurisdiction.” In addition, “all local councils are required to identify items of local heritage significance in a heritage schedule (attached) to the local environmental plan.” (“A local environmental plan is a planning instrument that councils prepare under the *Environmental Planning and Assessment Act 1979*.”)²¹

2.1.4 Institutional Arrangement

“The current institutional arrangements for heritage conservation are based on the three-tier framework established under the *COAG (Council of Australian Governments) agreement* (in 1997). The Commonwealth government focuses on heritage of national significance, while state and territory governments handle heritage of state significance. As to local governments, they cater for heritage of local

¹⁸ “Heritage Act 1997, Criteria for Listing on the State Heritage Register” Retrieved on 23 July 2013, under Heritage Council of New South Wales, website: <http://www.environment.nsw.gov.au/resources/heritagebranch/heritage/listings/criteria.pdf>.

¹⁹ “What is the State Heritage Register” in Environment & Heritage. Retrieved on 23 July 2013, under NSW Government, website: <http://www.environment.nsw.gov.au/heritage/listings/stateheritageregister.htm>.

²⁰ “NSW Heritage search” in Environment & Heritage. Retrieved on 23 July 2013, under NSW Government, website: <http://www.environment.nsw.gov.au/heritageapp/heritagesearch.aspx>.

²¹ “Local heritage” in Environment & Heritage. Retrieved on 23 July 2013, under NSW Government, website: <http://www.environment.nsw.gov.au/heritage/listings/local.htm>.

significance. Each level of government has its own responsibility of developing statutory protection and financial support measures corresponding to the significance of historic heritage it conserves.”²²

National Level

The Department of Sustainability, Environment, Water, Population and Communities (parent portfolio: Sustainability, Environment, Water, Population and Communities) is responsible for matters relating to the nation’s cultural and natural heritage. (The name change is recent; the department was formally called the Department of the Environment, Water, Heritage and the Arts.) As a multi-faceted department, “it develops and implements national policy, programs and legislation to protect and conserve Australia’s environment and heritage.” Heritage matters are handled by “Wildlife, Heritage and Marine,” a separate Division directly under one of the Department’s Deputy Secretaries. (Within Wildlife, Heritage and Marine, there are five sub-divisions, including Heritage North and Heritage South.) Another Division under the same Deputy Secretary is Environment Assessment and Compliance.²³

The Wildlife, Heritage and Marine Division appears to have replaced the old Heritage Division. This division developed and implemented “policies and programs to help identify, conserve and promote appreciation of Australia’s natural and cultural heritage places and objects.”²⁴

Importantly, the Department of Sustainability, Environment, Water, Population and Communities is responsible for administering the key national heritage law – *EPBC 1999*. The Department also administers *The Historic Shipwrecks Act 1976*, the *Aboriginal Torres Strait Islander Heritage Protection Act*, the *Protection of Movable Cultural Heritage Act 1986* and the *Australian Heritage Council Act 2003*.²⁵

State Level (NSW)

“The institutions and mechanisms established for identifying and conserving state-significant heritage are broadly similar among states and territories in Australia.” These include:

- register of historic heritage places of state significance, including the criteria and procedures for identifying places for inclusion in the register
- controls over the development of listed places through the linking of heritage and general planning control laws and regulations
- establishment of a Heritage Council
- funding programs to assist the conservation of historic heritage places
- incentives provided to private owners for carrying out general and/or specific works to their historic properties”²⁶

More specifically, “State and territory statutes provide for the setting up of a Heritage Council to manage the register of historic heritage places, advise the relevant minister on heritage-related issues and

²² Zhaozhong Yu (Michael), *Built Heritage Conservation Policy in Selected Places*, Hong Kong: Research and Library Services Division, Legislative Council Secretariat, 2008, p. 4.

²³ Retrieved on 23 July 2013, under Department of Sustainability, Environment, Water, Population and Communities, Australian Government, website: www.environment.gov.au/about/structure/pubs/structure.pdf.

²⁴ “Heritage Organisations”. Retrieved on 23 July 2013, under Department of Sustainability, Environment, Water, Population and Communities, Australian Government, website: <http://www.environment.gov.au/topics/heritage/heritage-organisations>.

²⁵ “Heritage Laws and Notices”. Retrieved on 23 July 2013, under Department of the Environment, Australian Government, website: <http://www.environment.gov.au/heritage/laws/index.html>. (Refer to responsibilities of the Australian Heritage Council.)

²⁶ Zhaozhong Yu (Michael), *Built Heritage Conservation Policy in Selected Places*, Hong Kong: Research and Library Services Division, Legislative Council Secretariat, 2008, pp. 5-6.

oversee the review of the heritage aspects of applications for changes to listed properties. Most state and territory governments have set up a secretariat body . . . to assist the Heritage Council on administering the state or territory register of historic heritage places, managing heritage-related funding schemes and issuing publications on heritage matters.”²⁷

In NSW, the Office of Environment and Heritage, a Division of the Government of NSW, has the responsibility “to identify, care for and promote the cultures and heritage of New South Wales,” which includes “Aboriginal cultures and heritage of NSW” and “culture and heritage values within NSW national parks and reserves.”²⁸

It should be noted that The Heritage Council of NSW “is an advisory body that includes members of the community, the government, the conservation profession and representatives of organisations, such as the National Trust of Australia (NSW).”²⁹

Local Level (Sydney)

Lastly, “local governments have jurisdictions over the majority of planning decisions and are required to consider heritage matters, among other things, when exercising their planning and land use controls. Most local governments also conduct heritage inventories to generate registers of locally significant places. Some have put in place incentive measures, such as grants, loans and rates rebates, to assist private owners with conservation of their historic properties.”³⁰

In Sydney, the local council is required “to identify items of local heritage significance in a heritage schedule (attached) to the local environmental plan.” (“A local environmental plan is a planning instrument that councils prepare under the *Environmental Planning and Assessment Act 1979*.”)³¹

2.2 Legal Framework

2.2.1 National Laws

At the national level, there are two major laws that relate to the conservation of the nation’s cultural and natural heritage.

Environment Protection and Biodiversity Conservation Act 1999

“The *EPBC Act* is the Australian’s government central piece of environmental legislation. It provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places.”³²

²⁷ *Ibid*, p. 6.

²⁸ “The Cultures and the Heritage of NSW” in Environment & Heritage. Retrieved on 23 July 2013, under NSW Government, website: <http://www.environment.nsw.gov.au/nswcultureheritage/>.

²⁹ “Heritage Council”. Retrieved on 23 July 2013, under NSW Government, website: http://www.environment.nsw.gov.au/Heritage/heritage_council/index.htm.

³⁰ Michael Yu, *Built Heritage Conservation in Selected Places*, Hong Kong, Research and Library Services Division, Legislative Council Secretariat, 2008, p. 6.

³¹ “Heritage Laws and Notices”. Retrieved on 23 July 2013, under Department of the Environment, Australian Government, website: <http://www.environment.gov.au/heritage/laws/index.html>.

³² “Environment Protection and Biodiversity”. Retrieved on 23 July 2013, under Department of the Environment, Australian Government, website: <http://www.environment.gov.au/epbc>.

The Act sets out and protects eight “matters” of national environmental significance, including national heritage. The eight matters are:

- “Australia’s world heritage properties
- national heritage places
- wetlands of international importance (listed under the *Ramsar Convention*)
- migratory species
- listed threatened and ecological communities
- Commonwealth marine areas
- the Great Barrier Reef Marine Park
- nuclear actions, including uranium mining”³³

Importantly, “the *EPBC Act* enables the Australian Government to join with the states and territories in providing a truly national scheme of environment and heritage protection and biodiversity conservation. The *EPBC Act* focuses Australian Government interests on the protection of matters of national environmental significance, with the states and territories having responsibility for matters of state and local significance.”³⁴

It should be noted that both the National Heritage List and the Commonwealth Heritage List were established under this Act.³⁵

Australian Heritage Council Act 2003

The Act provides for the establishment of the Australian Heritage Council, “a body of heritage experts” charged with advising the Australian Government on heritage matters. Its main responsibilities are to:

- assess places for the National Heritage List and the Commonwealth Heritage List
- nominate places for inclusion in the National Heritage List or Commonwealth Heritage List
- promote the identification, assessment, conservation and monitoring of heritage
- advise the Minister (Sustainability, Environment, Water, Population and Communities) on various heritage matters, including the preparation and amendment of heritage strategies and management plans for Commonwealth areas and agencies³⁶

“The Council replaced the Australian Heritage Commission as the Australian Government’s independent expert advisory body on heritage matters when the new Commonwealth heritage system was introduced in 2004 under amendments to the *Environment Protection and Biodiversity Conservation Act 1999*.”³⁷

³³ “National Heritage Laws”. Retrieved on 23 July 2013, under Department of the Environment, Australian Government, website: <http://www.environment.gov.au/heritage/laws/national.html>.

³⁴ “About the EPBC Act”. Retrieved on 23 July 2013, under Department of the Environment, Australian Government, website: <http://www.environment.gov.au/epbc/about/index.html>.

³⁵ “National Heritage Laws”. Retrieved on 23 July 2013, under Department of the Environment, Australian Government, website: <http://www.environment.gov.au/heritage/laws/national.html> and “Commonwealth Heritage Laws”. Retrieved on 23 July 2013, under Department of Sustainability, Environment, Water, Population and Communities, Australian Government, website: <http://www.environment.gov.au/topics/heritage/about-australias-heritage/commonwealth-heritage>.

³⁶ “About the Australian Heritage Council”. Retrieved on 23 July 2013, under Australian Heritage Council, Australian Government, website: <http://www.environment.gov.au/heritage/ahc/about/index.html>.

³⁷ *Ibid.*

Other laws include: The *Historic Shipwrecks Act 1976*; the *Aboriginal Torres Strait Islander Heritage Protection Act*; and the *Protection of Movable Cultural Heritage Act 1986*.³⁸

2.2.2 State Laws (NSW)

At the state level (NSW), there are two important acts that relates to the conservation of the state's cultural and natural heritage.

Environmental Planning and Assessment Act 1979

The Act, originally passed in 1979, has been revised (sections repealed) on a regular basis. Currently, a two-tiered system (state and local), the Act requires planning authorities to consider the impact of proposed developments or land-use changes to the environment (natural and built) and the community. Most developments require a Statement of Environmental Effects; larger development projects require an Environmental Impact Assessment and are subject to public scrutiny.³⁹

NSW Heritage Act 1977

The "objects" of the Act are:

- "to promote an understanding of the State's heritage
- to encourage the conservation of the State's heritage
- to provide for the identification and registration of items of State heritage significance
- to provide for the interim protection of items of State heritage significance
- to encourage the adaptive reuse of items of State heritage significance
- to constitute the Heritage Council of New South Wales and confer on it functions relating to the State's heritage
- to assist owners with the conservation of items of State heritage significance⁴⁰

The Heritage Council of NSW "is an advisory body that includes members of the community, the government, the conservation profession and representatives of organisations, such as the National Trust of Australia (NSW)."⁴¹

2.2.3 Local Laws (Sydney)

As previously mentioned in Chapter 2.1.4, at the local level (Sydney), the local council is required "to identify items of local heritage significance in a heritage schedule (attached) to the local environment plan." ("A

³⁸ "Heritage Laws and Notices". Retrieved on 23 July 2013, under Department of the Environment, Australian Government, website: <http://www.environment.gov.au/heritage/laws/index.html>.

³⁹ "Environmental Planning and Assessment ACT 1979". Retrieved on 23 July 2013, under New South Wales Consolidated Acts, website: http://www.austlii.edu.au/au/legis/nsw/consol_act/epaaa1979389/.

⁴⁰ "Heritage ACT 1977-Sect 3". Retrieved on 23 July 2013, under New South Wales Consolidated Acts, website: http://www.austlii.edu.au/au/legis/nsw/consol_act/ha197786/s3.htm.

⁴¹ "Heritage Council". Retrieved on 23 July 2013, under NSW Government, website: http://www.environment.nsw.gov.au/Heritage/heritage_council/index.htm.

local environment plan is a planning instrument that councils prepare under the *Environmental Planning and Assessment Act 1979*.”⁴²

The local council is also empowered to set up heritage conservation areas. The local environment plan details the boundaries of such areas in its list of heritage maps – and, within each area, places are defined as contributory, neutral or detracting. Owner consent is not sought – and, unless the place is on a national or state list, the owner is free to demolish it or alter it without penalty.⁴³

2.3 Incentives

2.3.1 National Level

At the national level, there are two major sources of government funding that benefit heritage:

- competitive programs, such as Your Community Heritage Program, which aims to “help protect and conserve Australia’s nationally significant historic sites,” among other aims
- discretionary, ad hoc or non-competitive grants, such as the National Trusts Partnership Program, which “provides on-going funding to the Australian Council of National Trusts to support activities that increase public awareness, understanding and appreciation of Australia’s cultural heritage, and enhance and promote its conservation and assist the Trusts to advocate and work for the preservation and enhancement of Australia’s cultural heritage”

In addition, and of wider consequence, there is provision in the tax code for deducting the cost of repairs. However, “according to judicial authority, a repair is the replacement of worn-out parts with new parts in order to restore the item being repaired to its formal level of efficiency without changing its character.” According to the Tax Office, “a repair for the most part is occasional and partial.”⁴⁴

Also of wider consequence is the opportunity to donate property and receive a tax write-off.

2.3.2 State Level (NSW)

NSW has a very convincing set of reasons for encouraging the listing of heritage properties. Some of the reasons include monetary ‘reward’ either immediately or in the future. As explained in the Heritage Council of New South Wales’s *Heritage Listing Explained: What It Means for You*:

Listing gives owners improved access to heritage grants, free advice from local council’s heritage planners on how to make sympathetic changes, and often allows a wider range of uses than the current zoning would otherwise permit. NSW grants for conservation works are described further at www.heritage.nsw.gov.au/funding. Some local councils also offer local heritage grants.

...

Free technical advice is available to owners of state-listed places for upgrading historic buildings from the Heritage Council’s expert technical committees. They provide advice on upgrades for disabled access, fire safety, building code standards and the introduction of new services for contemporary residential or business needs. Advice is also given on conserving historic building materials.

⁴² “Local Heritage”. Retrieved on 23 July 2013, under NSW Government, website: <http://www.environment.nsw.gov.au/heritage/listings/local.htm>.

⁴³ “Heritage Conservation Areas and Building Contributions”. Retrieved on 15 December 2013, under the City of Sydney, website: <http://www.cityofsydney.nsw.gov.au/development/application-guide/heritage-conservation/heritage-conservation-areas-building-contributions>.

⁴⁴ “Is your repair tax-deductible”. Retrieved on 23 July 2013, under Property Observer, website: <http://www.propertyobserver.com.au/is-your-repair-tax-deductible/2011051950328>.

Heritage listing can reduce council rates and land tax when owners apply for a 'heritage valuation' from the NSW Valuer General's Office. An existing heritage valuation will be shown in the 'Notice of Valuation' issued for council rating purposes.⁴⁵

More specifically, the NSW Heritage Grants Programme includes annual funding for "major works projects". The purpose of the funding is "to assist owners and managers of State Heritage Register-listed items to conserve, restore and reuse their heritage properties." Owners and managers are able to apply for "dollar-for-dollar grants from \$40,000 up to \$150,000." The minimum project value must be \$80,000, excluding Goods and Services Tax (A 10% tax on most goods and services). Projects eligible for funding include buildings, cemeteries, industrial sites, landscapes, archaeology, maritime archaeology, moveable items and pipe organs.⁴⁶

2.3.3 Local Level (Sydney)

At the local level, there is an especially innovative incentive programme entitled Heritage Floor Space (HFS) Scheme. It "provides an incentive for the conservation and on-going maintenance of heritage items in central Sydney by allowing owners of heritage buildings to sell unused development potential from their site, known as heritage floor space."

After the completion of conservation work, the city may award HFS. It can then be sold to a site that requires the space as part of an approved development application. It is assumed that the money so raised will offset the cost of conservation. It should be noted that the "Selling or transferring HFS is a private transaction between the owner and the prospective buyer – the City acts as the scheme administrator. The cost of legal agreements, transactions and other documentation associated with the award and allocation, or change of HFS ownership is met by the owner and prospective buyer."⁴⁷

Additionally, once conservation is completed, "the land owner, where the heritage item is located, enters into a deed with the City and registers covenants on title. A deed is drafted and executed between the land owner and the City to reinforce the positive and restrictive covenants that are to be placed on title, which:

- limit any future redevelopment of the site to the total gross floor area and height of the conserved heritage item (restrictive)
- ensure the ongoing conservation of the building by regular maintenance in accordance with the conservation management plan (positive)."⁴⁸

⁴⁵ Heritage Council of New South Wales, *Heritage Listing Explained: What It Means for You*, Heritage Branch, NSW Department of Planning, updated 2011, p. 4.

⁴⁶ "Funding – NSW Heritage Grants". Retrieved on 23 July 2013, under NSW Government, website: <http://www.environment.nsw.gov.au/Heritage/funding/index.htm> and "Major Works Projects". Retrieved on 23 July 2013, under NSW Government, website: <http://www.environment.nsw.gov.au/Heritage/funding/workprojects.htm>.

⁴⁷ "Heritage Floor Space Scheme". Retrieved on 23 July 2013, under the City of Sydney, website: <http://www.cityofsydney.nsw.gov.au/development/application-guide/heritage-conservation/heritage-floor-space-scheme>.

⁴⁸ "Heritage Floor Space Scheme – Awarding HFS". Retrieved on 23 July 2013, under the City of Sydney, website: <http://www.cityofsydney.nsw.gov.au/development/application-guide/heritage-conservation/heritage-floor-space-scheme/awarding-hfs>.

2.4 Public Participation

National Level

At the national level, a member of the public can nominate a place to be considered for inclusion on the National Heritage List or the Commonwealth Heritage List. In addition, members of the public have the opportunity to serve on the Australian Heritage Council, which is responsible for making recommendations to the Minister for Sustainability, Environment, Water, Population and Communities regarding the potential listing of places on national lists.

As part of the consideration for listing on the National Heritage List, "the *EPBC Act* requires (the Australian Heritage) Council to undertake a rigorous statutory assessment process of whether places in the Finalised Priority Assessment List for inclusion in the National Heritage List meet any of the National Heritage criteria. The process must consider and analyse relevant information as to whether a place meets one or more of the National Heritage criteria. . . . As part of this process there is a public consultation phase, as well as a requirement to consult in writing with owners, occupiers and Indigenous people with a right or interest in the place, if the Council has found that the place might have National Heritage values." (*Guidelines*, p. 7.)

State Level (NSW)

At the state level, state governments are empowered to establish Heritage Councils, which are usually composed of members of the public – both professionals and those with an interest in heritage matters. In NSW, the council is called the Heritage Council of NSW.⁴⁹

Local Level (Sydney)

At the local level, local governments are empowered to set up Heritage Advisory Committees, which are usually composed of a broad cross-section of individuals – both governmental and non-governmental.

2.5 Conclusion

The New South Wales heritage protection system provides specific insight regarding several distinctive aspects of Australian practice as they relate to heritage legislation and policy, for example, the inclusive approach to what constitutes cultural heritage, the integration of heritage resources with planning at the local level (local environment plan), the use of Area Character Studies, the wide-ranging public education initiatives and the rethinking of TDR through the HFS Scheme.

⁴⁹ "Heritage Council". Retrieved on 23 July 2013, under NSW Government, website: <http://www.environment.nsw.gov.au/Heritage/heritagecouncil/index.htm>.

3

CANADA

3.1 Background

3.1.1 Scope

Canada is a large country with many jurisdictions – a federal government, ten provinces, and three territories. In Canada the conservation of private property is the responsibility of the ten provinces and their local governments, as well as two of the three territories. Each province has its own system and regulations, and many local governments also have their particular procedures, but there are many commonalities among them.

This chapter focuses on the Province of British Columbia (BC), especially the cities of Vancouver and Victoria. Reference is made also to the Province of Ontario and some other provinces, where they may have a heritage programme that is not found in BC. The territories are not discussed in this paper because the devolution of powers from the federal government to the territories is only partial and the situation in the sparsely-populated territories is quite different from that in Hong Kong.

Vancouver has been selected as the primary object of analysis, since the city has many parallels to Hong Kong. Both Vancouver and Hong Kong have a restricted geography, strong private-sector development pressures and high land values.

Heritage legislation in BC is controlled by the *Heritage Conservation Act* (which addresses primarily archaeological sites and provincial designation) and the *Local Government Act* (which addresses municipal management of heritage). Vancouver has its own *Vancouver Charter*, provincial enabling legislation that for the most part – but not entirely – follows the *Local Government Act* with respect to heritage matters.⁵⁰

3.1.2 Heritage Designation System

Heritage designation is the jurisdiction of the provinces. Most provinces have delegated the responsibility for designation to local government, although the provinces retain the power to make designations.

Note that heritage designation in Canada refers specifically to the protection of historic places, as is discussed in more detail below.

The local government is advised in the designation process by a heritage commission or heritage committee, which is appointed by the elected City Council and serves at the pleasure of the Council. The names of the advisory groups vary; in BC the generic term is community heritage commission. Vancouver calls it the Vancouver Heritage Commission and Victoria calls it the Victoria Heritage Advisory Committee.

⁵⁰ These provincial acts are re-introduced and referenced in Chapter 3.2.

Some provinces also have provincial heritage advisory bodies. BC disbanded its advisory body when it devolved the responsibility for designation to local government.

A heritage commission is similar in its function to Hong Kong's Antiquities Advisory Board. It makes recommendations to the Council or the Council's appointee (in many cases the Planning Department) with respect to listing and protecting properties and it comments on applications to alter or demolish listed or protected properties. The commission does not have the power to make decisions.

3.1.2.1 Listing (Registration) and Designation

Historic places (buildings, groups of buildings, districts, landscapes, archaeological sites or other places; see Chapter 3.1.3) in BC that are *recognised* as having heritage significance are listed on a municipal heritage register. Heritage registers were formally called heritage inventories; some local governments retain the name 'inventory'. Heritage registers are statutory lists (unlike the graded buildings list in Hong Kong, which is not a statutory list). Listed property is not protected, but it is eligible to benefit from heritage incentives and to participate in other heritage programs.⁵¹ (See Chapter 3.4)

Historic places that possess a high level of heritage significance are usually *protected*, which is called 'designation'. Designation may control one or more of the following:

- Exterior alterations
- Structural changes
- Moving
- Actions that would damage a specified interior feature
- Actions that would damage a specified landscape feature
- Alteration, excavation or construction on protected land

A designated building may be altered if the proposal for change is approved by the Council or its designate (usually the Director of Planning), on the advice of the heritage commission. In this case a heritage alteration permit is issued. The appropriateness of a proposed change is usually guided by the *Standards and Guidelines for the Conservation of Historic Places in Canada*. (See Chapter 3.2.2)

BC legislation (introduced in Chapter 3.2.3) also provides for the protection of heritage conservation areas. A heritage conservation area is a distinct district or area that has special heritage value and/or character. Designation of a heritage conservation area provides protection to all or some of the properties in the area; those that are intended to be protected are identified in *Schedule A* of the by law. Property owners may not alter buildings or landscape features that are identified for protection, nor may they subdivide a property or construct a new building, without a heritage alteration permit (see below).

This provision is not applicable in Vancouver because it has not been included in the *Vancouver Charter*. Instead, Vancouver identifies heritage areas by means of the *Zoning and Development Bylaw*, rather than with a Heritage Bylaw.

Heritage registration and designation of individual properties and conservation areas are linked to the municipal property identification database, enabling local government to monitor proposed changes to recognised historic places. An application for a building permit will bring up the information that the property has been listed.

⁵¹ "Vancouver Heritage Register". Retrieved on 22 August 2013 under City of Vancouver, website: <http://vancouver.ca/files/cov/vancouver-heritage-register-2013-may.pdf>.

3.1.2.2 Alterations to Designated Property

Alterations or demolitions to designated property may be undertaken only with authorisation from the Council of the local government, a power that is usually delegated to the director of planning. Controversial issues will be referred to the Council. If the proposed alteration retains the cultural heritage significance of the property, the application will be approved; if not, it will be rejected.⁵²

Authorisation is provided by means of a heritage alteration permit, which specifies what work may be undertaken. The appropriateness of a proposed change is usually guided by the *Standards and Guidelines for the Conservation of Historic Places in Canada*. (See Chapter 3.2.2). Heritage alteration permits are also issued for approved changes to properties that are included on a heritage conservation area schedule, protected by a heritage revitalization agreement (see immediately below), protected by a heritage conservation covenant (see Chapter 3.3), or for protected archaeological sites.

For larger projects, a heritage revitalization agreement is usually drawn up between local government and the developer. This voluntary agreement stipulates the responsibilities of the property owner and the municipality. It also enables local government to vary or relax zoning and land-use requirements; these powers are discussed below in Chapter 3.3.2 with non-financial incentives.

A building may be de-designated (have its protection removed) by a majority vote of the City Council.

The 'dot, line and plane' concept is unknown in Canada. However, it may be noted that sight lines ('vistas' or 'view corridors') to and from protected property are sometimes considered. Sight lines may be protected by municipal bylaw (not heritage legislation). Vancouver protects certain views of the mountains. This is a major issue in Halifax, Nova Scotia, where views between the Halifax Citadel and the harbour have been protected for many years.

3.1.2.3 Public Acceptance of Registration and Designation

In BC the consent of the owner (whether private or public) is sought but not required for listing on the Heritage Register (recognition). Few owners object, because listing is perceived as having benefits but not bestowing hardships. Listing is done provisionally by staff, usually following the recommendation of the heritage commission, and from time to time lists of newly registered places are brought to Council for formal ratification. This is rarely a controversial process. As noted above, listing on the Register does not protect a building, but does make it eligible for participation in incentives and other heritage programs.

For a place to be designated as protected property, the owner's consent is sought – whether the owner is a private or a public entity. Designation must be approved by Council in a public hearing; i.e., the owner and the public are given ample opportunity to comment on the proposed designation. The owner of a designated building who does not agree to designation may sue the Council for 'compensation', defined in the legislation as the reduction in market value (assessed objectively).⁵³ In order to avoid the requirement to pay compensation, Vancouver offers the owners incentives to balance any perceived loss in value. These are discussed in Chapter 3.2.4.

Heritage conservation areas are treated somewhat differently from buildings. It is the area that is designated, and not the individual properties. The properties are listed on a schedule to the designation bylaw and become subject to guidelines for conservation and change, rather than being given outright protection.

⁵² The Burra Charter (1999), a key document that defines best conservation practices, states that "the aim of conservation is to retain the cultural significance of a place" (Article 2.2).

⁵³ It is important to note that the market value of a property is not always reduced by designation. Indeed, sometimes it is increased. It depends on whether there is a loss in the density allowed on the site, which is dependent on the zoning. This question of opportunity costs is discussed in Chapter 3.1.5 and 3.3, below.

While the consent of a large majority of property owners is sought, objection by only a few will not likely deter the local government from applying designation.

One controversial 'hostile' designation (i.e., designated against the owner's wishes) was made in Victoria a few years ago – protection of the interior of the Rogers Chocolates retail store. The owner sued the City for compensation and agreed to a payment of about CDN\$500,000.

3.1.3 Definition of Heritage

The most useful definition of 'immoveable heritage' is the definition of 'historic place', promoted by the Government of Canada in the *Standards and Guidelines for the Conservation of Historic Places in Canada* (see Chapter 3.2.2) The document provides three key definitions:

- Historic Place: a structure, building, group of buildings, district, landscape, archaeological site or other place in Canada that has been formally recognised for its heritage value
- Heritage Value: the aesthetic, historic, scientific, cultural, social or spiritual importance or significance for past, present and future generations. The heritage value of an historic place is embodied in its character-defining materials, forms, location, spatial configurations, uses and cultural associations or meanings
- Character-defining Element: the materials, forms, location, spatial configurations, uses and cultural associations or meanings that contribute to the heritage value of an historic place, which must be retained to preserve its heritage value

The Vancouver Heritage Register defines historic places similarly. Archaeological sites are among the kinds of historic places that can be included in the Heritage Register.

Moveable heritage (e.g., museum artifacts) and intangible cultural heritage (e.g., traditional knowledge) are separate from historic places and are not addressed in this paper or in the heritage conservation programme. Some jurisdictions, most notably the Province of Newfoundland and Labrador, have a programme for identifying intangible cultural heritage.



Fig. 1 The former Vancouver Public Library (1957, altered 1996) has been designated (protected) under the Recent Landmarks Program.

BC does not set a chronological limit for buildings that may be considered for listing or designation. In Vancouver, the original limit was pre-1940; however this has been changed with the inauguration in the 1990s of the Recent Landmarks Program, which allows buildings constructed that are at least 20 years old to be considered for the Heritage Register or for designation, using the same criteria as for older buildings.⁵⁴

3.1.4 Assessment of Heritage

The process of heritage assessment may vary from one local government to another. Generally the historic place is identified by staff and/or the heritage committee, and evaluated (assessed) according to a system adopted by the local government.

The Vancouver assessment system assesses historic places according to a set of criteria:

- architectural significance
- historical significance
- the extent to which the original context of the building and its surroundings remain
- the degree of alteration to the exterior of the building

Each criterion is assessed with a grade (excellent, very good, etc.) and the grades are rendered as numerical scores. The sum of the scores determines whether a building qualifies for listing on the Vancouver Heritage Register. The sum of the score also determines whether the place is listed in the 'A', 'B' or 'C' category. They are defined:

A - Primary Significance

Represents the best examples of a style or type of building; may be associated with a person or event of significance.

B - Significant

Represents good examples of a particular style or type, either individually or collectively; may have some documented historical or cultural significance in a neighbourhood.

C - Contextual or Character

Represents those buildings that contribute to the historic character of an area or streetscape, usually found in groupings of more than one building but may also be of individual importance.

While the category is a useful reference, the key is that whichever category a building is placed under, it is deemed to have heritage significance. The manner in which a building is treated is not intended to vary according to the category. "In other words, the heritage value of each building on the Heritage Register is formally recognised and the elements that define its character should be afforded the same level of respect."⁵⁵

No distinction is made between privately- and publicly-owned property in assessment or listing. As described below in Chapter 3.3.1, Vancouver and other BC municipalities seek the owner's consent for designation by offering heritage incentives.

⁵⁴ It may be of interest that the Sydney Opera House, completed in 1973, was inscribed on the World Heritage List in 2007, 34 years after completion, and it is not the youngest site to be included on the list.

⁵⁵ "Vancouver Heritage Register". Retrieved on 22 August 2013 under City of Vancouver, website: <http://vancouver.ca/files/cov/vancouver-heritage-register-2013-may.pdf>.

3.1.5 Opportunity Cost

The financial impacts and opportunity costs to property owners are considered in Chapter 3.3 below, with the discussion of incentives.

The larger economic impacts of heritage grants and incentives to the general economy have been shown to be positive. The impacts are tracked closely in Victoria. A recent analysis in the City of Victoria has shown that every \$1.00 in public grants to historic places (i.e., public investment) in the Building Incentive Programme leverages \$28.08 in private investment.⁵⁶ This demonstrates that public investment in heritage conservation has a large, positive economic impact on the City. As a consequence the Council is usually amenable to the expansion of heritage programmes.

Vancouver has not undertaken a comparable comprehensive economic study.

3.2 Legal Framework

3.2.1 Separation of Powers

Canada is characterised by a formal separation of powers between the federal government and the ten provinces. Each has distinct powers, which are defined by the *Constitution Act, 1982*; this in turn is based on the *British North America Act, 1867*, the statute that created the nation of Canada.

The Canadian provinces are legal entities independent from the federal government. They are *not* the creation of the federal government. This is in contrast to the U.S., where the states are responsible to the federal government. In Canada, municipalities and other local governments (e.g., counties, regional districts) are creations of the provinces, and are dependent on provinces for passing enabling legislation that permits local governments to operate.

The three territories are the creation of the federal government. Various powers are in the process of being devolved from the federal government to the territorial governments and First Nations and Inuit (Aboriginal people). The territories and Aboriginal land are not considered in this chapter.

3.2.1.1 Land Use and Management

Land use is defined in the *Constitution Act* as being the jurisdiction of the provinces, not the federal government. Hence control over the use and management of private property rests with the provinces, which in turn may pass (devolve) responsibilities to local government. Planning and heritage conservation fall within provincial jurisdiction. The federal government has only limited scope in this respect.

3.2.2 Federal Government Responsibility for Heritage

3.2.2.1 Land Ownership

The federal government has jurisdiction only over land that it owns; and hence, with respect to heritage conservation, only over historic places that it owns. Responsibility for managing federally-owned historic places rests with the Parks Canada Agency, an entity that reports to the Minister of the Environment and the Privy Council Office. The parks branch (now Parks Canada) was organised in 1911 within the former Department of the Interior. Canada's is the oldest national park system in the world. Since the adoption of

⁵⁶ See below, Chapter 3.3.1.

the *Historic Sites and Monuments Act, 1919*, Parks Canada (and its predecessor agencies) has held responsibility for both National Parks and National Historic Sites.⁵⁷

National historic sites are identified and designated by the federal government on the advice of the Historic Sites and Monuments Board of Canada. National historic sites may be publicly or privately owned. Designation does not provide protection, only commemoration. The federal government assists in the conservation of some privately-owned national historic sites by means of cost-sharing agreements.



Fig. 2. Fort Langley National Historic Site in British Columbia, a reconstructed fur-trade post, is a federally-owned and –managed historic place.

The federal government cannot protect private heritage property because the constitutional separation of powers gives this authority to the provinces. An exception occurs with respect to railway stations, which are usually owned by the operating railways. Since railways are controlled by federal legislation and/or federal agencies, the provinces have no jurisdiction over them. The federal government plugged this gap with the *Heritage Railway Stations Protection Act* (1990).

Another building-type that ‘fell through the cracks’ is lighthouses. They are owned by the federal government and administered by the Department of Fisheries and Oceans. The federal government passed the *Heritage Lighthouse Protection Act* (2008) to protect the most important of these as they are eliminated from service and pass into the hands of community organisations. Both the *Railway* and *Lighthouse Acts* are administered by Parks Canada. Designations are recommended by the Historic Sites and Monuments Board of Canada.

3.2.2.2 Heritage Policy

Parks Canada is the principal source of heritage policy in Canada. The federal government seeks provincial agreement with its policy initiatives through suasion and by establishing federally-funded heritage programmes. As an example, the federal Historic Places Initiative (c.1998-2010) created the *Standards and Guidelines for the Conservation of Historic Places in Canada* (*Standards & Guidelines*, revised 2010), which provides guidance for the treatment of all historic places and are applicable to public and private property in

⁵⁷ Parks Canada. Retrieved on 22 August 2013, website: <http://www.pc.gc.ca> and C.J. Taylor, *Negotiating the Past: The Making of Canada’s National Historic Parks and Sites*, Montreal: McGill-Queens University Press, 1990.

any country; a template for writing statements of significance; and the Canadian Register of Historic Places.⁵⁸ Provinces that participated in these programmes and accepted the related policies (e.g., BC) received generous programme funding; those provinces that did not were left unfunded (e.g., Ontario).

The Historic Places Initiative was intended to produce a federal *Historic Places Act*, but the legislation never reached the floor of Parliament.

Another innovative policy is the *Cultural Resource Management Policy* (1994, revised 2013), which provides guidance for the management of national historic sites.⁵⁹

Canada has signed UNESCO's *World Heritage Convention* of 1972 and adheres to its policies. At present Canada has 17 sites inscribed on the World Heritage List, of which 8 are cultural and 9 are natural. Canada has not yet adopted UNESCO's *Convention for the Safeguarding of the Intangible Cultural Heritage* (2003). The federal government, through Parks Canada, respects (and contributes to) international heritage doctrine produced by ICOMOS. Compliance to this doctrine by all countries is voluntary.

3.2.3 Provincial Government Responsibility for Heritage

3.2.3.1 Provincial Heritage Legislation

As mentioned in Chapter 3.2.1, the provinces are responsible for the use and management of land. Therefore they hold responsibility for heritage conservation with respect to all property that is not federally owned or under federal jurisdiction, including all privately-owned property. Land in First Nations (Aboriginal) reserves is under federal jurisdiction and cannot be controlled by the provinces.

Each province has adopted its own heritage conservation legislation. In BC, the original heritage legislation was the *Heritage Conservation Act* (RSBC 1996, c. 187), first enacted in 1977, which vested responsibility and powers for conservation with the Province.⁶⁰ Subsequently some powers devolved to local government in the *Municipal Act* and the *Vancouver Charter*. The legislation was amended in 1994, with most of the responsibility for heritage conservation passed on to local government. Today the powers and the 'tools' are mostly contained in Section 27 of the *Local Government Act* (RSBC 1996, c. 323).⁶¹ The powers include the designation (protection) of historic places, including buildings conservation areas; the tools include the incentives described below in Chapter 3.3. This is followed by all local governments except Vancouver, whose powers for heritage conservation are stated in Part 28 of the *Vancouver Charter* (SBC 1953, c. 55).⁶²

⁵⁸ "The Standards & Guidelines for the Conservation of Historic Places in Canada". Retrieved on 22 August 2013 under Canada's Historic Places, website: <http://www.historicplaces.ca/en/pages/standards-normes.aspx> and "About Us". Retrieved on 22 August 2013 under Canada's Historic Places, website: <http://www.historicplaces.ca/en/pages/about-apropos.aspx>.

⁵⁹ "Cultural Resource Management Police". Retrieved on 22 August 2013 under Parks Canada, website: <http://www.pc.gc.ca/docs/pc/poli/grc-crm/index.aspx>.

⁶⁰ "Heritage Conservation ACT". Retrieved on 22 August 2013, website: http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96187_01. The effectiveness of heritage programmes in BC before the 1990s legislation is analysed in Leah Lyn Holman, *When it's gone it's gone: Assessing the effectiveness of heritage conservation support tools in British Columbia*, University of British Columbia, 1996.

⁶¹ "Local Government ACT". Retrieved on 22 August 2013, website: http://www.bclaws.ca/EPLibraries/bclaws_new/document/LOC/freeside/--%20L%20--/Local%20Government%20Act%20RSBC%201996%20c.%20323/00_Act/96323_31.xml.

⁶² "Vancouver Chapter". Retrieved on 22 August 2013, website: http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/vanch_00.

The heritage provisions of the *Vancouver Charter* primarily address registration and designation, discussed in Chapter 3.1.2; and tools and incentives, addressed in Chapter 3.3.

The *Heritage Conservation Act* (as amended) remains in place, giving the Province the ability to protect heritage property. In actuality, the Province protects and manages archaeological sites beyond the boundaries of local governments, but not built heritage.

Heritage policy and programmes in BC are the responsibility of the Heritage Branch, which currently resides in the Ministry of Forests, Lands and Natural Resource Operations.⁶³ This connects heritage conservation directly with land use. The Branch has limited resources with which to develop policy, and to a large extent has followed federal government policy as disseminated by Parks Canada. BC was an enthusiastic participant in the Historic Places Initiative.

The Heritage Branch has been placed within several different ministries in recent decades, including those that were responsible for tourism, for culture, and for municipal affairs.

In Ontario, by comparison, the procedures for provincial and municipal heritage conservation are provided for in the *Ontario Heritage Act* (RSO 1990, c. O.18), first enacted in 1974 and most recently receiving significant amendments in 1995.⁶⁴ Part IV of the Act regulates the “protection of property of cultural heritage value of interest.” It provides for each municipality keeping “a register of property situated in the municipality that is of cultural heritage value or interest”, and for a municipality to be advised by a municipal heritage committee (formerly called a local architectural conservation advisory committee). Part V of the *Ontario Heritage Act* addresses conservation districts’ and Part VI “resources of archaeological value.”

The administration of heritage policy and programmes in Ontario resides within the Ministry of Tourism, Culture and Sport. The Ministry has been effective in developing heritage policy. It has done this largely independently from federal government policy and programmes.

3.2.3.2 Provincial Planning Legislation

Provinces also enact planning legislation, which is the principal regulatory legislation for controlling land use. In general, however, the provincial planning acts generally do not address heritage conservation other than peripherally. BC’s former *Planning Act* has been replaced by Section 26 of the *Local Government Act*.⁶⁵ It makes occasional reference to heritage matters (e.g., enabling municipalities to pass bylaws addressing heritage property), but only to link heritage conservation procedures in Section 27 with planning and land-use procedures.

An exception is the designation of heritage areas in Vancouver (see Chapter 3.1.2). Because the *Vancouver Charter* does not enable the city to use its heritage programme to designate heritage conservation areas, Vancouver uses the Zoning and Development Bylaw (enabled by the planning provisions of the *Local Government Act*) for this purpose (see Chapter 3.2.4 for the bylaw).

⁶³ “Heritage”. Retrieved on 22 August 2013 under British Columbia, website: <http://www.for.gov.bc.ca/heritage/>.

⁶⁴ “Ontario Heritage ACT”. Retrieved on 22 August 2013, under Ontario, website: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90o18_e.htm.

⁶⁵ “Local Government ACT”. Retrieved on 22 August 2013, website: http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/96323_30.



Fig. 3. Gastown in Vancouver has been declared a heritage area under the City's Zoning and Development Bylaw.

Ontario has enacted the *Planning Act* (RSO 1990, Chapter P.13). It does not address heritage conservation at all. The *Ontario Municipal Board Act* (RSO 1990, Chapter O.28), establishes the Ontario Municipal Board (OMB), which formerly adjudicated disputes over the designation of heritage property, but since 1995 this responsibility has been passed on to the Conservation Review Board (CRB), enabled by the *Ontario Heritage Act*. This may have been in part a response to the criticism that members of the OMB generally did not have training in heritage conservation, and so their decisions with respect to heritage adjudication were unpredictable.⁶⁶

3.2.3.3 Provincial Heritage Trusts and the Provincial Ownership of Heritage Property

When the Canadian provinces established their heritage legislation in the 1970s, most formed provincial heritage trusts. Most were empowered to own property on behalf of the Crown, and to support privately- and publicly-owned heritage property with grants, loans, and other tools.

The British Columbia Heritage Trust was formed in this spirit in 1977. It was formerly quite effective, particularly in the 1980s and 1990s when it provided a number of large grants to assist with the conservation of heritage property. The government terminated the BC Heritage Trust in 1993, following a core review that determined that it did not perform an essential service. Its granting function was superseded by the Heritage Legacy Fund of British Columbia, established with \$5 million of seed money from the Provincial government. The Heritage Legacy Fund is operated by Heritage BC, a non-profit organisation. Its funds are limited and the grants smaller, so its programmes are less effective than those of its predecessor.⁶⁷

The *Ontario Heritage Act* of 1974 established the Ontario Heritage Foundation, known today as the Ontario Heritage Trust. The Trust is very active. It holds 27 properties; a few are operated as museums (several with fine collections), but most continue in their former uses. It also holds a number of heritage easements (see Chapter 3.3.2; these provide control over private property). In addition, the Trust's

⁶⁶ Robert Shipley and Nicole McKernan, "A Shocking Degree of Ignorance Threatens Canada's Architectural Heritage" in *Architecture Canada* 36, no. 1, 2011, pp. 83-91.

⁶⁷ "Heritage Legacy Fund". Retrieved on 22 August 2013, under Heritage BC, website <http://www.heritagebc.ca/funding/heritage-legacy-fund>.

programs include commemoration with plaques, stewardship of natural heritage, archaeological excavations, preparation of the informative Ontario Heritage Tool Kit, and more.⁶⁸

3.2.3.4 Environmental Legislation

Both the federal and provincial governments have enacted environmental legislation, which can affect heritage development directly. The federal legislation is the *Canadian Environmental Assessment Act* (SC 1992, c. 37)⁶⁹ which regulates projects that are controlled by federal legislation.

Provinces regulate other projects of a particular scale or for other reasons determined by the province. The legislation in BC is the *Environmental Assessment Act* (SBC 2002, c. 43).⁷⁰ The act addresses projects that may have a “significant adverse environmental, economic, social, heritage or health effect”, including heritage in this list. Consequently Environment Impact Assessments (EIA) are intended to address heritage. In practice most EIAs look carefully for prehistoric archaeological remains, which are legally defined as pre-1846 Aboriginal remains. The European and Asian heritage is not regulated and is therefore usually addressed superficially or not at all.

On occasion an interested party objects to the inadequate treatment of heritage resources in an EIA. One instance occurred in 2007, when the Municipality of Delta was dissatisfied with the cursory way in which its non-Aboriginal heritage was handled in the EIA for the proposed South Fraser Perimeter Road, a highway project south of Vancouver undertaken by a provincial government agency. The agency complied and the outcome was a separate ‘heritage assessment’.⁷¹

The heritage impact assessment (HIA) is evolving into a self-standing document, albeit with a methodology that is similar to that for EIAs. The Heritage Branch now requests that municipalities include a HIA as part of conservation plans that they undertake or commission from consultants. This is a recent interpretation of Section 14 of the *Heritage Conservation Act*, which empowers the Minister to order a ‘heritage inspection’ or a ‘heritage investigation’ where, in the minister’s opinion, land may have heritage value or contain heritage property, and may be subject to alteration by natural or human causes. The Heritage Branch issued model terms of reference for HIAs in May 2013.⁷² These are recent developments; the manner in which they are observed and the outcomes will emerge after some time.

It cannot be said overall whether environmental legislation ‘strengthens’ heritage conservation. Rather it adds additional dimensions to heritage management, some strong (e.g., the very requirement for an HIA) and some weak (e.g., the frequent lack of concerted mitigation with a negative assessment).

⁶⁸ Ontario Heritage Trust. Retrieved on 22 August 2013, website: <http://www.heritagetrust.on.ca/Home.aspx?lang=en-CA..> The OHT traces its roots to 1967. “Ontario Heritage Tool Kit”. Retrieved on 22 August 2013, under Ontario, website: http://www.mtc.gov.on.ca/en/heritage/heritage_toolkit.shtml.

⁶⁹ Canadian Environmental Assessment Act (S.C. 1992, c. 37). Retrieved on 22 August 2013, under Justice Laws Website, website: <http://laws-lois.justice.gc.ca/eng/acts/c-15.2/>.

⁷⁰ “Environmental Assessment ACT”. Retrieved on 22 August 2013, website: http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_02043_01.

⁷¹ Commonwealth Historic Resource Management Limited, *SFPR Heritage Assessment: The Potential Effects of the South Fraser Perimeter Road on Heritage Resources and Cultural Landscapes in Delta*, Vancouver, August 2008; re-issued as Document 416 of the Gateway Program.

⁷² “Heritage Impact Assessments in British Columbia – Terms of Reference”. Retrieved on 22 August 2013, under BC Heritage Branch, website: http://www.for.gov.bc.ca/ftp/heritage/external!/publish/web/Heritage_Impact_Assessment_TOR.pdf.

3.2.4 Local Government Responsibility for Heritage

3.2.4.1 Local Government Bylaws

Local governments (cities, incorporated towns, counties, and regional districts) generally place their heritage conservation programmes within the municipal department responsible for planning and development.⁷³ Smaller communities appoint one or more planner responsible for heritage; large ones have dedicated heritage planning staff.

Local governments pass bylaws (the equivalent of ordinances) to exercise the powers given to them by the *Local Government Act* in BC, or by the appropriate provincial heritage legislation elsewhere. Local government bylaws that affect heritage management include:

- Bylaws that list recognised property, designated property, and heritage conservation areas. (See Chapter 3.1.2)
- Bylaws that provide for heritage programmes, including grants, incentives, and other activities. (See Chapter 3.3)
- Bylaws that enforce minimum maintenance standards. These help prevent demolition by neglect – an owner's deliberately allowing a building to deteriorate to the point where repair may become unfeasible. Local government may have the authority to enter a building to inspect its condition and to force the owner to make urgent repairs – or do the repairs itself, at the owner's expense.

In Vancouver heritage is addressed in the *Zoning and Development Bylaw* only to the extent necessary to reference the provincial enabling legislation and the relevant heritage bylaws.

3.2.4.2 Building Development

Building permits are issued on the basis of compliance with the *Zoning and Development Bylaw* and with applicable building codes (regulations that address life and fire safety).

Building codes

Building codes are in place at the federal, provincial, and municipal levels. Building codes and related regulations have a significant effect on the planning and design of conservation projects. Sometimes they serve as an incentive, sometimes as a disincentive.

Traditional 'prescriptive' codes, which specify the detailed requirements for construction, work well for new construction. However, this system can pose unreasonable constraints on the rehabilitation or renovation of existing buildings, whether or not they have heritage significance, since contemporary building systems and materials cited in the codes often differ from those used in the past. Old buildings usually must be upgraded to comply with current codes if they undergo a substantial alteration, which is defined as a change in use or work in excess of an established threshold.

A recent solution to this dilemma has been to supplement the building codes with special provisions for old buildings that provide the means for alternative compliance (or equivalences). These provisions are in effect incentives for rehabilitation, since they reduce inherent biases against conservation. Sometimes the old-building provision is a prescribed alternative building system; in other cases the renovated building may be

⁷³ Planning and development generally occur within the same municipal department in Canada, whereas in Hong Kong they are in distinct bureaus.

permitted to meet a lower standard or at least be no more hazardous than its pre-rehabilitation condition, although this is a subjective call that is interpreted by the responsible building official.⁷⁴

A new kind of code has begun to replace the prescriptive code in recent years. Called a performance-based (or objective-based) code, it establishes the required performance that a building system must meet, without specifying the technical solution. For example, it will stipulate the fire-rating of a partition or the egress requirements in terms of volume of people and time to exit, without dictating the method of construction or precise number of staircases or doors. The proponent must demonstrate that the minimum level of performance (the objective) is met.

A performance-based code is equally and indiscriminately applicable to both new and old construction. It is not an incentive, but it does reduce the negative biases of prescriptive codes. The strengths of performance-based codes include their encouragement of innovation and the frequent reduction of building costs; weaknesses include the sometimes broad articulation of performance-based requirements in ways that are not readily measurable, and which are difficult to administer and enforce.⁷⁵

Energy codes

Energy codes, a product of the drive for achieving sustainability in the building industry, may discriminate against old buildings. They often prescribe new products with high thermal efficiency without taking into consideration their appearance or their lack of heritage authenticity. Some jurisdictions have succeeded in negotiating exemptions for historic places. As an example, Heritage BC, a province-wide advocacy group, successfully lobbied the provincial government to exempt recognised historic properties from the window-replacement requirements for residential conversions under the *Homeowner Protection Act*.⁷⁶

Accessibility standards

Accessibility standards for disabled persons can also pose hurdles for heritage conservation. In the U.S., the *Americans with Disabilities Act* (ADA 1990) sets prescriptive provisions for establishing unimpaired access to new and existing buildings that accommodate the public, without exempting historic properties. Parallel regulations in Canada are at present voluntary, but may soon become mandatory. Barriers to access may be created by entrances, ramps and stairs, surface textures, parking, size of doorways, interior corridors, toilets, signage, and more. The recommended upgrades can have a serious negative impact on historic places.

3.2.4.3 Local Government Ownership of Heritage Property

Most local governments in BC own a number of significant heritage properties. These are buildings, sites, and landscapes that have come down to it over the years and which continue to be operated for government and public purposes. The same situation occurs with respect to the provincial government.

⁷⁴ The local building official may be personally liable should an approved construction system fail, so officials are understandably conservative.

⁷⁵ Canada's National Building Code (2005) is objective-based (performance-based). Revisions are currently in progress. The new code will likely contain a separate section on existing buildings with specific reference to heritage conservation, with an intended objective being to ensure the protection of heritage values. Susan Coles et al, *Building Codes and Historic Places: Making Connections - Summary Report 2009-2010*, Ottawa: Public Works and Government Services Canada, Heritage Conservation Directorate, 2010.

⁷⁶ "Persistence Pays Off!" in *Heritage BC Quarterly*, Summer 2010, p. 4. The collaborators were Heritage BC and the Heritage Branch of the provincial government, which lobbied another government agency to achieve the exemption.



Fig. 4. Vancouver City Hall (1936) is a municipally designated building owned by the City of Vancouver.

As a general principle, neither local nor provincial governments acquire private heritage property as a means of conservation. Conservation is usually achieved by protection (Section 3.2) and by means of incentives (Chapter 3.3).

3.2.4.4 Land Resumption

Canada has no direct equivalent to Hong Kong's land resumption. Canada speaks of privatizing or alienating Crown lands (i.e., government-owned lands, which are usually held by the provinces). Alienation occurs by leasehold or by freehold purchase when the government decides to make such lands available. If the government chooses to re-possess the land, it may do so under powers of expropriation for the public good (the equivalent of eminent domain in the U.S.), in which case government is expected to pay fair market value; or it may purchase the land in the open, private market.

3.3 Incentives

The most direct form of heritage intervention to a threatened private property is for government to acquire ownership. This is a direct purchase and not an incentive. Acquisition can be justified and effective if ownership of the historic place is consistent with government policy, and if government is willing and able to commit sufficient resources on a long-term basis. However, it is not a popular proposition in times of financial restraint or when there are competing opportunities for government action. For this reason, Canadian governments at all levels rarely acquire privately-owned, at-risk heritage properties.

The practical alternative is heritage incentives. Incentives usually cost considerably less than acquisition. An incentive can also be more effective than government acquisition if the existing owner will commit to effective ongoing management after having received the benefits of the incentive.

The incentive system provides a consideration to a private (or institutional) property owner in return for a conservation intervention. The principle is one of *quid pro quo* – the owner or developer gives the community a heritage amenity (i.e., enjoyment of the historic place) and the community gives the owner a

benefit in return. Eligibility is based on the property's being designated or on the heritage register. No means test is applied.

As noted below, BC municipalities request the owner's consent for designation, in order to avoid suits for compensation. Consent is usually achieved by offering the owner or developer an incentive in lieu of compensation. The recipient is required to formally accept the incentive in lieu of compensation and to waive the right to any future claim for compensation.

Heritage incentives may be financial or non-financial. The two categories are discussed below.

3.3.1 Financial Incentives

Financial incentives involve an outlay of funds by government (direct incentives) or foregoing government revenues (indirect incentives). Direct incentives provide funds to a property owner, nominally to assist with conservation and development costs. Indirect incentives offer fiscal benefits to encourage private investment in conservation.

3.3.1.1 Direct Incentives

Compensation

The concept of compensation is based on the somewhat outdated, and often erroneous, perceptions that the cost of conservation work (or the opportunity cost of foregoing some renovation and development opportunities) exceeds the cost of non-conservation construction; and that designation reduces property values. According to this belief, a property owner deserves to be compensated for the alleged additional cost. This is indeed sometimes the case. However, at times the opposite is true: the cost of preservation or rehabilitation may be significantly less than demolition and new construction; and in many situations designation either does not affect property values or raises them.

In BC, the owner of a designated property may demand payment equal to the loss of market value, where designation is proved by objective appraisal to cause a reduction.⁷⁷ Likewise in the adjacent province of Alberta, if designation (protection) decreases the economic value of a building, structure or land, the City must provide the owner with 'compensation for the decrease in economic value.'⁷⁸

In order to avoid paying compensation, BC municipalities rarely designate properties without the owner's consent. They request consent, which is usually provided in return for an incentive.

A controversial 'hostile' designation (i.e., a designation made against the owner's wishes) occurred in Victoria a few years ago. This was the designation and consequent protection of the interior of the popular and historic Rogers Chocolates retail store. The owner sued the City for compensation and settled for a payment of CAD\$598,000 plus 85% of legal costs.⁷⁹

⁷⁷ "Local Government Act" Section 969. Retrieved on 22 August 2013, website: http://www.bclaws.ca/EPLibraries/bclaws_new/document/LOC/freeside/--%20L%20--/Local%20Government%20Act%20RSBC%201996%20c.%20323/00_Act/96323_31.xml. This is an improvement over earlier legislation, which left the amount of compensation open-ended.

⁷⁸ Historical Resources Act, R.S.A. 2000, chap. H-9, 28(1). Retrieved on 22 August 2013, under Alberta Queen's Printer, website: <http://www.qp.alberta.ca/documents/Acts/h09.pdf>.

⁷⁹ "Victoria Must Pay for Designation" (Heritage BC, 2010). Retrieved on 22 August 2013, under Heritage BC, website: <http://www.heritagebc.ca/blog/victoria-must-pay-for-designation> (accessed 1 March 2013). The City was criticized for having lacked the political will to fight the suit aggressively.

Grants

The most common form of financial incentive is a grant. Money is given to the property owner to assist with the capital cost of conservation work, thereby lessening the financial burden. Grants may be nominal or substantial. Even a nominal grant can have considerable impact, since it gives the property owner a sense of being valued by society and encourages the conservation activity. The advantage of a grant is that it is the most direct form of incentive. The disadvantage to the granting agency is that it is a direct and non-reimbursable expense.

The federal government has had granting programmes from time to time. The most recent one was the Commercial Heritage Properties Incentive Fund (2004-2010), which provided grants to privately-owned or –leased commercial properties that were listed on the Canadian Register of Historic Places. Work had to comply with the *Standards & Guidelines*.⁸⁰



Fig. 5. The exterior of the Chinese Freemasons Building in Vancouver was restored with assistance from the former Commercial Heritage Properties Incentive Fund.

The Province of BC offered grants through the former BC Heritage Trust, but the Trust and the granting programme were discontinued some time ago. Provincial funds provided the initial capital for the present Heritage Legacy Fund of BC, operated by Heritage BC, a non-profit organisation.⁸¹

The City of Vancouver provides conservation grants (Heritage Façade Rehabilitation Programme) to property owners in the Downtown East Side, which includes the Gastown and Chinatown historic areas. However the grants are seen by the City as being secondary to the primary conservation tool, the non-financial incentives (described in Chapter 3.3.2 below)

A number of granting programmes are available to private property owners in Victoria. The Victoria Civic Heritage Trust provides Building Incentive Programme grants and the Victoria Heritage Foundation

⁸⁰ "The Commercial Heritage Properties Incentive Fund". Retrieved on 22 August 2013, under Parks Canada, website: http://www.pc.gc.ca/APPS/CP-NR/release_e.asp?bgid=669&andorl=bg.

⁸¹ Heritage Legacy Fund. Retrieved on 22 August 2013, website: <http://www.heritagelegacyfund.ca/>.

provides House Grants; both are funded mostly with municipal allocations.⁸² The benefits of these programmes are described at the end of this chapter.

Governments will usually want some assurance of a positive outcome. This is usually achieved by having the owner provide an equal or greater 'matching' investment and requiring that good conservation practice be followed in the work. Another guaranty is to hold back the final payment until completion, but this can place a financial hardship on the grant recipient. The recipient must submit a report at the end of the work and the grantor will usually inspect the quality of work. In theory the grantor can pursue reimbursement if the work is not done properly, but the funds may be difficult to recover.

The grantor will likely also see the funds as an investment in community development, whether the return on investment is measured by its economic, social, and/or cultural benefits.

3.3.1.2 Indirect Incentives

Financial incentives need not put funds into the hands of property owners; they may be just as effective by reducing owners' expenses. A way of achieving this is by providing tax concessions, which has the effect of lowering their tax obligations. A wide array of tax concessions has been made available to encourage conservation work.

Tax incentives have proven to be effective in stimulating private-sector investment in conservation, particularly in the U.S. They are attractive to authorities because their implementation is voluntary and not coercive. On the other hand, they tend to benefit higher-income taxpayers more than lower-income ones, which goes against liberal theories of progressive taxation. Benefits aside, fiscal incentive programs come at a real cost to the treasury, whether as expenditures (e.g., government grants) or foregone revenues (e.g., tax credits). The cost can certainly be justified by the social and economic benefits, both of which contribute to community sustainability.

Property tax exemption

The principal source of revenue for Canadian municipalities comes from the property tax, which is calculated as a percentage of the assessed value of the land and improvements. The property tax has typically worked contrary to the interests of heritage conservation. Most jurisdictions in Canada require that land be assessed at its 'highest and best use' – i.e., the most intense use permissible under current zoning regulations. They therefore overtax 'underdeveloped' properties, such as those built up with smaller-scaled historic buildings. To counteract the biases (disincentives) against historic places, some provinces and cities allow property owners an exemption (or abatement) from property tax in return for approved conservation work to a recognised or protected place. At the end of the exemption period, property tax resumes on the then currently assessed amount. The taxing authority foregoes short-term tax revenues in return for long-term higher property tax revenues, as well as for the economic stimulation of conservation.

The property tax is a provincial power, the benefits of which generally accrue to local government. The Province of BC has enabled local governments to provide property tax exemptions to encourage heritage conservation.

The City of Victoria offers a Tax Incentive Programme (TIP) for downtown heritage buildings. This consists of property-tax exemptions for the adaptation of former commercial buildings to residential units and undertaking structural upgrades for seismic (earthquake) protection – both municipal policy priorities. The length of the tax exemption is determined by a simple formula:

⁸² "Grants Available for Heritage Buildings". Retrieved on 22 August 2013, under City of Victoria, website: <http://www.victoria.ca/EN/main/departments/planning-development/community-planning/heritage/grants.html>.

$$\text{Term of exemption (years)} = \frac{\text{Cost of seismic upgrading}}{\text{Current taxes}}$$

The maximum term under the program is ten years. The city forgoes tax revenue from the property during this time, but in the eleventh year it resumes at its then current rate.⁸³

Income tax credits or deductions

Tax incentives for historic preservation were established in U.S. practice with the *Tax Reform Act* of 1976. It provides income tax credits for private-sector rehabilitation of commercial buildings listed on the National Register of Historic Places or contributes to a registered historic district, as long as work conforms to the Secretary of the Interior's Standards for Rehabilitation.

In Canada the imposition of income tax is a federal power. It was intended that the Government of Canada follow with similar legislation as part of the Historic Places Incentive of the 1990s, but the legislation never reached Parliament and Canada still does not provide income tax incentives. The present federal government continues to indicate no interest in providing incentives for conservation.

3.3.1.3 Success of Financial Incentives in Victoria, BC



Fig. 6. The rehabilitation of the Oriental Hotel in Victoria benefitted from the city's Tax Incentive Program.

The City of Victoria offers an array of financial incentive programmes, using community partners to administer some. All are funded by the City. The incentive programs comprise:

- House Grants Programme: Grants to owners of designated houses; administered by the Victoria Heritage Foundation
- Building Incentive Programme for Commercial & Institutional Buildings: Grants for rehabilitation and structural / seismic upgrades; administered by the Victoria Civic Heritage Trust
- TIP for Downtown Heritage Buildings: Ten-year tax exemptions for the provision of new residential units and structural upgrades; administered by the City of Victoria

⁸³ Steve Barber, "Heritage Tax Incentives" in *Input*, 41:1, Winter, 2013, pp. 18-21. Retrieved on 22 August 2013, website: http://www.reibc.org/_Library/Input_Magazine/Input_Winter_2013_web.pdf.

- Design Assistance Grants: Assistance for rehabilitation design (discontinued)

These programmes are seen by elected officials and residents as worthwhile municipal investments. In addition to implementing several official policies (conservation of historic places, increasing residential units in the downtown core, and seismic upgrade of commercial buildings), they yield a strong return on investment. A study of benefits discovered that:

- The Building Incentive Programme leverages \$28.08 in private investment for every \$1 in grants
- The Building Incentive Programme generated more than \$123m in private investment for 196 properties (1990-2012)
- The TIP generated 630 new residential units and seismic upgrades for 25 buildings (1998-2013)
- The House grants helped more than 200 houses and generated \$1.8m in private investment (to 2002)
- The tax base increased faster than for non-supported buildings (for TIP projects, the value of property taxes has increased 131% vs. an average of 57%) This ensures that the property tax revenues foregone over ten years will be recovered over time
- Tourism increased⁸⁴

3.3.2 Non-Financial Incentives

Non-financial incentives generally allow variances to planning regulations in return for a conservation initiative. No direct costs are involved other than increased staff time. Non-financial incentives may incur indirect costs, such as necessitating increased urban infrastructure (e.g., expanding utilities and transit to serve additional density), and they may have a negative impact on urban design. Non-financial incentives also often provide significant economic benefits to the community.

Non-financial incentives shift the cost of conservation from the public to the private sector. In some cities, including Vancouver, anticipation of the benefits to be derived from incentives encourages property owners to seek registration or designation in order to qualify for the program. They recognise that development and conservation are compatible and mutually supportive.

3.3.2.1 Regulatory Relaxations / Amenity Bonuses

Municipalities apply a variety of relaxations to zoning regulations in return for a heritage amenity (and often for other kinds of public amenities as well). This section of the chapter identifies some of the most common types of relaxation.⁸⁵

The principle behind non-financial incentives is incentive zoning, a technique whereby development that meets established policy objectives is encouraged with a system of rewards. Incentive zoning was introduced with the *New York Zoning Resolution* of 1961.⁸⁶ Incentives, often in the form of additional height

⁸⁴ City of Victoria, "Tax Incentive Program Fact Sheet" updated July 9 2013; Victoria Civic Heritage Trust, "1990-2012 Grant Summary" September 30, 2012. Rising construction and property-acquisition costs over the years have made the incentives less effective than formerly. Recommendations for increasing the incentives were proposed in Coriolis Consulting Corp., Busby Perkins + Will, and TBKG, *Downtown Victoria Heritage Building Economic Study*, Victoria, BC: City of Victoria, 2007.

⁸⁵ Jeannette Hlavach, "Heritage Planning in Vancouver" in *Conference Papers on International Conference: Heritage and Education*. ed., Antiquities and Monuments Office, Hong Kong: Leisure and Cultural Services Department, 2004, pp. 141 – 149.

⁸⁶ Barry Cullingworth and Roger W. Caves, *Planning in the USA: Policies, Issues, and Processes*, 3rd ed. Abingdon and New York: Routledge, 2009, pp. 115-116.

and/or density, are offered to induce developers or property owners to provide public amenities that are regarded as benefitting the community at large. The 1961 *New York regulation* bonussed the creation of open space (plazas), which it called privately owned public spaces, in the midst of a development boom.

Today the range of public amenities that are rewarded has been broadened to include the provision of things as diverse as cultural facilities, day-care centres, affordable and/or accessible housing, parks, and the protection of environmental attributes. The conservation of historic places is also seen as a public amenity, and therefore it too is eligible for incentive zoning.

The value of incentive zoning was described a decade after its introduction by American law professor John Costonis. He wrote:

By modifying the economics of downtown development, these programs encourage development decisions that would normally be precluded by the harsh realities of the marketplace. Where successful, they have enabled cities to channel development in accordance with municipally selected urban design policies.⁸⁷

The rewards usually consist of regulatory relaxations and bonuses (called amenity bonuses). Relaxations, which over-ride zoning regulations, may involve items such as land use, lot coverage, height, or parking, but not human safety. Bonuses can be provided in the form of additional plot ratio (also called density). Incentives are given on a discretionary basis according to local criteria.

In BC any variance to the zoning (or other) bylaw or an extraordinary permit is formally recorded in a *Heritage Revitalization Agreement*. This is a voluntary written agreement negotiated by local government and the property owner and is registered on the land title.

The most common relaxations, bonuses and exemptions are described below.

Lot coverage

Zoning typically controls the percentage of the site that can be built upon, as well as dictating minimum setbacks from the four lot lines. Incentives may increase coverage and reduce setbacks, often with the proviso that neighbours who may be impacted not object to the changes. The result can provide additional buildable land for new construction that complements the historic building, thereby adding floor space without making major alterations to the heritage resource. Amending coverage and setbacks may also permit moving the historic building within the site, again allowing more unencumbered space for new construction.⁸⁸

⁸⁷ John J. Costonis, "The Chicago Plan: Incentive Zoning and the Preservation of Urban Landmarks" in *Harvard Law Review* 85, no. 3, 1972, 575-576.

⁸⁸ Moving a historic building is not considered good conservation practice and is discouraged by the charters and standards; nevertheless many cities allow it as a compromise position.



Fig. 7. The Thomas Fee House (1904) in Vancouver was moved to the corner of the site and a new addition built behind and beside it in 1994.

Density bonus

A density bonus (plot ratio bonus, floor area bonus) is the heritage incentive of choice in Vancouver and many other cities. It is particularly useful in the case of both commercial and residential developments, when a historic building comprises a part of a larger development. Additional floor space in a strong economy means additional profits. The incremental revenue provides an incentive not to demolish the historic place and can be applied to the cost of its conservation. The tool is effective when there is strong pressure for new development, and ineffectual when there is little demand for development. The bonus floor area is usually expressed as additional height and/or bulk.

The City calculates the size of the bonus, using a complicated formula that is based on the developer's estimated capital costs and operating pro forma. The principle is that the owner should be compensated for any incremental costs incurred as a result of the conservation requirements.



Fig. 8. The large, mixed-use Woodward's redevelopment in Vancouver, which rehabilitated a portion of the old department store (1908) and erected new buildings beside it (2010), benefitted from a significant density bonus.

Since, in legal terminology, bonus floor space is created *ex nihilo*, it adds density to a neighbourhood over and above what has already been authorised by zoning, leading to the possibility of additional pressure on infrastructure (e.g., public services and facilities, transit, and utilities) and lessening the quality of urban design, and so it may have a negative impact on the neighbourhood environment.



Fig. 9. The Elan development in Vancouver (right) received a height and density bonus in return for the conservation of the Federal Motors Company Building (1920; left and at the left of the drawing). The scale of the new high-rise has an impact on the area.

Subdivision and infill

Most zoning regulations permit only one 'principal building' on a lot. In residential situations when space permits, allowing a second house on the property may provide the property owner with revenue with which (s)he can undertake maintenance or conservation work. The second house may be either freehold, in which case the property must be subdivided into two lots; or leasehold, in which case subdivision may not be

necessary. In either situation a zoning variance is required and the municipality requires assurance that the added revenue is used for the intended purpose.



Fig. 10. A new infill building (1990; visible at the left rear) was permitted to be built behind the Barber House (1936) as an incentive.

Land-use variance

Zoning stipulates the use(s) to which a property may be put. As demographic and economic conditions change, it can be challenging to accommodate the prescribed use(s). This is a particular problem in historic urban neighbourhoods and rural areas with large properties that were originally developed with large mansions and which remain zoned for single-family use. A declining number of purchasers are able or willing to invest in and maintain large, older houses. Many among the wealthy prefer to build new houses designed to their particular specifications, rather than acquire historic houses that they don't see as meeting their needs or tastes.

An effective solution is a land-use relaxation that authorises multiple-family use or use as a group home. Another solution may be to permit subdivision or infill. A proposed change of this kind may be opposed by neighbours who have a vested interest in keeping the *status quo* and who perceive it as a risk to their investment. However, preventing change poses the threat of reducing market demand and leaving properties vacant, which in could lead to the ultimate failure of the neighbourhood. A delicate balance – a compromise – must be achieved between conserving the character of the historic building and conserving the character and values of the larger neighbourhood. Indeed, this principle lies behind all incentive programs.



Fig. 11. Glen Brae (1910), a former private residence in the Shaughnessy Heights neighbourhood of Vancouver, was awarded a land-use variance as a conservation incentive. It is now Canuck Place, a hospice for terminally-ill children.

It may be noted that BC authorities tend to seek active, revenue-positive new uses for old buildings, since it the best way to ensure conservation is for a property to be financially productive. Adaptation to museum use, which was once popular, is rarely recommended.

Parking relaxation

New urban development or a change in use of a historic building may require the provision of a certain number of parking spaces. With new buildings, parking is easily (if expensively) created underground. In rehabilitation projects, it may not be feasible to excavate beneath the existing building to create underground parking. Older commercial buildings often cover most or all of their lots, precluding at-grade parking.

Relaxation of (or exemption from) parking requirements can be a very powerful incentive. Of course this has an impact on the neighbourhood, increasing competition for scarce curb side parking or space in lots and garages. However, since older commercial and institutional buildings are generally located in neighbourhoods that are well served by public transit, demand for parking may be lower than elsewhere in the city.

This is not very relevant to the business districts of Hong Kong, where parking plays a much lesser role than in Canada.

Sign ordinance relaxation

Vancouver and other cities have ordinances that determine the maximum size, location and permitted sources of illumination for signs. Generally signs are quite modest in scale compared to Hong Kong.

Many retailers install the largest sign permissible to gain exposure. The Vancouver heritage programme enables the city to vary the sign ordinance in return for conservation.

An interesting instance of this involved the international chain Toys 'R' Us. The company leased new retail premises that had been on the site of long-time automobile dealership BowMac (Bowell McLean Motor Company). The old BowMac sign, 29 metres high (1959), illuminated with 3,500 incandescent bulbs and neon tubing, and visible for miles remained standing and had been placed on the Vancouver Heritage Register. The Vancouver Heritage Commission offered the retailer the options of superimposing a new, semi-transparent and reversible (removable) sign – which would not conform to the sign bylaw – on the

landmark or replacing it with a small new sign as permitted by the ordinance. The toy company wisely chose the former for its prominence.



Fig. 12. The landmark BowMac sign (1959) was conserved and overlaid with a new, non-conforming sign for Toys 'R' Us.

Density transfer/ Plot-ratio transfer

A very useful incentive that was developed specifically to encourage the conservation of historic buildings in downtown urban settings is density transfer (plot-ratio transfer; also called transfer of density rights, transfer of development rights (TDR)).

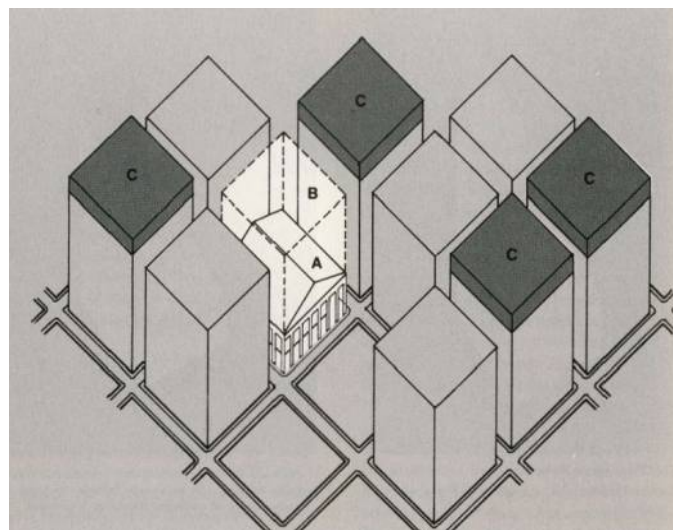


Fig. 13. The principle of density transfer: Building A is developed to less than its permitted floor area. The unused floor area (B) is transferred to several other buildings (C) to redistribute the density.

(from John J. Costonis, *Space Adrift: Landmark Preservation and the Marketplace*, Urbana, University of Illinois Press, 1974.)

The principle is simple and sophisticated at the same time. Local zoning regulations authorise a certain maximum plot ratio for a particular lot. Historic buildings often have less floor area than permitted. A density transfer allows the owner of a historic building to sell the unused floor area (or unrealized plot ratio) from the historic place (called the 'donor site') to the owner(s) or developer(s) of one or more other sites (called 'receiver sites') at a market- or city-determined price. The revenue provides an attractive incentive that helps pay for conservation. The tool can be very effective when there is strong demand for floor space, but less so when demand weakens. Density transfer does not create new space; it simply redistributes space that has been already authorised, and which is therefore within the capacity of existing infrastructure.⁸⁹

New York City was again the innovator of this tool. It adopted a density transfer program in 1968, but for a host of reasons the regulation proved difficult to use. A serious impediment was that transfers could be made only to an adjacent property, and so often there was no eligible receiver site. Other issues included inadequate analysis of the economic and urban design consequences of the transaction, onerous administrative requirements, and unease among the interested parties in accepting the legality of the transfer mechanism.⁹⁰

Lawyer John Costonis took the concept of density transfer a step further with his 'Chicago Plan', a program developed for the conditions in that city but applicable generally to urban areas in which historic places are threatened by pressure for new development. His plan (somewhat simplified) allows unused density to be transferred to any appropriate site within what he termed a 'transfer district'. Costonis proposed the creation of a municipal 'development rights bank', into which would be deposited rights transferred from publicly owned historic places in the district, rights donated by private owners, and rights taken from owners who are unwilling to participate in the system and therefore have their properties possessed by the city through powers of eminent domain (expropriation).⁹¹

⁸⁹ The City of Vancouver has deviated from this principle and allows new density to be created ex nihilo. See below.

⁹⁰ Frank B. Gilbert, "Saving Landmarks: The Transfer of Development Rights" in *Historic Preservation* 22, no. 3, 1970, pp. 13-15. and John J. Costonis, "The Chicago Plan: Incentive Zoning and the Preservation of Urban Landmarks" in *Harvard Law Review* 85, no. 3, 1972, p. 578. The legality of density transfer was upheld by the U.S. Supreme Court (1978) in *Penn Central Transportation Co. v. City of New York (Grand Central Terminal)*.

⁹¹ 'The Chicago Plan' in John J. Costonis, *Space Adrift: Landmark Preservation and the Marketplace*, Urbana, University of Illinois Press, 1974.



Fig. 14. Park Place (1984; left) incorporated the unused density from Christ Church Cathedral; financial proceeds enabled the conservation of the historic cathedral.

Vancouver was among the first cities to use the technique. In 1971 Vancouver's Christ Church Cathedral proposed to raise much-needed funding for its ministry by demolishing its late-19th-century downtown church and replacing it with an 18-storey office tower and underground sanctuary. A group of citizens and community leaders convinced the City to allow the unused development rights to be transferred to the developer who was intending to build on the property next door. The City rejected the Church's development application. The outcome saw the adjacent tower, called Park Place (completed in 1984), built taller and bulkier than the zoning would otherwise have permitted. The church received (and continues to receive) a large annual payment from its neighbour, which enabled conservation and continues to benefit church programmes. Any future development of the church site was restricted to its current floor area, discouraging future redevelopment of the site.⁹²

The City of Vancouver has used density transfers (plot-ratio transfers) widely since that time. Transfer of density policy was formally approved in 1983. It was amended in 1993 to allow density to be 'banked' and transferred off-site within specified areas. Since 1993, 50 heritage buildings in Vancouver have been conserved, rehabilitated, and protected by using the transfer of density, often coupled with other of the City's heritage incentives and programmes.

A problem has arisen with respect to excessive unused density. Between 1993 and 2008 approximately 3 million square feet of transferable density was created, half of which (1.5 million sq. ft.) was transferred or approved for transfer, and the other half was 'unlanded density' retained in the 'density bank' (now called the Heritage Amenity Bank). The present high balance in the bank (1.2 million sq. ft.) has reduced

⁹² Not until 1975 did the City have the power to protect property, and the Province of BC, which held that power, refused to act. The idea of applying a density transfer to resolve the threat to Christ Church Cathedral was first suggested by the author of this report. See Carolyn Purden, "Crisis in the Cathedral" in *Canadian Churchman* October, 1973, pp. 9-14. In 2002 Christ Church Cathedral received a bonus of additional density (created ex nihilo) to be transferred off site as an incentive to agree to the designation of the historic interior.

the value of transferable density and hence the effectiveness of the program. Consequently there is currently a moratorium on density transfers. City staff is now (September 2013) asking City Council to approve modifications to the policy, which would allow consideration of transfers city-wide, enable an increase in permitted floor space for transfer from 10% to 20%, and adjust accounting procedures in the Heritage Amenity Bank to reduce the balance of transferable density.

The regulations for the density transfer program are stipulated in detail. The City lists available density on its web site.⁹³

3.3.2.2 Other Non-Financial Incentives

Heritage covenant or easement

Heritage covenants and easements are voluntary contractual agreements that give one party certain rights or controls over the property of another party without possessing or owning the property. (Covenants and easements differ in British common law, but the outcome is similar.) With a heritage covenant or easement (also called a scenic easement), the property owner gives the other party, often a government or a public heritage trust, the right to impose certain conditions that ensure conservation of the property in return for an agreed-upon consideration. The conditions usually address protection against demolition and inappropriate alterations, by giving the easement holder the right to approve or reject proposals for change. The owner continues to occupy and use the property.

In Canada this technique is used most frequently in Ontario by the Ontario Heritage Trust, a government agency (see Chapter 3.2.3). The consideration is usually a tax credit (which provides a financial benefit to the owner), given in return for donating the easement. The outcome is similar to that of designation, but the consideration generally costs the public far less money than compensation.



Fig. 15. The Stephen Leacock House in Orillia, Ontario, benefits from a heritage covenant.

Note that covenants and easements could also be classified as financial incentives, since money changes hands.

⁹³ "Transfer of Density Policy and Procedure" in City of Vancouver. Retrieved on 22 August 2013, website <http://vancouver.ca/files/cov/transfer-density-policies.pdf> and City of Vancouver, Transferable Heritage Density Inventory (rev. 2013.). Retrieved on 22 August 2013, website: <http://vancouver.ca/files/cov/Transferable-heritage-density-summary-20130628.pdf>; Policy Report to Standing Committee on City Services and Budgets from Director of Planning, 28 July 2009; and Policy Report to Vancouver City Council from the General Manager of Planning and Developing Services, 11 September 2013.

Technical support

Some BC municipalities facilitate projects and encourage good conservation practice by offering technical support to owners of historic places. This may comprise practical information delivered in publications, *pro bono* professional advice, design assistance, and/or priority routing of heritage applications (called a 'green-door policy'.)

Another kind of technical assistance is the provision of training programs at low cost or free. This may address various audiences, including property owners, craft trades, and real estate agents (estate agents) who specialize in heritage properties. The last helps agents become more familiar with historic buildings and with conservation incentives and financing.

The Vancouver Heritage Foundation, an arm's-length agency of the City of Vancouver, operates many training programs for property owners and professionals.

3.3.2.3 Success of Incentives in Vancouver, BC

The City of Vancouver introduced the Heritage Building Rehabilitation Programme and the complementary Heritage Façade Rehabilitation Programme in 2003. Properties in four areas within the economically depressed Downtown East Side were eligible for the programmes.

The Heritage Façade Rehabilitation Programme has provided CAD \$106 million in 'shortfall compensation', which has (or will) leveraged \$451 million in private investment.⁹⁴ The only cash contribution consisted of \$2.9 million of façade grants. Other municipal contributions were \$23.5 million in property tax exemption (over a period of 10 years following completion) and \$79.6 million in transferable density, to be used elsewhere in the city. Some 23 major heritage projects and 18 additional façade improvements have been approved. The majority of buildings either retained or were repurposed as residential uses, providing additional living units in the area. This meets is a policy priority for the Downtown East Side.⁹⁵

Across the city, some 50 buildings have retained and protected by using density transfers and countless others have benefited one way or another from the City's rich heritage conservation programme and its many 'tools'.

3.4 Public Participation

Canadian municipalities place considerable emphasis on public participation in urban planning and development, of which heritage planning is a part. This occurs both at the planning stage and the decision-making stage.

Community stakeholders are frequently engaged by the municipalities' staff and consultants as part of their planning activity. Stakeholders are loosely defined as any person or organisation with an interest in the subject being addressed. Consultation may be done in a variety of formats, including individual or group interviews, public meetings, open houses, workshops, and focus groups. For larger initiatives, such as community plans and heritage plans, consultation will happen at various stages in the project – both before and after staff has developed a concept plan. Information about upcoming public meetings is generally posted on the city's web site and advertised in newspapers and community centres. There are no formal regulations

⁹⁴ "Shortfall compensation" is the name given to the difference between projected market value after rehabilitation and the cost of rehabilitation (hard/soft/contingency costs + property value [land and improvements] + 15% profit). Vancouver's numbers are calculated quite differently from Victoria's, so no direct comparison can be made between the two cities.

⁹⁵ The data were kindly provided by Zlatan Jankovic, Planning and Development Services, City of Vancouver.

as to how many consultations should take place, but it is our experience that civic officials usually make a sincere effort to engage the community.

Development applications (whether or not for heritage-related developments) require that a sign be posted in front of the site providing an overview of the application and inviting public comment.



Fig. 16. The public in Victoria is notified of a proposal to rezone a listed property and erect an infill dwelling with this sign, which invites comment.

City Council (the body of elected municipal decision-makers) meets in open sessions and invites the public to address it as 'delegations' during deliberations. Speeches are limited to 5 minutes. Often only a handful of delegations will speak, but the author was involved in a recent 'hot' issue in the City of Vancouver that involved the proposal to close a road to through traffic, for which 215 delegations signed up to speak to the Council. The deliberations went on for several days.

Certain planning changes, such as zoning revisions and heritage designations, require the Council to meet in 'public hearing', which is a more formal version of hearing delegations. For some of these statutory activities (for zoning but not for designation), notices soliciting comment are mailed to all property-owners within a defined radius of the subject site.

In addition to consultations and delegations, some members of the public are appointed by the Council to sit as volunteers on municipal advisory committees and commissions, including the Heritage Commission, the Urban Design Panel, the Board of Variance, and the Seniors' Advisory Committee.

These requirements beg the question of the degree to which public comment is truly heeded. It is the author's anecdotal experience that both the bureaucrats and the Council do listen to comment and often let public opinion – if a consensus can be discerned – shape their decisions.

This was illustrated in a recent decision by the City of Vancouver's Director of Planning (a senior member of staff) to reject a planning application that would have made a major intervention to Casa Mia, a 1930s mansion that was listed in the 'A' category on the Vancouver Heritage Register (i.e., valued and recognised, but not protected). The proposal would have demolished a portion of the house and developed the site with a 90-bed seniors' facility. Public opinion, including comments by City-appointed advisory

committees (the Heritage Commission was one) was overwhelmingly against the proposal. As a consequence, the City instructed the developer to submit a new proposal that would retain the entire house (despite its not being protected), separate the new wing more appropriately from the old house, and create not more than 60 beds.



Fig. 17. A proposal to build a large seniors' complex attached to Casa Mia (1932), a Spanish Colonial Revival mansion on a large lot, was rejected because of strong public opposition.

3.5 Interpretation

Interpretation is highly valued as an activity in Canadian conservation. However it has been formally integrated only to a small extent in the heritage programmes of the cities of Vancouver and Victoria.

Both cities erect descriptive plaques on designated buildings, whether the historic place is privately or publicly owned. This is done at the cities' initiative and expense, upon the owners' consent.



Fig. 18. A City of Vancouver heritage plaque.

There is no obligation to make a privately-owned designated property open to the public. However, some places that have received generous grants have been asked to make their places available to the public

on a limited basis (such as one day a year) as a condition of the grant. Likewise buildings whose interior have been designated and supported with funding often have this requirement.

The Vancouver Heritage Foundation (as mentioned above, an arm's-length agency of the City of Vancouver) organises a house tour every year at which the houses are open to the public over a weekend. There is no formal link between the City's heritage programme and the houses chosen for the tours, but the event provides a good opportunity to showcase conserved buildings. The Heritage Vancouver Society (an advocacy group) sponsors garden tours.



Fig. 19. Visitors look at a private garden at the Heritage Vancouver Society's garden tour.

The City of Vancouver also erects interpretive signs along public walkways and in public parks, but not on private property. Private owners may choose to interpret their properties with a sign, plaque, or by other means at their own initiative.

3.6 Conclusion

Some conclusions and observations that can be drawn from the study of heritage policy in Vancouver and Victoria include the following. Historic properties that are recognised as having heritage significance are listed on a municipal heritage register. Individual properties are protected by being 'designated'. Heritage registers are statutory lists, unlike the list of graded buildings in Hong Kong, which is not a statutory list. Listed property is not protected outright, but applications for demolition and change are delayed for study and discussions, and the property is eligible to benefit from heritage incentives and to participate in other heritage programmes.

The requirement for private-property owners to qualify for incentives is based on the property's being designated (protected) or listed on the heritage register (not protected). No means test is applied. As a general principle, neither local nor provincial governments in BC acquire private heritage property as a way of conserving them. Conservation is usually achieved by the owner's accepting protection and incentives.

Heritage conservation areas may be designated as well. The specified area is declared a conservation area; individual properties are scheduled and subject to conservation and development guidelines. The City of

Vancouver cannot declare conservation areas under its heritage mandate, and so it uses planning tools (i.e., zoning) to achieve this. Heritage management in BC's municipalities resides within the departments responsible for planning and development. In Victoria, the economic impacts of financial incentives (i.e., grants and tax incentives) to the general economy are positive. The impacts are tracked closely. A recent analysis has revealed that every \$1.00 in public grants to privately-owned properties in Victoria's Building Incentive Programme leverages \$28.08 in private investment. In Vancouver, whose development climate is similar to Hong Kong's, the principal conservation tool for privately-owned property are *non-financial* incentives. The primary non-financial incentives are regulatory (zoning) relaxations (e.g., lot coverage, density/plot-ratio bonus, and land-use variance) and transfer of density/plot ratio. In Vancouver private-property owners who receive incentives acknowledge them as being in lieu of compensation and accept formal protection (designation).

Non-financial incentives shift the cost of conservation from the public sector to the private sector. Vancouver developers often actively seek registration (listing) in order to qualify for incentives. They recognise that development and conservation are compatible and mutually supportive.

4

CHINA

4.1 Background

Shanghai, China has undergone rapid development in the past decades and has become one of the most important financial centres of China. Recent years' development in Shanghai has directly led to a rapid urban renewal process and increases in land value. The conflict between conservation and economic development of the city becomes apparent and thus, the balance between development and conservation of historical buildings and sites has become a great challenge.

In 1986, Shanghai was designated as Historically and Culturally Famous Cities. The protection of Areas with Historical Cultural Features and Excellent Historical Buildings becomes one of the important agenda of Shanghai Government. Due to the special historical background of Shanghai, there are many historical buildings which are of around a century of history; they become distinct cultural heritages in Shanghai, which are known by the name Excellent Historical Buildings⁹⁶, or previously the Modern Excellent Buildings⁹⁷. This is comparable with Hong Kong's situation as many of the built heritages in Hong Kong are of about or less than a century of history. The practice of Shanghai will be of great value for reference in Hong Kong for reviewing the heritage conservation policy.

⁹⁶ "Regulations of Shanghai Municipality on the Protection of the Areas with Historical Cultural Features and the Excellent Historical Buildings" [《上海市歷史文化風貌區和優秀歷史建築保護條例》], effected from 1 January 2003. Retrieved on 3 October 2013, from Laws & Rules under the official website of Shanghai Municipality, website:

<http://www.shanghai.gov.cn/shanghai/node2314/node3124/node3177/node3181/userobject6ai1126.html>.

⁹⁷ "Management Rules of Shanghai Municipality on Modern Excellent Buildings", [《上海優秀近代建築保護管理辦法》], effective from 1 January 1991. Retrieved on 5 December 2007, from Laws & Rules under the official website of Shanghai Municipality, website:<http://www.shanghai.gov.cn/shanghai/node2314/node3124/node3177/node3181/userobject6ai756.html>.

4.1.1 Heritage Designation System

According to the *Law of the People's Republic of China on Protection of Cultural Relics*, cultural assets including both immovable heritages and movable heritages are protected by law. On top of the individual heritages, Historically and Culturally Famous Cities⁹⁸ and Historical Precinct (Villages or Towns) are also protected by this Law.

4.1.1.1 Immovable Heritages

Immovable heritages include:

- Sites of ancient culture
- Ancient tombs
- Ancient architectural structures
- Cave temples
- Stone carvings and murals
- Important modern and contemporary historic sites and typical buildings

4.1.1.2 Movable Heritages

Movable heritages include:

- Valuable works of art and handicraft
- Important documents, manuscripts and books, etc.
- Typical material objects reflecting social system, social production or life of various nationalities

4.1.1.3 Hierarchy of Cultural Heritages

Immovable heritages are assessed based on their historic, artistic and scientific values. These cultural heritages are designated as Officially Protected Site at national, provincial, city or county level. The movable heritages such as art and handicraft, manuscripts and books are classified into valuable cultural relics and ordinary cultural relics. Valuable cultural relics are subdivided into grade-one, grade two and grade-three cultural relics.

⁹⁸ Chinese-English Glossary of Principles for the Conservation of Heritage Sites in China.

4.1.1.4 Shanghai Municipal

Areas with Historical Cultural Features

In 2003, there were 12 Areas with Historical Cultural Features designated in the Shanghai city centre and 32 that are in the rural areas, some commonly known ones include The Bund, Lao Chengxiang, People's Square and the area between Hengshan Road and Fuxing Road. On top of that, 4 Historical Precincts (Villages or Towns) were designated.

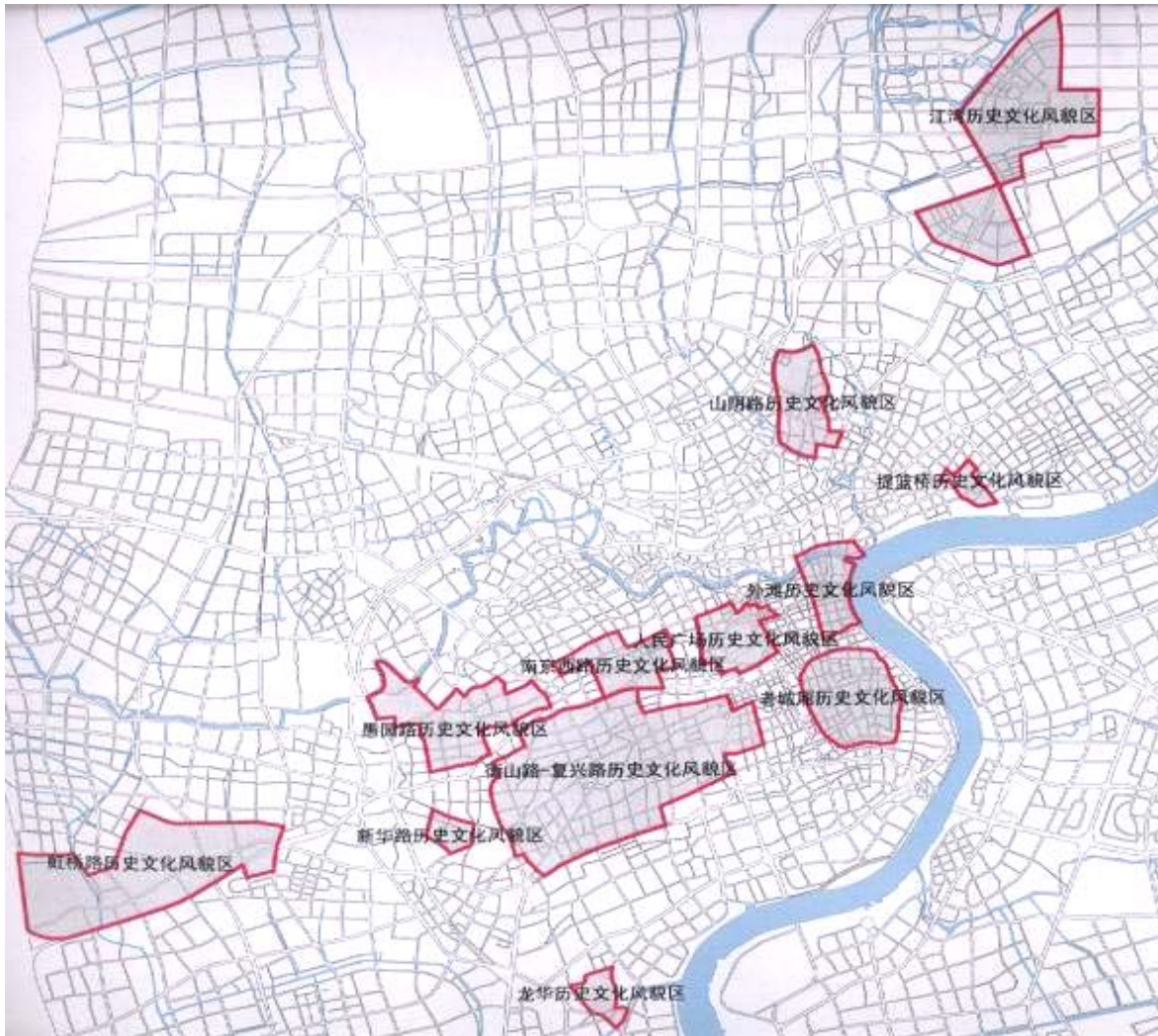


Fig. 20. Protective Areas with Historical Features.
(from presentation of Wujiang, Deputy Director of Shanghai Urban Planning Administration Bureau.)

Excellent Historical Buildings

In Shanghai, there are groups of distinct built heritages, which are known as Excellent Historical Buildings,⁹⁹ or previously Modern Excellent Buildings.

Excellent Historical Buildings are subdivided into the following categories:

- Office building
- Commercial building
- Entertainment building
- Public building
- Residences
- Industrial building

4.1.2 Assessment Criteria

4.1.2.1 General

According to the *Law of Protection of Cultural Relics*, cultural heritages are designated if it possesses one or more than one of the following characters:

- With significant historic, artistic and scientific values
- Related to major historical events, revolutionary movements or famous personalities and that are highly memorable or are of great significance for education
- Material objects that reflect the social system, social production or the life of various nationalities in different historical periods
- Cities, towns, streets, villages with unusual wealth of cultural relics of important cultural historical value or high revolutionary memorial significance are designated as Historically and Culturally Famous Cities or Historical Precinct (Villages or Towns)

4.1.2.2 Areas with Historical Cultural Features

An area will be designated as Areas with Historical Cultural Features if it possesses complex historical buildings which architectural styles, space patterns and street landscape feature of Shanghai's regional culture in a certain historical period in a comparatively complete manner.

4.1.2.3 Excellent Historical Buildings

A building will be designated as an Excellent Historical Building if it is more than 30 years old and possesses one of the following conditions:

- Possesses research value in its architectural styles, construction techniques and construction technologies
- Reflects historical cultural features of Shanghai's regional architecture
- Stands as representative works of renowned architects

⁹⁹ "Regulations of Shanghai Municipality on the Protection of the Areas with Historical Cultural Features and the Excellent Historical Buildings" [《上海市历史文化风貌区和优秀历史建筑保护条例》], effected from 1 January 2003. Retrieved on 3 October 2013, from Laws & Rules under the official website of Shanghai Municipality, website: <http://www.shanghai.gov.cn/shanghai/node2314/node3124/node3177/node3181/userobject6ai1126.html>.

- Stands as workshops, stores, factory buildings and warehouses that are representative in history of the country's industrial development
- Contains other historical and cultural significance

4.1.3 Assessment Body and Mechanism

4.1.3.1 Officially Protected Sites

There are Officially Protected Sites at the national level, the provincial level and the city or county level. Officially Protected Sites at the national level are selected and designated by the State Council, Officially Protected Sites at the provincial level are verified and announced by the provincial governments, and should be reported to the State Council for record. Officially Protected Sites at the city or county level are verified and announced by local governments and reported to provincial governments for record.

4.1.3.2 Areas with Historical Cultural Features and Excellent Historical Buildings

Shanghai Government has set up a committee for Areas with Historical Cultural Features and Excellent Historical Buildings which is responsible for the assessment, alteration to the heritage list and advise comments. The committee consists of experts from areas of planning, housing and land, architecture, conservation, history, culture, social and economics, etc.

Building owner or user, and also other individuals may recommend an area with historical cultural features or an excellent historical building to the municipal administrative Department of Planning or the Municipal Administrative Department of Housing and Land.

The preliminary list of Areas with Historical Cultural Features is prepared by the municipal administrative Department of Planning. Comments are collected from the Department of Housing and Land, Department of Cultural Relics and the local government. The preliminary list for the Excellent Historical Buildings is prepared by the Department of Planning and Department of Housing and Land. Comments are collected from the Department of Cultural Relics, the owners and local government. The list would be examined and appraised by the specialist committee which is composed of experts from sectors of planning, housing and land, architecture, heritage site, history, culture, society and economy, subsequent to evaluation, the list will be submitted to the municipal people's government for approval and confirmation. Such preliminary list of Historical Cultural Features and Excellent Historical Buildings would be publicized, which the public could submit comments.

4.1.3.3 Consent from Owner

Generally, owner's consent is not required within the conservation areas in order for the government to draw up new conservation areas. However, the comments from different relevant departments and the community will be sought. Notices will be posted so that owners, individual or organisations can raise comments or objection for the specialist advisory committee for further consideration. Eventually, the final decision on whether the individual building or area is to be designated is highly based on the cultural values of the particularly building or areas.

4.1.4 Institutional Arrangement

At the state level, it is the State Administration of Cultural Heritage's (SACH) responsibility to oversee cultural heritages in China. At the local level, it is the Shanghai Municipal Cultural Relics Administration Commission's responsibility to oversee the protection of local heritage site. For the protection of the Excellent Historical Buildings and Areas with Historical Cultural Features, it involves two other departments, namely the Shanghai Municipal City Planning and Land Administration Bureau and the Shanghai Municipal

Housing Administration Bureau. These three departments together oversee the cultural, planning, construction and land use issues, which are the major closely linked to the adaptive re-use of historical buildings.

4.2 Legal Framework

4.2.1 Primary Legislation for Heritage Conservation

In China, conservation protection is governed by the *Law of the People's Republic of China on Protection of Cultural Relics*, on top of that other subsidiary legislations, departmental rules and administrative guidelines are established and specified in details. Local government would look to the State's cultural policies to set up respective local legislations based on their specific historical background and conditions.

Shanghai with its special historical background has developed its own laws and administrative rules on the protection on modern historical buildings.

State Level – Law and Regulation	Effective Dates
<i>Law of the People's Republic of China on Protection of Cultural Relics (Amended)</i>	28 October 2002
<i>Regulations for the implementation of the Law of the People's Republic of China on Protection of Cultural Relics</i>	1 July 2003

Table 1 State Level Conservation Law and Regulations in China

The overall principle of conservation in China is stated in Article 4 of the *Law of the People's Republic of China on Protection of Cultural Relics*:

In the work concerning cultural relics, the principle of giving priority to the protection of cultural relics, attaching primary importance to their rescue, making rational use of them and tightening control over them shall be carried out.

The *Law of the People's Republic of China on Protection of Cultural Relics* states the following outlines for the nation's heritage conservation policies:

- The definition of a heritage site, the designation criteria, and the types of heritage site (Articles 2 and 3)
- Principles for protection of cultural heritage
- Establishment of area of protection for a historical and cultural site to control construction activities (Article 17)
- Responsibility of maintenance by owners and users of historical buildings (Article 21)
- Employment of qualified units on repair, removal, or reconstruction of protected heritage site (Article 21)
- Restriction on the change of use of memorial building or traditional architecture (Article 23)
- Principles of keeping immovable heritage site in their original state shall be adhered to in their use, and shall not be damaged, dismantled and no additional structures to be built on the site (Article 26)

4.2.2 Subsidiary Legislations or Department Rules in Shanghai

In Shanghai, regulations or administrative rules for modern historical buildings are developed from the *State's Law of Protection of Cultural Relics*. The overall approaches of the regulation are:

- “Unified planning, classified management, effective protection, rational utilization and subordination of utilization to protection” (Article 4)¹⁰⁰
- Comprehensive planning, holistic protection, encourage adaptive re-use, and strict enforcement of law.¹⁰¹

The relevant statutory and administrative means of control are listed in the table below:

Statutory and Administrative Means of Control in Shanghai	Effective Date
<i>Regulations of Shanghai Municipality on the Protection of the Areas with Historical Cultural Features and the Excellent Historical Buildings</i>	1 January 2003
<i>Administrative Rules of Shanghai Municipality on the Protection of Excellent Modern Historical Buildings</i>	15 December 1991 (first announced) 14 December 1997 (revised)
<i>Notice on Strengthening Conservation in Areas with Historical Cultural Features and the Excellent Historical Buildings</i>	2004
<i>Notice on Strengthening Management of Areas with Historical Cultural Features and the Excellent Historical Buildings</i>	2006

Table 2 Statutory and Administrative Means of Control in Shanghai

4.2.3 Town Planning Control

Conservation Master Plan

To better protect the built heritages, the *Regulation of Shanghai Municipality on the Protection of the Areas with Historical Cultural Features and the Excellent Historical Buildings* has outline certain requirements on the planning level to limit developments which are considered incompatible. In 1996, Shanghai Municipal City Planning Administration published *The Protection Guidelines of Shanghai as a Historical and Culturally Famous City* stated that the conservation master plan should have three different levels of conservation planning:¹⁰²

- Preserved building zone – demolition of historic buildings is not allowed, building external elevations should be conserved, internal facilities should be restored and upgraded to modern standard, while the exchange of house or relocation of occupants to other areas is allowed
- Buffer zone - alteration of the buildings is allowed provided that the building height, style and colours are in harmony with the historic buildings
- Development control zone - no new construction is allowed in the area, the zone can only increase its green areas

In the conservation master plan of the Area with Historical Cultural Features, the buildings are further classified into five different types. Different levels of intervention are allowed according to the type of buildings

¹⁰⁰ *Regulations of Shanghai Municipality on the Protection of the Areas with Historical Cultural Features and the Excellent Historical Buildings* in 2003 [《上海市歷史文化風貌區和優秀歷史建築保護條例》], 2003.

¹⁰¹ *Notice about further reinforces the protection of the Areas with Historical Cultural Features and the Excellent Historical Buildings* [《關於進一步加強本市歷史文化風貌區和優秀歷史建築保護的通知》], 2004.

¹⁰² *Preservation and Restoration Technology of Historic Architecture in Shanghai*, Zhongguo Jian Zhu Gong Ye Chu Ban She 上海市房地產科學研究院, Beijing, 2011, pp. 4-5.

they belong to. The conservation and planning requirements are divided into five major categories and tabulated below.¹⁰³

Type	Definition	Conservation Requirements	Allowed intervention
Protected Building	<ul style="list-style-type: none"> ▪ Includes Official Protected Site at municipality or national level ▪ Includes Shanghai Municipal Excellent Historical Buildings 	<ul style="list-style-type: none"> ▪ The protective requirement follows the <i>Regulations of Shanghai Municipality on the Protection of the Areas with Historical Cultural Features and the Excellent Historical Buildings</i> strictly ▪ Buildings in this category cannot be demolished ▪ When relocation or demolition is required under special conditions, a set of procedures is stated in Article 39 of the <i>Law of the People's Republic of China on Protection of Cultural Relics</i> ▪ Actions shall be initiated by the Departments of Planning, Housing and Land. A specialist advisory committee will be involved in the evaluation 	Cannot be demolished
Preserved Historical Building	<ul style="list-style-type: none"> ▪ Possesses outstanding historical and cultural features and distinctive cultural value 	<ul style="list-style-type: none"> ▪ Require to be preserved and cannot be demolished completely ▪ Include buildings that are not on the list of Officially Preserved Site but their existence is contributing to the integrity of the areas with cultural features ▪ Follow the <i>Regulations of Shanghai Municipality on the Protection of the Areas with Historical Cultural Features and the Excellent Historical Buildings</i> ▪ The specific requirements on conservation are listed in development plans or urban plans 	Limited preservation

¹⁰³ Wu Jjiang & Wang Lin, *Lishi wenhua fengmaoqu baohu guihua bianzhi yu guanli. The Planning and Management of the Protection of the Areas With Historical Cultural Features*. [《歷史文化風貌區保護規劃編制與管理》] Shanghai Shi: Tongji Daxue Publisher, 2007, p. 51.

Type		Definition	Conservation Requirements	Allowed intervention
General Historical Buildings	Grade 1	<ul style="list-style-type: none"> ▪ Include individual building that has relatively high value on cultural features ▪ Buildings that contribute to the significance of the Area with Historical and Cultural Features ▪ Buildings built before 1975 	<ul style="list-style-type: none"> ▪ Adaptive re-use is the most optimum approach for buildings in this category ▪ If demolition is unavoidable, a thorough survey has to be conducted on the building ▪ Reconstruction has to be in accordance with the original appearance at original site ▪ During the reconstruction, re-use of original characteristic architectural elements is essential 	Reconstruction following original appearance at original site
	Grade 2	<ul style="list-style-type: none"> ▪ Include individual building that has relatively high value on cultural features ▪ Buildings that contribute to the significance of the Area with Historical and Cultural Features 	<ul style="list-style-type: none"> ▪ Allow extension, alteration or demolition for reconstruction, but new portions have to be in harmony with existing historical cultural features ▪ Special development ratio will be applied to the redevelopment 	To preserve or demolish on case by case basis
Buildings to be demolished		<ul style="list-style-type: none"> ▪ Buildings that are not in harmony with the existing historical cultural features of the area and buildings with dangerous structures that are beyond repaired will be placed under this category for compulsory demolition 	<ul style="list-style-type: none"> ▪ Extension or alteration is not allowed after a building is declared for compulsory demolition 	Demolish
Other Buildings		<ul style="list-style-type: none"> ▪ Buildings other than the above four categories ▪ There are no provisions to demolish buildings of this category even if they are not in harmony with the historical and cultural features of the area ▪ Buildings built after 1975 and all other legal buildings 	<ul style="list-style-type: none"> ▪ On occasions of extension, alteration or reconstruction, new work has to be in harmony with existing historical and cultural features: <ul style="list-style-type: none"> i. Preserve – building with its massing, height and appearance in tune with existing historical and cultural features ii. Modify – building which can be altered through changing the building colour, roof form, reducing the numbers of storey, demolish partially to make it in tune with the historical and cultural features. ▪ Demolish – building which has negative impact on the historical and cultural features are to be demolished for new construction 	To be preserved or demolished judged by the specific condition of the particular case

Table 3 Conservation and Planning Requirements for Each Category.

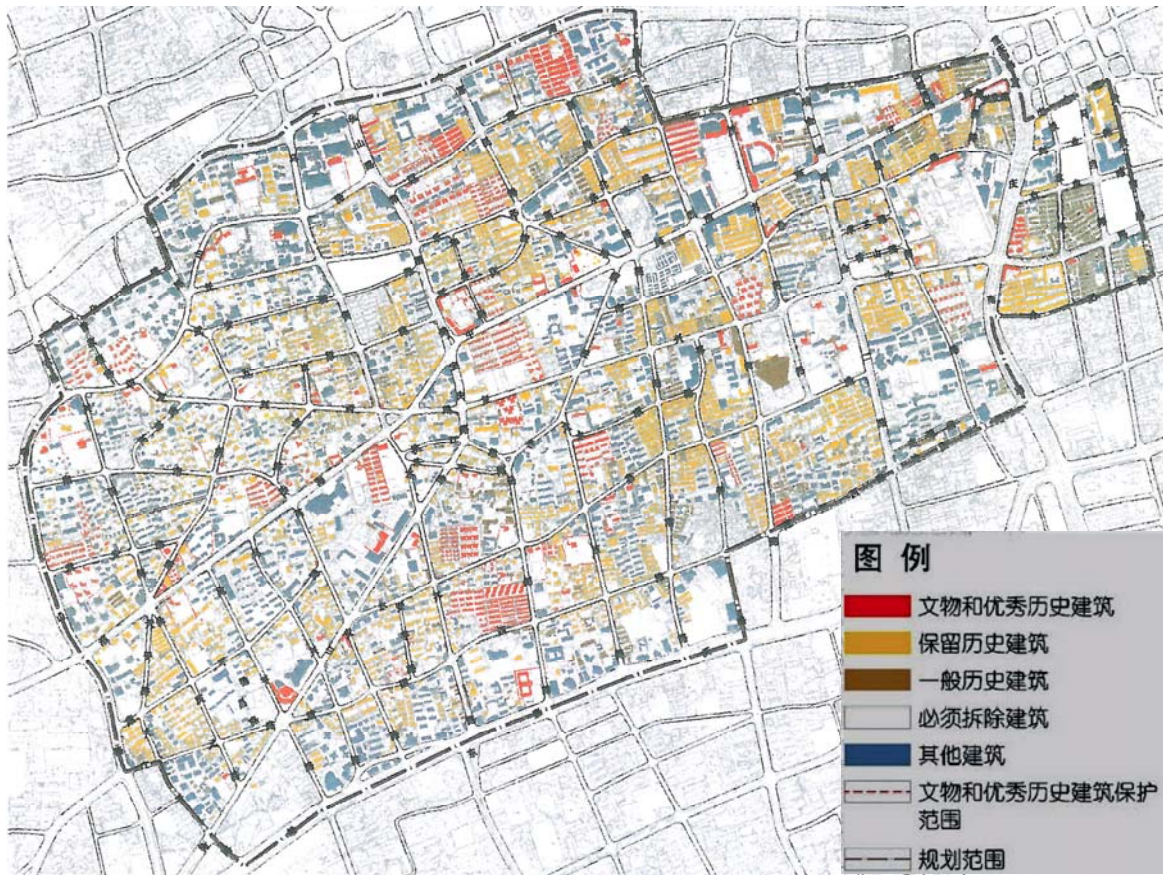


Fig. 21. Shanghai Municipality's Planning for the Protection of the Areas with Historical Cultural Features at Hengshan Road–Fuxing Road,
 (from Wu Jiang, Wang Lin, *The Planning and Management of the Protection of the Areas With Historical Cultural Features*, Shanghai Shi: Tongji Daxue Publisher, p. 157.)

Other regulations that protect built heritage through town planning controls are listed in the section below.

4.2.3.1 The planning of Areas with Historical Cultural Features¹⁰⁴

The planning of the Areas with Historical Cultural Features is stated in Article 15 *Regulations of Shanghai Municipality on the Protection of the Areas with Historical Cultural Features and the Excellent Historical Buildings*, 2003. The regulation stated the following:

- The historical and cultural features of the area and its norms of protection
- The key scope of protection and scope of controlled construction area
- The control and adjustment of the planning of land-use nature of the area
- The requirements for the protection of space environment and the landscape around the building
- The renovation requirements for the buildings that are not in harmony with the historical and cultural features of the area

¹⁰⁴ Article 15, *Regulations of Shanghai Municipality on the Protection of the Areas with Historical Cultural Features and the Excellent Historical Buildings*, 2003.

4.2.3.2 Limitation on the construction activities inside the core protection area of the Areas with Historical Cultural Features (Article 16)¹⁰⁵

Article 16 of the *Regulations of Shanghai Municipality on the Protection of the Areas with Historical Cultural Features and the Excellent Historical Buildings, 2003* stated the limitation for construction activities inside the core protection area of the Areas with Historical Cultural Features. The Article states the following:

- The block layout, the original elevation and colour of buildings shall not be altered arbitrarily
- Apart from auxiliary facilities of buildings that are essential, no new construction or extension activity is allowed, and when the existing buildings are being reconstructed, their historical cultural features shall be maintained and restored
- Without authorisation, no new construction or extension of roads is allowed, and when the existing roads are being reconstructed, the original road pattern and landscape features shall be maintained or restored
- No new industrial enterprise is allowed to be built, and the existing industrial enterprises that obstruct the protection of the Areas with Historical Cultural Features shall be removed in a planned manner

4.2.3.3 Limitation on the construction activities within controlled construction Areas with Historical Cultural Features (Article 17)¹⁰⁶

- New buildings to be built, extended or reconstructed, should be in harmony with the historical cultural features in terms of height, volume and colour
- New roads being built, extended or reconstructed should not damage the existing historical cultural features
- No industrial enterprise causing environmental pollution is allowed to be built in the area, and the existing industrial enterprises causing environmental pollution shall be removed in a planned manner
- If a building to be built or extended in the limits of controlled construction Areas with Historical Cultural Features is restricted in terms of its building volume, the practice of compensation in another place may be made according to the city planning

The characters considered to be protected and controlled in the town planning are:¹⁰⁷

- Architecture
- Space
- Urban fabric
- Environment
- Others (e.g. places associated with important historical figures)

4.2.3.4 The planning and approval procedures of the Conservation Master Plan of the Areas with Historical Cultural Features

The approval procedure based on the current legislations includes:

- *Planning Regulation of Shanghai Municipality*

¹⁰⁵ Article 16, *Regulations of Shanghai Municipality on the Protection of the Areas with Historical Cultural Features and the Excellent Historical Buildings, 2003*.

¹⁰⁶ *Ibid.* Article 17.

¹⁰⁷ Presentation for the Architectural Conservation Programme in the University of Hong Kong by Professor Wujiang, Deputy Director of Shanghai Urban Planning Administration Bureau, 2007.

- *Regulations of Shanghai Municipality on the Protection of the Areas with Historical Cultural Features and the Excellent Historical Buildings*
- *The Approval Procedures of Detailed Master Planning of Shanghai Municipality*

4.2.4 Land Management

Government may resume the land for heritage conservation if it is considered of public interest.¹⁰⁸ The compensation of the affected parties would follow the government's requirements as stipulated in the *Details Resumption Procedures and Compensation of State-Owned Properties*. The compensation can be monetary or exchange of property rights in other location.

4.2.5 Building Control

4.2.5.1 Excellent Historical Buildings

The specific requirements for protecting Excellent Historical Buildings are established by the administrative Department of Housing and Land, jointly with the administrative Department of Planning, Specialist committees assist in reviewing.

Shanghai Municipality's *Regulation on the Protection of Areas with Historical Cultural Features and the Excellent Historical Buildings* stipulates the levels of intervention of individual historical buildings. According to the historical, scientific and artistic value of the building and its extent of good condition, the requirements for protecting the Excellent Historical Buildings are divided into the following four types:

- Type 1 - The elevation, structural system, plane layout and internal decoration of the building shall not be changed.
- Type 2 - The elevation, structural system, basic plane layout and internal decoration with characteristics of the building shall not be changed, but the other parts may be changed.
- Type 3 - The elevation and structural system of the building shall not be changed, but the internal parts of the building may be changed.
- Type 4 - The main elevation of the building shall not be changed, but other parts may be changed.

The required levels of protection for historical buildings by Shanghai government are usually of Type 3 or Type 4 as listed above. Types 1 or 2 are found less frequently. This reflects that the government adopts a conservation approach that prioritizes protection on the external appearance, while allowing more flexibility for adaptive re-use in the interior.¹⁰⁹ However, the above four types provide only the general principles on level of intervention, which would still be subjected to case-by-case reviews. The approval authorities would issue solid requirements on conservation for different cases and in some cases, even when a building is categorized as Type 4, the interior may also need to be conserved, although the overall principle is a holistic conservation.

The building owner shall appoint qualified professional to prepare the proposal for the repair and restoration works and shall follow the building codes. If the restoration and repair works cannot comply with the requirements, then the administrative department of housing and land would review the proposal together with other relevant government departments and the specialist committee.

¹⁰⁸ Article 8. Government order No. 71. [《上海市國有土地上房屋徵收與補償實施細則》，上海市人民政府令第71號], 2011.

¹⁰⁹ Wang Anshi [王安石], (Shanghai Municipal Housing, Land and Resources Administration Bureau 200120), "Protection and Utilization of Shanghai Excellent and Historic Buildings", in *Housing Science*, Vol. 2, 2004, p. 34.



Fig. 22. Sinan Gongguan – Type I protection, protect both the exterior & interior of the building.
(from The photo of Sinan Gongguan in Shanghai. Retrieved on 13 December 2013, website: <http://www.nipic.com/show/1/48/5570365k6bbcad82.html>.)



Fig. 23. French Consulate – Type 2 protection, protect mainly the exterior of the buildings, internal lobby, staircase and interior decoration.
(from Presentation by Wujiang, Deputy Director of Shanghai Urban Planning Administration Bureau. 2007.)



Fig. 24. Jianyeli – Type 4 protection, protect mainly the exterior of the buildings.
(from Presentation by Wujiang, Deputy Director of Shanghai Urban Planning Administration Bureau , 2007.)

4.2.6 Maintenance

It is the responsibility of the building owner to repair and upkeep the historic building and follow the requirements given by the government after an inspection. If the owner has financial difficulties to carry out the repair and maintenance work, owners can apply to the local government for subsidies, which would be paid in the expense of the special funds for protection (Article 33 of the *Regulations of Shanghai Municipality on the Protection of the Areas with Historical Cultural Features and the Excellent Historical*). If the building owner fails to repair the historic building and make it at risk, government may engage another contractor to carry out the necessary repair and maintenance works at the owner's cost or the owner might be fined.

On the other hand, according to Article 5 of *Regulations of Shanghai Municipality on the Protection of the Areas with Historical Cultural Features and the Excellent Historical Buildings*, it is stated that the public can report to the government if they find any acts that endanger the Areas with Historical Cultural Features and Excellent Historical Buildings.

4.3 Incentives

4.3.1 Financial Supports from Government

4.3.1.1 State Level

Government would provide financial support for the conservation projects at the State level. This includes both stated-owned and privately-owned properties. When deciding whether or not to fund the conservation projects, government would consider:

- Is the heritage endangered?
- Is the project appropriate?

When applying for funding, the individual applicant or the institute must first prepare a proposal for the conservation project. If the proposal is approved, the applicant, whether the state or private entity can be granted with funding. State-owned properties are fully-funded, while privately-owned properties are partially-funded. In regard to privately-owned properties, those in more developed areas would receive less funding (between 30% - 60% of the total cost for the project); properties in less developed areas, could receive up

to 80% funding. The conditions for the receipt of funding for privately-owned properties are the owner must follow the approved conservation proposal and allow public visitation.

The standard application is available for the Special Fund for Protection. The applicant needs to provide information such as the existing condition of heritage site/buildings, the maintenance history and year plan, and prepare cost estimation. The area for funding includes the urgent repair, maintenance, interpretation, protection and safety, fire, etc. For non-state-owned heritages, the funding would be given after the project is completed and is accepted by authorities after inspection.¹¹⁰

4.3.1.2 Official Protected Site

Official Protected Site is managed by Shanghai Municipal Cultural Relics Administration Commission. The commission is responsible for issuing solid conservation guidelines to each Officially Protected Site and supporting the sites with funds that could cover both privately-and state-owned properties.

4.3.1.3 Excellent Historical Buildings

Excellent Historical Buildings are managed by the Shanghai Municipal Housing Administration which is responsible for issuing solid conservation guidelines (the 4 types as mentioned aforesaid). The government would base on the particular situation to apply for the required budget, which would cover both privately-and state-owned properties. Although it is stated in Article 5 of *Regulations of Shanghai Municipality on the Protection of the Areas with Historical Cultural Features and the Excellent Historical Buildings* that the local government has the responsibility for protecting the historical buildings and shall provide necessary policy and support of funds, there is no well-established policy for private owner to apply for financial funds and there is no relevant tax reduction in place.¹¹¹

4.3.2 Awards

The State would give moral encouragement or material rewards to units and individuals who contribute greatly in protection of cultural heritages.

4.4 Public Participation

There is no well-established public participation system in Shanghai, but when consolidating the list of Areas with Historical Cultural Features and Excellent Historical Buildings, the list would be publicized and the government would collect the comments from the community. Public and the community can also suggest buildings to be inscribed in the list of Excellent Historical Buildings. Also, when the government draw up conservation areas, notices will be posted and announced to the public. The owner as well as the public can raise objection while the specialist advisory committee will further consider their comments.

4.5 Conclusion

There are multiple observations that could be drawn from the Shanghai's case. The principal law sets the priority and principle for different governments. It provides the basis for building control, which is namely the Rational Utilization and Subordination of Utilization to Protection. The conservation of the built heritage is

¹¹⁰ 關於印發《國家重點文物保護專項補助資金管理辦法》的通知，國家文物局財政部，9th June, 2013. Retrieved on 17 October 2013, website: <http://wenku.baidu.com/view/48025e0b0740be1e650e9a09.html>.

¹¹¹ Interview with Prof. Shao Yong, College of Architecture and Urban Planning, Tongji University, National Research Center of Historic Cities, Shanghai, China, December 2013.

more effective to be resolved at planning level and development control through various designated conservation area. Buffer zone and development control zone are also very helpful devices in conservation used in China. Conservation works are not limited to individual historic building but extends to the surrounding context. The hierarchy and different levels of intervention on individual built heritage in accordance with their cultural significance allows flexibility and encourages adaptive re-use of historic buildings.

4

ENGLAND

5.1 Background

The protection of historic environment in England started in the late 19th century, with the cultural heritage policy developed into a comprehensive system during the 20th century. Conservation policies are already incorporated in the planning level, where local planning authorities are required by law to cover conservation policies in their development plans. The government provides detailed guidance for both the applicants for building works to historic buildings and the local planning authorities, consultation with relevant bodies is greatly encouraged before the formal submission of any application. The ultimate goal is to minimize the conflicts between the preservation of historic fabric and new works starting from an earlier planning stage.

5.1.1 Heritage Designation System

The heritage designation of the United Kingdom can be classified as follows:

- Scheduled Monuments
- Listed Buildings
- Registered Parks and Gardens
- Conservation Areas
- Protected Wreck Sites
- Registered battlefields
- World Heritage Sites

The first four categories are more relevant to the case in Hong Kong and therefore will be discussed in the following sections.

5.1.1.1 Scheduled Monuments

Definition

The England has had legislation in place to protect heritage assets with archaeological interest since 1882. Any representative sample of nationally important archaeological sites should be afforded protection under the provisions of the *Ancient Monuments and Archaeological Areas Act 1979* (the 1979 Act). It is the duty of the Secretary of State for Culture, Media and Sport to compile and maintain a schedule of 'monuments'. Once included in the schedule, a monument has legal protection. The Secretary of State is required to consult English Heritage for the inclusion of monuments in the schedule or their removal from it. The preparation of English Heritage's advice will include consultation with its owner(s)/ occupant(s) and the relevant local authority(s).

A monument potentially to be scheduled must meet the 1979 Act's definition as follows:

- any building, structure or work, whether above or below the surface of the land, and any cave or excavation
- any site comprising the remains of any such building, structure or work or of any cave or excavation
- any site comprising, or comprising the remains of, any vehicle, vessel, aircraft or other moveable structure or part thereof which neither constitutes nor forms part of a monument as defined above
- any site situated in, on or under the sea bed within the seaward limits of United Kingdom territorial waters adjacent to England, except the following:
 - any structure which is occupied as a dwelling house;
 - any ecclesiastical building in ecclesiastical use; and
 - any sites protected under the *Protection of Wrecks Act 1973*.¹¹²

Assessment criteria

There are criteria laid down by the Secretary of State for Culture, Media and Sport on the decisions for scheduling, which are:

- **Period** – all types of monuments that characterise a category or period should be considered for preservation.
- **Rarity** – there are some monument categories which are so scarce that all surviving examples which still retain some archaeological potential should be preserved. A selection must be made which portrays the typical and commonplace as well as the rare.
- **Documentation** – the significance of a monument may be enhanced by the existence of records of previous investigation or, by the supporting evidence of contemporary written or drawn records in the case of more recent monuments. On the contrary, the absence of documentation can make the potential of a monument more important as the only means of developing the understanding of the monument.
- **Group Value** – the value of a single monument could be greatly enhanced by its association with related contemporary monuments or with monuments of different periods. In some cases, it is preferable to protect the entire group of monuments, including associated and adjacent land, rather than to protect isolated monuments within the group.
- **Survival/condition** – the survival of a monument's archaeological potential both above and below ground is a particularly important consideration and should be assessed in relation to its present condition and surviving features.
- **Fragility/vulnerability** – highly important archaeological evidence from some field monuments can be destroyed by a single ploughing or unsympathetic treatment; vulnerable monuments of this nature would particularly benefit from the statutory protection which scheduling confers. There are also existing standing structures of particular form or complexity whose value can be severely reduced by neglect or careless treatment, which are similarly well suited by scheduled monument protection.
- **Diversity** – some monuments may be selected for scheduling because they possess a combination of high quality features, others because of a single important attribute.

¹¹² "Department for Culture, Media and Sport, Scheduled Monuments – identifying, protecting, conserving and investigating nationally important archaeological sites" under the Ancient Monuments and Archaeological Areas Act 1979, United Kingdom, Department for Culture, Media and Sport, 2010, pp. 5-6.

- **Potential** – on occasion, the nature of the evidence cannot be specified precisely, but it may still be possible to document reasons anticipating its existence and importance and so to demonstrate the justification for scheduling. The greater the likelihood that such evidence will be revealed through archaeological investigation, the stronger will be the justification for scheduling.¹¹³



Fig. 25. Former RAF Perranporth Airfield in Cornwall, now a privately owned airfield scheduled as a monument.
 (from *Unique Property Bulletin*. Retrieved on 26th June 2013, website: <http://uniquepropertybulletin.org/>.)

There are 18 thematically-arranged selection guides by English Heritage which give detailed guidance on what may be eligible for scheduling. The 18 themes are:

- Law and Government
- Transport Sites
- Commemorative and Funerary
- Sites of Health and Welfare
- Gardens
- Places of Learning
- Culture, Entertainment and Sport
- Utilities
- Commercial Sites
- Religion and Ritual pre-AD 410
- Sites of Early Human Activity
- Agriculture
- Pre-1500 Military Sites
- Religion and Ritual post-AD410
- Maritime and Naval
- Industrial Sites

¹¹³ "Department for Culture, Media and Sport, Scheduled Monuments – identifying, protecting, conserving and investigating nationally important archaeological sites" under the Ancient Monuments and Archaeological Areas Act 1979, United Kingdom, Department for Culture, Media and Sport, 2010, p. 19.

- Military Sites Post-1500
- Settlement Sites to 1500¹¹⁴

5.1.1.2 Listed Buildings

Definition

Section 1 of the *Planning (Listed Buildings and Conservation Areas) Act 1990* (the 1990 Act) imposes a duty on the Secretary of State for Culture, Media and Sport to compile or approve a list or lists of buildings of special architectural or historic interest as a guide to the planning authorities when carrying out their planning functions. In England, the planning system is designed to regulate the development and use of land in the public's interest. The designation of historic sites enables the planning system to protect them through the complementary systems of listed building consent and conservation area control, coupled with controls over scheduled monument consent.

There are three categories of listed buildings:

- **Grade I buildings** are of exceptional interest, sometimes considered to be internationally important. Only 2.5% of listed buildings are Grade I.
- **Grade II* buildings** are particularly important buildings of more than special interest. 5.5% of listed buildings are Grade II*.
- **Grade II buildings** are nationally important and of special interest. 92 % of all listed buildings are in this class and it is the most likely grade of listing for a home owner.¹¹⁵

Assessment criteria

The following statutory criteria are adopted by the Secretary of State to assess whether a building should be added to the statutory list:

- **Architectural interest.** To be of special architectural interest a building must be of importance in its architectural design, decoration or craftsmanship; special interest may also apply to nationally important examples of particular building types and techniques (e.g. buildings displaying technological innovation or virtuosity) and significant plan forms
- **Historic interest.** To be of special historic interest a building must illustrate important aspects of the nation's social, economic, cultural, or military history and/or have close historical associations with nationally important people. There should normally be some quality of interest in the physical fabric of the building itself to justify the statutory protection afforded by listing¹¹⁶

General principles for the assessment are as follows:

- **Age and rarity.** The older a building is, and the fewer the surviving examples of its kind, the more likely it is to have special interest:
 - before 1700, all buildings that carry a significant proportion of their original fabric are listed
 - from 1700 to 1840, most buildings are listed

¹¹⁴ English Heritage, *Scheduling Selection Guides*. Retrieved on 25 June 2013, from English Heritage, website: <http://www.english-heritage.org.uk/caring/listing/criteria-for-protection/scheduling-selection-guides/>.

¹¹⁵ "Department for Culture, Media and Sport, Principles of Selection for Listing Buildings – General principles applied by the Secretary of State when deciding whether a building is of special architectural or historic interest and should be added to the list of buildings compiled" under the Planning (Listed Buildings and Conservation Areas) Act 1990. United Kingdom, Department for Culture, Media and Sport, 2010, pp. 3-4.

¹¹⁶ *Ibid*, p. 4.

- after 1840, because of the greatly increased number of buildings erected and the much larger numbers that have survived, progressively greater selection is necessary
 - particularly careful selection is required for buildings from the period after 1945
 - buildings of less than 30 years old are normally listed only if they are of outstanding quality and under threat
- **Aesthetic merits.** The appearance of a building – both its intrinsic architectural merit and any group value – is a key consideration in judging listing proposals, but the special interest of a building will not always be reflected in obvious external visual quality. Buildings that are important for their technological innovation, or as demonstrating particular aspects of social or economic history may have little external visual quality.
 - **Selectivity.** Where a building qualifies for listing primarily on the strength of its special architectural interest, the fact that there are other buildings of similar quality elsewhere is not likely to be a major consideration. However, a building may be listed primarily because it represents a particular historical type in order to ensure that examples of such type are preserved. Listing in these circumstances is largely a comparative exercise and needs to be selective where a substantial number of buildings of a similar type and quality survive. In such cases, the Secretary of State’s policy is to list only the most representative or most significant examples of the type.
 - **National interest.** The emphasis is to establish consistency of selection to ensure that not only are all buildings of strong intrinsic architectural interest included on the list, but also the most significant or distinctive regional buildings that together make a major contribution to the national historic stock.
 - **State of repair.** The state of repair of a building is not a relevant consideration when deciding whether a building meets the test of special interest. The Secretary of State will list a building which has been assessed as meeting the statutory criteria, irrespective of its state of repair.¹¹⁷

A building has normally to be over 30 years old to be eligible for listing. For a post-1945 building, it has to be exceptionally important in order to be listed. 0.2% of all listed buildings are 1945 and later buildings. A representative example is the Lloyd’s Building recently listed as a Grade I building, built in 1981-1986 by the Richard Rogers Partnership with engineering by Ove Arup & Partners. It is being listed for being a supreme icon of British ‘Hi-Tech’ architecture, designed by one of the Britain’s most significant modern architects. It is also a purpose-built headquarters for an internationally important organisation that successfully integrates the traditions and fabric of earlier Lloyd’s buildings. (See Appendix I (i))

¹¹⁷ “Department for Culture, Media and Sport, Principles of Selection for Listing Buildings – General principles applied by the Secretary of State when deciding whether a building is of special architectural or historic interest and should be added to the list of buildings compiled” under the Planning (Listed Buildings and Conservation Areas) Act 1990. United Kingdom, Department for Culture, Media and Sport, 2010, pp. 5-6.



Fig. 26. Lloyd's Building, a privately-owned insurance institution in London, currently listed as a Grade I building.

There are 20 thematically-arranged selection guides by English Heritage which give detailed guidance on what may be eligible for listing. The 20 themes are:

- Agricultural Buildings
- Commemorative Structures
- Commerce and Exchange Buildings
- Culture and Entertainment
- Domestic 1: Vernacular Houses
- Domestic 2: Town Houses
- Domestic 3: Suburban and Country Houses
- Domestic 4: The Modern House & Housing
- Education Buildings
- Garden and Park Structures
- Health and Welfare Buildings
- Industrial Structures
- Law and Government Buildings
- Maritime and Naval Buildings
- Military Structures
- Places of Worship
- Sports and Recreation Buildings
- Street Furniture
- Transport Buildings

- Utilities and Communication Structures¹¹⁸

5.1.1.3 Registered Parks and Gardens

Definition

Registered parks and gardens are designated by English Heritage under the *Historic Buildings and Ancient Monuments Act 1953* for their special historic interest. The grading is similar to that of the listed buildings:

- **Grade I** are sites of exceptional interest
- **Grade II*** are sites of particularly important, of more than special interest
- **Grade II** are sites of special interest, warranting every effort to preserve them

The above grading of the sites is independent of the grading of any listed building which falls within the area.¹¹⁹

Assessment criteria

The following assessment criteria have been drawn up as a guide to the level of historic interest expected.

- Age and rarity. The older a designed landscape is, and the fewer the surviving examples of its kind, the more likely it is to have special interest. The following chronology is a guide to assessment:
 - Sites formed before 1750 where at least a proportion of the original layout is still in evidence
 - Sites laid out between 1750 and 1840 where enough of the layout survives to reflect the original design
 - Sites with a main phase of development post-1840 which are of special interest and relatively intact, the degree of required special interest rising as the site becomes closer in time
 - Particularly careful selection is required for sites from the period after 1945
 - Sites of less than 30 years old are normally registered only if they are of outstanding quality and under threat
- Sites which were influential in the development of taste, whether through reputation or reference in literature
- Sites which are early or representative examples of a style of layout or a type of site, or the work of a designer (amateur or professional) of national importance
- Sites having an association with significant persons or historic events
- Sites with a strong group value with other heritage assets

The Register is more concerned with the permanent elements in a landscape such as earthworks, built structures, walks and rides, water features, structural shrubberies, hedges and trees. The existing condition of the site, for example, being in a poor condition with neglected planting will not affect its potential to be registered.¹²⁰

¹¹⁸ English Heritage, "Listing Selection Guides". Retrieved on 25 June 2013, from English Heritage, website: <http://www.english-heritage.org.uk/caring/listing/criteria-for-protection/selection-guidelines/>.

¹¹⁹ English Heritage, "The Register of Parks and Gardens", 2010, pp. 1-2. Retrieved on 27 June 2013, from English Heritage, website: <http://www.english-heritage.org.uk/publications/register-parks-gardens/>.

¹²⁰ English Heritage, "The Register of Parks and Gardens", 2010, pp. 2. Retrieved on 27 June 2013, from English Heritage, website: <http://www.english-heritage.org.uk/publications/register-parks-gardens/>.



Fig. 27. Rousham, Oxfordshire, a privately-owned Register Parks and Gardens, Grade I.
 (from Flickr. Retrieved on 27 June 2013, website:
<http://www.flickr.com/photos/ugardener/with/5830992034/>.)

There are 4 thematically-arranged selection guides by English Heritage which give detailed guidance on what may be eligible for register. The 4 themes are:

- Landscapes of Remembrance
- Urban Landscapes
- Rural Landscapes
- Institutional Landscapes¹²¹

5.1.1.4 Conservation Areas

Definition

The designation of conservation areas is under the *Planning (Listed Buildings and Conservation Areas) Act 1990* primarily by local authorities. The areas are designated for their special architectural and historic interest. The local authority is required to notify the Secretary of State and English Heritage for the designation, as well as giving notice of intended designation through a notice placed in the London Gazette and a local newspaper.

In recent years, local communities have become more proactively involved in identifying the areas, leading to the success of a recently published guidance on heritage content of community led plans in rural areas by the English Heritage (Fig. 28).¹²²

¹²¹ Ibid.

¹²² English Heritage, "Understanding Place: Conservation Area Designation, Appraisal and Management", 2012, pp. 4-5. Retrieved on 27 June 2013 from English Heritage, website: <http://www.english-heritage.org.uk/publications/understanding-place-conservation-area/>

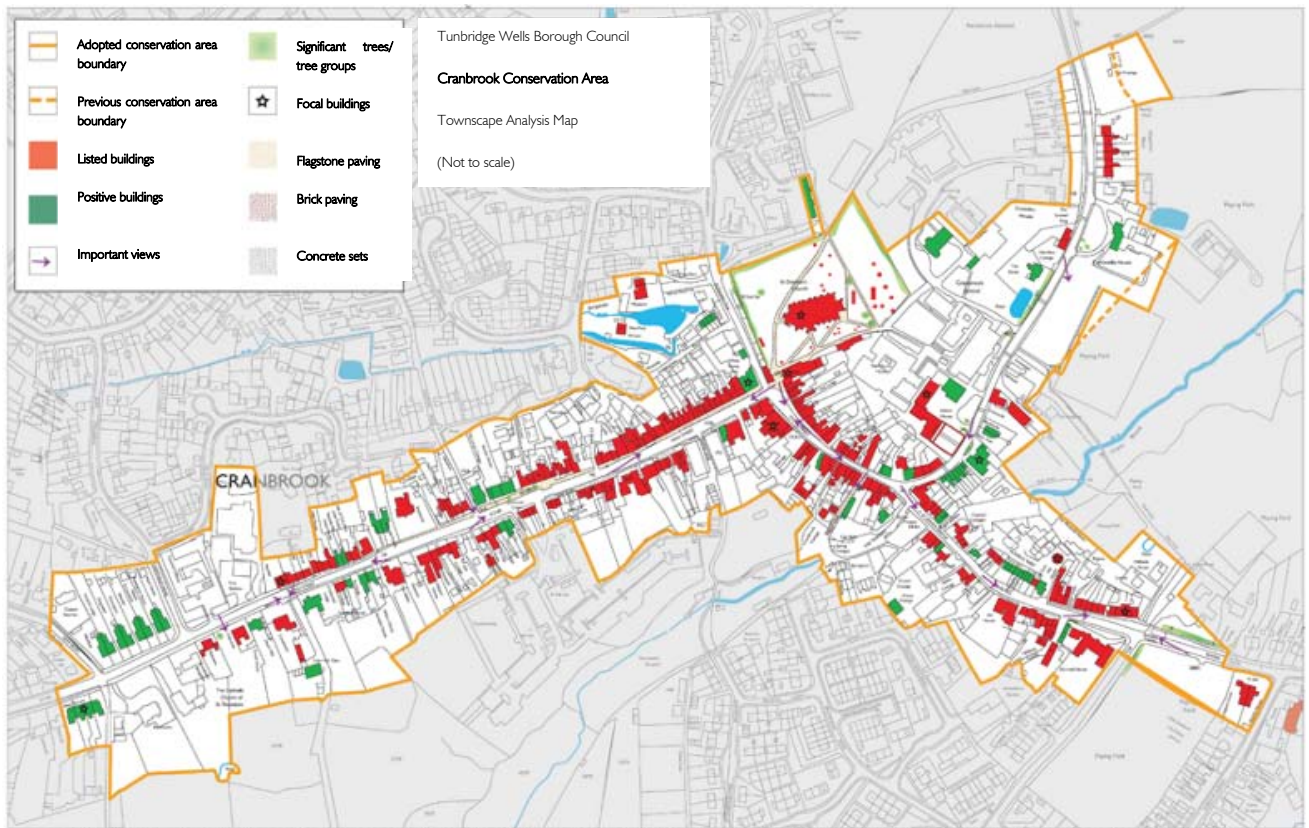


Fig. 28. Cranbrook Conservation Area, Kent. Conservation area boundary reviewed with the initiatives from local interest groups, business community, relevant professionals and borough councillors forming the Conservation Area Advisory Committee. Appraisal being adopted in 1997.
 (from Tunbridge Wells Borough Council, *Conservation Area Appraisals*. Retrieved on 28 June 2013, from Tunbridge Wells Borough Council, website:
http://www.tunbridgewells.gov.uk/_data/assets/pdf_file/0003/24798/CAA_Cranbrook_Townscape_Analysis_Map.pdf.)

Assessment criteria

The designation of a conservation area starts off with an appraisal of the area, which gives an understanding and articulation of its character that will help the local authorities to develop a management plan for the conservation area.

The key elements for the assessment are:

- Location and setting - the relationship of the conservation area to its setting and the effect of that setting on the area
- Historic development - the still-visible effects/impact of the area's historic development on its plan form, character and architectural style and social/historic associations
- how the places within it are experienced by the people who live and work there and visitors to the area (including both diurnal and seasonal variations if possible)
- architectural quality and built form
- open spaces, green areas, parks and gardens, and trees
- designated and other heritage assets, their intrinsic importance and the contribution they make to the area
- local distinctiveness and the sense of place which make the area unique

5.1.2 Opportunity Cost

Recently, a research is carried out by the London School of Economics and Political Science on the assessment of the effects of conservation areas on value. Quantitative as well as qualitative studies were both carried out. In the quantitative study, the costs and benefits that are associated with a location of the properties inside or near a conservation area in England based on capitalization effect was mainly investigated. Heritage effect (related to the specific character of buildings within the conservation areas) and policy effect (that stems from the legislation imposed to protect the character of conservation areas) are identified. A data set with over a million observations on sales prices in 1995-2010 have been compiled to make comparison between sales prices of buildings inside and outside conservation areas. In the qualitative study, interviews and questionnaires were conducted with householders, conservation/ planning officers and other property professionals in 10 separate case study areas which were selected based on property premia, levels of deprivation and location.¹²³ The findings are consolidated as follows:¹²⁴

Unconditional estimates reveal high price premia of about 23.1% for properties inside designated conservation areas and about 16.5% for areas prior to designation.

The estimated property price premium attached to a location inside a conservation area depends on various characteristics of the area. In particular, the premium tends to increase in the size of a conservation area and the time gone by since designation and is highest at suburban locations. Property prices are significantly lower in conservation areas that are classified as "at risk" compared to properties inside other conservation areas. On average, property prices inside conservation areas with "Article 4" status exceed property prices in other conservation areas by about 15%.

The conservation area premium at the boundary (0-50m) of about 10% roughly doubles once the innermost zone is reached (inside the conservation area, but more than 450m from the boundary). Just outside the conservation area (0-50m) there is still a significant premium of up to about 5%. The external premium declines in distance and becomes virtually zero at about 700m and statistically indistinguishable from zero at about 500m. There is a relatively steep decline in prices as one moves from the inner 0-50m ring to the outer 0-50m ring (about 5%).

There are positive relative appreciation trends, where the percentage premium attached to a location inside or near a conservation area increases over time. Both the prices of properties inside conservation areas and close to conservation areas increased over time.

Residents inside conservation areas perceive a positive impact on the value of their home as particularly attractive, and they saw the price of their property as likely to increase in value or remain stable in the future. Even in the low premia or high deprivation areas, there was a strong feeling that price exclusivity brought with it a 'better' class of resident.

There is no negative attitude towards planning regulation over the ability of the residents to alter their properties. Home owners who had applied for permission were generally more likely to have positive attitudes toward planning controls than those who had not applied. Strong planning control was often linked back to protecting the coherence of a neighbourhood.

Around 40% of the residents had objected to a neighbour's planning application. Most residents objected due to loss of a view, light or privacy. There were also strong views against the loss of local character.

¹²³ The London School of Economics and Political Science, *An Assessment of the Effects of Conservation Areas on Value*, 2012, pp. 3-4.

¹²⁴ *Ibid*, pp. 5-9.

5.2 Legal Framework

5.2.1 Primary Legislation for Heritage Assets

5.2.1.1 Ancient Monuments and Archaeological Areas Act 1979 (the 1979 Act)

It is an Act to consolidate and amend the law relating to ancient monuments, to make provision for the investigation, preservation and recording of matters of archaeological or historical interest and (in connection therewith) for the regulation of operations or activities affecting such matters, to provide for the recovery of grants under section 10 of the *Town and Country Planning (Amendment) Act 1972* or under section 4 of the *Historic Buildings and Ancient Monuments Act 1953* in certain circumstances, and to provide for grants by the Secretary of State to the Architectural Heritage Fund.¹²⁵

5.2.1.2 Planning (Listed Buildings and Conservation Areas) Act 1990 (the 1990 Act)

It is an Act to consolidate certain enactments relating to special controls in respect of buildings and areas of special architectural or historic interest with amendments to give effect to recommendations of the Law Commission.¹²⁶

5.2.1.3 Historic Buildings and Ancient Monuments Act 1953

It is an Act to provide for the preservation and acquisition of buildings of outstanding historic or architectural interest and their contents and related property, and to amend the law relating to ancient monuments and other objects of archaeological interest.¹²⁷

5.2.2 Planning Application

According to section 38 (6) of the *Planning and Compulsory Purchase Act 2004*, the determination of planning applications must be made in accordance with the development plan unless material considerations indicate otherwise.¹²⁸ The development plan itself comprises a local development plan prepared by the local planning authority and the neighbourhood development plan for the area if there is any. The material considerations mentioned here could include policies within the National Planning Policy Framework (NPPF). There are 12 core planning principles in the NPPF, one of those point out that planning should 'conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations'. Chapter 12 of the NPPF also included details for local planning authorities on conservation and enhancing the historic environment in the consideration of any planning development.¹²⁹

In view of the above, planning permission will be needed for undertaking works to scheduled monuments, listed buildings, and conservation area. Planning applications will have to be made to the local planning authority, which is the local district authority in regions with county and district councils, or the unitary authority or London Borough.

¹²⁵ *Ancient Monuments and Archaeological Areas Act 1979*, 1979, p. 1.

¹²⁶ *Planning (Listed Buildings and Conservation Areas) Act 1990*, 1990, p. 1.

¹²⁷ *Historic Buildings and Ancient Monuments Act 1953*, 1953, p. 1.

¹²⁸ *Planning and Compulsory Purchase Act 2004*, 2004, section 38(6).

¹²⁹ Department for Communities and Local Government, *National Planning Policy Framework*, 2012, pp. 5-6 and pp. 30-32.

5.2.2.1 Consent to be Obtained on Heritage Development

Scheduled Monument

Scheduled monuments are protected under the 1979 Act, where it is a criminal offence to:

- destroy or damage a scheduled monument
- execute or cause or permit to be executed works – including operations of any description undertaken for purposes of agriculture or forestry – that would demolish, destroy, damage, remove, repair, alter or add to a scheduled monument, or to carry out any flooding or tipping operations on land in, on or under which there is such a monument, without the prior written consent of the Secretary of State
- use a metal detector in a place which is the site of a scheduled monument (or of any monument under the ownership or guardianship of the Secretary of State, English Heritage, a local authority or a National Park Authority) or situated in an area of archaeological importance without prior consent from English Heritage
- remove any object of archaeological or historical interest which has been discovered by the use of a metal detector in a place which is the site of a scheduled monument (or of any monument under the ownership or guardianship of the Secretary of State, English Heritage, a local authority or a National Park Authority) or situated in an area of archaeological importance without prior consent from English Heritage

A scheduled monument is also subject to the provisions of *The Treasure Act 1996*, *The Treasure (Designation) Order 2002* and *The Theft Act 1968*.¹³⁰

For undertaking works to a scheduled monument, scheduled monument consent has to be obtained. If a monument is both scheduled and listed, only scheduled monument consent is required for any works. Relevant parts of the *Planning (Listed Buildings and Conservation Areas) Act 1990* do not apply.¹³¹

There are some categories of works to scheduled monuments which do not require scheduled monument consent as they are deemed to have consent under the terms of the *Ancient Monuments (Class Consents) Order 1994* (the *Class Consents Order*). Subject to the restrictions and exceptions specified in the *Class Consents Order*, these include:

- Agricultural, horticultural and forestry works (Class 1)
- Works undertaken by the British Coal Board (Class 2)
- Works undertaken by the British Waterways Board (Class 3)
- Works for the repair or maintenance of machinery (Class 4)
- Works urgently necessary for safety or health (Class 5)
- Works undertaken by English Heritage (Class 6 & Class 10)
- Works of archaeological evaluation (Class 7)
- Works carried out under agreements made under section 17 of the 1979 Act (Class 8)
- Works grant-aided under section 24 of the 1979 Act (Class 9)¹³²

¹³⁰ “Scheduled Monuments – identifying, protecting, conserving and investigating nationally important archaeological sites under the *Ancient Monuments and Archaeological Areas Act 1979*”, pp. 7-8.

¹³¹ *Ibid*, p. 9.

¹³² *Ibid*, p. 14.

Listed Buildings

According to the 1990 Act, it is a criminal offence to execute any works for the demolition of a listed building, or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised.¹³³ The listing covers a whole building, including the interior, unless parts of it are specifically excluded in the list description. It can also cover other attached structures and fixtures, later extensions or additions, and any pre-1948 buildings on land attached to the building. For undertaking works to a listed building, a listed building consent has to be obtained.¹³⁴

Register Parks and Gardens

A registered park or garden is not protected by a separate consent regime. The National Planning Policy Framework defines the registered park and gardens as designated heritage assets, where great weight should be given to their conservation when considering the impact of a proposed development. Substantial harm to or loss of a Grade II registered park or garden should be exceptional and for a Grade I or II* registered park or garden should be wholly exceptional.¹³⁵ Local planning authorities are required to consult English Heritage when considering a planning application which affects a Grade I or II* registered site and the Garden History on all applications affecting registered sites of all grades.

Conservation Areas

Under the 1990 Act, it may be a criminal offence to demolish a building in a conservation area without conservation area consent from the local planning authority.¹³⁶ A 'conservation area consent' will not be required if the building is a listed building, ecclesiastical buildings being used for ecclesiastical purposes, or a scheduled monument.¹³⁷ The 1990 Act shall not apply to the following descriptions of buildings as well:

- any building with a total cubic content not exceeding 115 cubic metres (as ascertained by external measurement) or any part of such a building, other than a pre-1925 tombstone
- any gate, wall, fence or means of enclosure which is less than one metre high where abutting on a highway (including a public footpath or bridleway), waterway or open space, or less than two metres high in any other case
- any building erected since 1 January 1914 and in use, or last used, for the purposes of agriculture or forestry
- any building required to be demolished by virtue of an order made under section 102 of the principal Act
- any building required to be demolished by virtue of any provision of an agreement made under section 106 of the principal Act

¹³³ *Planning (Listed Buildings and Conservation Areas) Act 1990*, section 7, section 9.

¹³⁴ English Heritage, *Listed Building Consent*. Retrieved on 2 July 2013, from English Heritage, website: <http://www.english-heritage.org.uk/professional/advice/hpg/consentandplanningpermission/lbc/>.

¹³⁵ Department for Communities and Local Government, "National Planning Policy Framework", 2012, p. 31. Retrieved on 2 July 2013, from GOV.UK, website: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf.

¹³⁶ *Planning (Listed Buildings and Conservation Areas) Act 1990*, Article 74.

¹³⁷ *Ibid.* Article 75.

- any building in respect of which the provisions of an enforcement notice issued under section 172 of the principal Act or sections 38 or 46 of the Act require its demolition, in whole or part, however expressed
- any building required to be demolished by virtue of a condition of a planning permission granted under section 70 or section 177(1) of the principal Act
- any building required to be demolished by virtue of a notice served under section 215 of the principal Act
- any building to which a demolition order made under Part IX of the *Housing Act 1985* applies
- any building included in a compulsory purchase order made under the provisions of Part IX of the *Housing Act 1985* and confirmed by the Secretary of State
- a redundant building (within the meaning of the *Pastoral Measure 1983*) where demolition is in pursuance of a pastoral or redundancy scheme (within the meaning of that Measure).¹³⁸

Under the *Town and Country Planning (General Permitted Development) Order*, there is a wide range of minor works permitted without the need for formal planning permission, known as permitted development rights. However, if local planning authorities consider the exercise of permitted development rights would undermine the aims for the historic environment within the conservation area; local planning authorities may issue an article 4 direction to impose restrictions on permitted development rights.¹³⁹ By doing so, a planning application will have to be made for the proposed works.¹⁴⁰

5.2.2.2 Planning Application Procedure

Preliminary consultation

Pre-application discussions between the developers and local planning authorities are the key to an informed and reasonable planning decision. Through the preliminary consultation, the local planning authority will be able to set out the minimum information requirements that will be needed to consider a proposal.

Rapid appraisals/ Conservation Statements/ Conservation Management Plan

Local planning authorities require an applicant to provide a description of the significance of the heritage assets affected and the contribution of their setting to that significance. The level of detail should be proportionate to the importance of the heritage asset and should be able to understand the potential impact of the proposal on the significance of the asset. While a rapid appraisal gives a brief history of the asset, its significance and the special features identified, a conservation statement and a conservation management plan could provide more guidance on how to safeguard the significance of the asset. The findings can be used to shape and inform an emerging scheme.

¹³⁸ Department for Communities and Local Government, "Circular 01/01: Arrangements for handling heritage applications - notification and directions by the Secretary of State, 2001", para 31. Retrieved on 05 July 2013 from GOV.UK, website: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7666/158304.pdf.

¹³⁹ Department for Communities and Local Government, "Planning Policy Statement 5: Planning for the Historic Environment, 2010", p. 5. Retrieved on 03 July 2013, website: <http://webarchive.nationalarchives.gov.uk/20120919132719/www.communities.gov.uk/documents/planningandbuilding/pdf/1514132.pdf>.

¹⁴⁰ *The Town and Country Planning (General Permitted Development) Order 1995*, section 4.

Impact assessment

When an application is submitted, it should have sufficient information to enable the authority to understand fully the implications of the proposal on the asset's significance. A Design and Access Statement or a Heritage Statement is required to demonstrate the potential impact of a scheme and the measures that have been taken to avoid or minimise damage. In the majority of the cases, the local planning authority will be able to reach a decision on the acceptability of a proposal on the basis of the information before it.

If there is insufficient information and concerns remain about the potential impact of the proposed changes on the significance of the asset, the applicant may be asked to provide a specialist assessment. A specialist assessment will provide an understanding of the significance of the historic asset and the possible impact of the scheme on its significance and setting, which might include the following:

- Historical research
- Fabric analysis
- Architectural investigation
- An examination of any surviving fixtures and fittings
- Exploratory works
- The detailed analysis of decorative schemes or particular materials
- Tree-ring dating (dendrochronology)
- An archaeological evaluation¹⁴¹

Appeal system

Appeals could be made against a refusal of listed building consent or conservation area consent against a failure by the local authority to decide such applications, or against the conditions imposed on a granted consent.¹⁴² Appeals are made to the Planning Inspectorate, who is directly appointed by the Secretary of State for the purpose instead of by the Secretary of State.¹⁴³ The decision is final in a sense that it cannot itself be appealed. (See Appendix I (ii))

5.2.3 Neighbourhood Development Plan

With the passing of the *Localism Act*, local groups are enabled to take part in neighbourhood planning and produce a Neighbourhood Development Plan for their area. Such plan sets out policies in relation to the development and use of land in the defined neighbourhood area, which is drafted by local people who have been recognised by their council as a representative group for their neighbourhood.

Neighbourhood Development Plan forms part of the development plan for the area, along with the local planning authority's local development plan. The development plan is the basis for all planning permission decisions. The Neighbourhood Plans takes precedence over the local authority's development plan on matters that are not of strategic importance to the local authority's area.

5.2.3.1 Criteria

The basic conditions to be satisfied by the proposal are:

¹⁴¹ English Heritage, *Understanding Historic Buildings: Policy and Guidance for Local Planning Authorities*, 2012, pp. 3-8.

¹⁴² English Heritage, "Challenging A Decision". Retrieved on 22 August, 2013, under English Heritage, website: <http://www.english-heritage.org.uk/professional/advice/hpg/consentandplanningpermission/challenging/>.

¹⁴³ *Town and Country Planning Act 1990*, schedule 6.

- Having taken the policies in the National Planning Policy Framework and any advice contained in guidance issued by the Secretary of State into consideration, it is appropriate to make the plan
- The plan contributes to the achievement of sustainable development
- The plan is in general conformity with the strategic policies contained in the development plan for the area of the authority
- The plan is in general conformity with European Union obligations (in respect of matters such as the protection of habitats) ¹⁴⁴

Before the submission to the local planning authority, statutory consultees may need to be consulted, which include English Heritage, Natural England and the Environment Agency amongst others whose interests may be affected. ¹⁴⁵

5.2.3.2 Mechanism

The proposed plan starts with an appraisal of the area, followed by a proposed management plan. The proposed plan is to be publicized and consulted, which is then submitted to the local planning authority and an independent examiner. If there is more than half of those voting vote in favour, the Neighbourhood Development Plan will be adopted for that area. ¹⁴⁶

5.2.4 Control on Historic Building in Disrepair

5.2.4.1 Urgent Works Notice

An urgent works notice may be served where works are urgently necessary for the preservation of a listed building. The local authority is advised to notify the owner that an urgent works notice is considering to be served. The owner may then decide to undertake the necessary works. If the owner declines to do so or is otherwise unresponsive, the law allows the local authority to execute any works which appear to them to be urgently necessary for the preservation of the listed building within their area. ¹⁴⁷ The Secretary of State may also authorise English Heritage to carry out such works elsewhere in England.

An urgent works notice should generally be restricted to urgent repairs to keep a building wind and weather-proof and safe from collapse, or action to prevent vandalism or theft. The cost of the works may be recovered by the local authority or English Heritage from the owner. Such cost may include the continuing expense of providing temporary support or shelter of the building.

Apart from listed buildings, the Secretary of State has the power to direct that the urgent works provisions also apply to an unlisted building in a conservation area if the preservation of the building is important for maintaining the character or appearance of the conservation area. It is usually exercised in response to a request from a local authority to enable it to serve an urgent works notice. English Heritage will be consulted before the decision is made. ¹⁴⁸

¹⁴⁴ English Heritage, "Neighbourhood Planning and Heritage." Retrieved on 22 August, 2013, under English Heritage website: <http://www.english-heritage.org.uk/professional/advice/hpg/historicenvironment/neighbourhoodplanning/>.

¹⁴⁵ English Heritage, "Improving your Area." Retrieved on 22 August, 2013, under English Heritage website: <http://www.english-heritage.org.uk/caring/get-involved/improving-your-neighbourhood/>.

¹⁴⁶ English Heritage, "Neighbourhood Planning and Heritage." Retrieved on 22 August, 2013, under English Heritage website: <http://www.english-heritage.org.uk/professional/advice/hpg/historicenvironment/neighbourhoodplanning/>.

¹⁴⁷ *Planning (Listed Buildings and Conservation Areas) Act 1990*, section 54.

¹⁴⁸ *Planning (Listed Buildings and Conservation Areas) Act 1990*, section 76.

5.2.4.2 Repairs Notice

A repairs notice is concerned with long-term conservation when comparing to an urgent works notice, and is a pre-cursor to possible compulsory acquisition. If a listed building is in disrepair where the owner places the building at risk without a reasonable care, a local authority will serve a repairs notice on the owner specifying those works which is considered reasonably necessary for the proper preservation of the building. There is no provision for an appeal against a repairs notice nor is there a requirement to consider the financial means of the owner when specifying the works.¹⁴⁹

5.2.4.3 Compulsory Purchase Order

If after not less than two months, it appears that the owner does not take reasonable steps for the proper preservation of the listed building, the authority can begin compulsory purchase proceedings to acquire the building from the owner. The Compulsory Purchase Order has to be confirmed by the Secretary of State under the following condition:

- Reasonable steps are not being taken to preserve the historic building
- It is expedient that the building should be preserved
- It should be compulsorily purchased to ensure its preservation

Hence, there has to be a credible plan in place to secure the future of the historic building, which may include a proposal to immediately transfer the property to a building preservation trust upon acquisition.¹⁵⁰

Compensation will be paid to the owner. Normally, the open market value is the basis for the assessment of compensation. If it is considered that the owner has deliberately allowed the building to fall into disrepair in order to justify its demolition and secure permission for redevelopment of the site, the local authority may include within the Compulsory Purchase Order application a direction for minimum compensation.¹⁵¹

5.2.4.4 Court Order for Dangerous Structures

A court order may be applied to a building which is in sufficient disrepair to be considered dangerous, which requires the owner to make the building safe or to demolish all or part of it. If the owner fails to comply with the order, the local planning authority can carry out the work and reclaim the expense. The court order is registrable as a local land charge.¹⁵²

5.2.4.5 Amenity Notice

If it appears to the local planning authority that the amenity of a part of their area or of an adjoining area is adversely affected by the condition of land or buildings, an amenity notice may be served on the owner specifying the works necessary to remedy the poor condition. Such notice may also be used for an unlisted building in a conservation area and for scheduled monuments. It may be used to remedy relatively minor matters in a listed building, e.g. poor external maintenance, broken fences and accumulated rubbish.¹⁵³

¹⁴⁹ *Planning (Listed Buildings and Conservation Areas) Act 1990*, section 47. See also English Heritage, "03. Compulsory Acquisition of Listed Buildings". Retrieved on 1 August 2013, from English Heritage, website: [http://www.english-heritage.org.uk/professional/advice/hpg/HAR/compulsoryacquisitions/#\(3\)](http://www.english-heritage.org.uk/professional/advice/hpg/HAR/compulsoryacquisitions/#(3)).

¹⁵⁰ *Planning (Listed Buildings and Conservation Areas) Act 1990*, section 48.

¹⁵¹ *Planning (Listed Buildings and Conservation Areas) Act 1990*, section 50.

¹⁵² *Buildings Act 1984*, section 77.

¹⁵³ *Town and Country Planning Act 1990*, section 215.

5.2.4.6 Works to Empty Buildings

A local planning authority may undertake works to an unoccupied building to prevent unauthorised entry or to prevent it becoming a danger to public health. The expenses of the works may be recovered from the owner.¹⁵⁴

5.2.4.7 Statutory Nuisance

An abatement notice may be served on an owner or occupier of premises requiring the abatement or prevention of the nuisance or the execution of necessary works for that purpose. This may provide a useful power if premises were allowed to deteriorate to such extent that they affect health or cause a nuisance.¹⁵⁵

5.2.4.8 Works to Ancient Monuments

English Heritage and a local planning authority have powers to carry out works to a scheduled monument that are required for the preservation, maintenance and management of the monument and to contribute to the costs of such works. The consent of the owner must be obtained.

The Secretary of State and English Heritage may carry out works that are urgently necessary for the preservation of a scheduled monument upon a 7 days written notice to the owner.

5.2.4.9 Public or Charitable Ownership and Guardianship

According to the *Historic Buildings and Ancient Monuments Act 1953*, the Secretary of State and English Heritage have powers to acquire by agreement or gift any building which appears to them to be of 'outstanding historic or architectural interest' and any related land. English Heritage also has the power to acquire a building in a conservation area that is of special historic or architectural interest and any other garden or land that is of outstanding historic or architectural interest. Outstanding in this context has always been interpreted as meaning grade I or II*.¹⁵⁶

A scheduled monument may be acquired by agreement or as a gift by a local authority or by English Heritage with the consent of the Secretary of State. Any land adjoining or in the vicinity of the monument needed for its maintenance or management, or to provide and facilitate access to it may also be acquired.¹⁵⁷

An alternative to the acquisition of ancient monuments is guardianship arrangements by a public body. The guardian agrees to accept responsibility for management and maintenance of the ancient monument and in return acquires certain rights over the property. The owner does not give up ownership but is subject to the guardianship agreement.¹⁵⁸ Such agreements are a voluntary arrangement. The Secretary of State, English Heritage and local authorities all have the power to become guardians of ancient monuments. Once the monument has been taken into guardianship, the guardian is under a statutory duty to maintain it and has very wide powers to exercise control and management and to do everything necessary for its maintenance. There is also a responsibility to provide public access and visitor facilities. Associated land may also be taken into guardianship.

Once being acquired, any scheduled monument must be made open to the public, although access may be regulated or even entirely excluded in certain circumstances.¹⁵⁹

¹⁵⁴ *Local Government (Miscellaneous Provisions) Act 1982*, section 29.

¹⁵⁵ *Environment Protection Act 1990*, sections 79-82.

¹⁵⁶ *Historic Buildings and Ancient Monuments Act 1953*, sections 5 and 5A.

¹⁵⁷ *Ancient Monuments and Archaeological Areas Act 1979*, sections 10 and 11; *Acquisitions of Land Act 1981*.

¹⁵⁸ *Ancient Monuments and Archaeological Areas Act 1979*, section 12.

¹⁵⁹ *Ancient Monuments and Archaeological Areas Act 1979*, section 19A.

5.2.5 Building Approval

Building Regulations are likely to apply to the new building works carried out in new buildings or alterations of existing premises. Any material alteration and material change of use of an existing building will also need to comply with the Building Regulations. Approval is sought from the building control bodies, which can be a local authority building control officer or a private sector approved inspector.

If an approved inspector is to be commissioned, the developer and the Approved Inspector have to jointly give an initial notice to the local authority, informing the local authority that an approved insurance scheme is in operation. Building works cannot be started until the initial notice is accepted by the local authority within five working days.

Applicants can also apply to the local authority for a relaxation or dispensation of the requirement if they find the requirements in the Building Regulations too onerous or not applicable to their proposal. If it is rejected, the applicant has the right to appeal within one month of that decision. The power to dispense with or relax any requirement contained in the Building Regulations shall be exercisable by the local authority.¹⁶⁰

5.3 Incentives

5.3.1 Government Support and Criteria

Currently there is no incentive to owners of private properties for conservation, while supports are mainly given to the charities, non-profit making organisations and public bodies. However, there are still some non-governmental agencies that offer support to owners of private properties.

5.3.2 Other Supporting Agencies

5.3.2.1 Grants for Historic Buildings, Monuments and Designed Landscapes by English Heritage

Such grants are mainly offered for urgent repairs or other work required within two years preventing loss or damage to important architectural, archaeological or landscape features. Such grants can also grant aid project development work involving the preparation of specialist reports and studies as a basis for repair or future management.

Criteria

The grants are covered by a contract between the recipient and English Heritage. The recipient will need to provide access for the general public to see the completed work as a condition of the grant in most of the cases. Moreover, the recipient will also need to follow the Public Procurement Regulations, where the recipient will have to obtain at least three tenders as competitively procurement for the grant-aided building works. The recipient will also need to prepare a costed maintenance plan during their application, where once the grant is approved; the agreed maintenance plan will need to be put into practice.¹⁶¹

5.3.2.2 Management Agreements for Field Monuments by English Heritage

English Heritage offers funding to improve the management of monuments or access to them through agreements with the owner or occupier of the land. Funding includes payment for one-off repairs. More

¹⁶⁰ *Building Act 1984*, section 8 (1).

¹⁶¹ English Heritage, "Grants for Historic Buildings, Monuments and Designed Landscapes." Retrieved on 22 August 2013, under English Heritage, website: <http://www.english-heritage.org.uk/professional/funding/grants/grants-available/hbmdl/>.

major repairs can be considered under such grant scheme for Historic Buildings Monuments and Designed Landscapes.¹⁶²

Criteria

Management Agreements offer protection for the landscape and monuments in England. The agreements usually run for a term of three or five years. Priorities are given to scheduled monuments at risk.

Mechanism

The English Heritage works closely with Natural England, whose agri-environment funding scheme known as Environmental Stewardship is the primary source of funding for landscape management. Sites where environmental stewardship is not available or appropriate will be focused.

5.3.2.3 National Heritage Protection Commissions Programme (NHPCP)

The National Heritage Protection Commissions Programme (NHPCP) funds projects that support the National Heritage Protection Plan (NHPP), was launched in 2011 and sets out how English Heritage will prioritise and deliver heritage protection for the next four years (2011-2015).

The NHPP offers support to private owners for their repair, maintenance, adaptation, reuse and interpretation of heritage assets through empowering owners, local groups, communities and individuals by providing them with access to expert advice, technical support and, in some circumstances, financial assistance.¹⁶³

Criteria

NHPCP can only fund projects which directly address the main strategic priorities outlined in the NHPP. Those priorities are established through collecting views from the local authorities, interested groups and the general public. All projects must contribute to an NHPP measure.¹⁶⁴

Mechanism

The framework of NHPP could be divided into four main stages: identifying issues including threats or opportunities of the heritage assets, assessing the issues, understanding the character and significance of the heritage assets, and offer responses to the applicants. Responses mainly fall into three areas, including protection responses, management responses, and provide advice, investment and grant-aid for protection.¹⁶⁵

5.3.2.4 Heritage Lottery Fund (HLF)

The Heritage Lottery Fund was established in 1994 by the Parliament as a non-departmental public body to give grants to projects involving the local, regional and national heritage of the United Kingdom. Financial and policy directions are issued by the Secretary of State for Culture, Media and Sport and HLF

¹⁶² English Heritage, "Management Agreements for Field Monuments." Retrieved on 22 August 2013, under English Heritage, website: <http://www.english-heritage.org.uk/professional/funding/grants/grants-available/management-agreements/>.

¹⁶³ English Heritage, *National Heritage Protection Plan Framework*, pp. 5-7.

¹⁶⁴ English Heritage, "National Heritage Protection Commissions Programme." Retrieved on 22 August 2013, from English Heritage website: <http://www.english-heritage.org.uk/professional/funding/grants/grants-available/nhpcp/>.

¹⁶⁵ English Heritage, *National Heritage Protection Plan Framework*, pp. 11-12.

reports to Parliament through the department. It is administered by the Trustees of the NHMF. The money of HLF comes from the income from National Lottery tickets.¹⁶⁶

Criteria and mechanism

The grant is from £3,000 to over £5 million. HLF offers a range of different grant programmes, that the applicant should know which programme their application is under. The programmes are:

- Sharing Heritage (£3,000 to £10,000) – for any type of project related to national, regional or local heritage in the UK
- Our Heritage (£10,000 to £100,000) – for any type of project related to national, regional or local heritage in the UK
- Heritage Grants (over £100,000) – for any type of project related to the national, regional, or local heritage in the UK with grants over £100,000
- Young Roots (£10,000 to £50,000) – for projects that engage young people with heritage in the UK
- First World War: then and now (£3,000 to £10,000) – for communities to mark the Centenary of the First World War
- Heritage Enterprise (£100,000 to £5 million) – supports enterprising community organisations across the UK to rescue neglected historic buildings and sites and unlock their economic potential
- Start-up grants (£3,000 to £10,000) – for everyone who wants to create a new organisation to look after or engage people with heritage, or existing groups taking on new responsibilities for heritage
- Transition funding (£10,000 to £100,000) – for organisations in the UK who want to achieve significant strategic change in order to become more resilient and sustain improved management of heritage for the long term
- Townscape Heritage (£100,000 to £2 million) – for schemes which help communities improve the built historic environment of conservation areas in need of investment across the UK
- Parks for People (£100,000 to £5 million) – for projects related to historic parks and cemeteries in the UK
- Landscape Partnerships (£100,000 to £3 million) – for schemes led by partnerships of local, regional and national interests which aim to conserve areas of distinctive landscape character throughout the UK
- Grants for Places of Worship (£10,000 to £250,000) – for projects that involve urgent structural repairs to places of worship that are at risk. Funding are also given to work which encourages greater community use and engagement.
- Catalyst (Various) – such grants initiatives form part of a broader partnership initiative between HLF, DCMS and Arts Council England
- Skills for the Future (£100,000 to £1 million) – for projects which provide training placements to meet skills shortages in the heritage sector, and fully support trainees to learn practical skills

¹⁶⁶ Heritage Lottery Fund, "Our background." Retrieved on 21 August 2013, from Heritage Lottery Fund under the Heritage Lottery Fund, website: <http://www.hlf.org.uk/aboutus/Pages/OurBackground.aspx#.UhsPHZ2wo3E>.

5.3.3 Tax Relief for Listed Buildings and Other Heritage Assets

A number of tax breaks are available which can benefit the owners of heritage assets to assist with their conservation.

5.3.3.1 Capital Gain Tax

Capital gains tax relief, for instance, the principal private residence and roll-over relief, apply to heritage assets just as they do to any other building or site.¹⁶⁷

5.3.3.2 Inheritance Tax

Inheritance tax is payable on the death of an owner or on a gift made within 7 years of death, which can be exempted if the asset falls into one of the following categories:

- Objects or collections of objects pre-eminent for their national, scientific, historic or artistic interest
- Land of outstanding scenic, scientific or historic interest
- Buildings of outstanding historic or architectural interest, which are likely to be listed Grade I, II* or scheduled monument
- Land essential for the protection of the character and amenities of an outstanding building
- Objects historically associated with an outstanding building

The new owner must provide reasonable access for the public and take reasonable steps for maintenance, preservation and repair to their historic asset. The conditional exemption is not lost on the subsequent disposal of the property, subsequent death of the recipient or a further lifetime transfer or gift to a heritage body as long as further undertakings as to access and maintenance are entered into by the new owner.¹⁶⁸

5.3.3.3 Value Added Tax (VAT)

There are VAT reliefs for works to listed buildings, which include the following:

- A zero rate for conversion of any non-residential building for a housing association
- A reduced VAT rate of 5 per cent for conversions of non-residential buildings into qualifying dwellings or communal residential buildings and for conversions of residential buildings to a different residential use.
- A reduced VAT rate of 5 per cent for the renovation or alteration of empty residential premises.
- A reduced VAT rate of 5 per cent VAT for the installation of energy saving materials, grant funded heating system measures and qualifying security goods.
- A zero rate for some construction work to suit the condition of people with disabilities.¹⁶⁹

¹⁶⁷ English Heritage, "Tax relief for listed buildings and other heritage assets." Retrieved on 22 August 2013, from English Heritage, website: [http://www.english-heritage.org.uk/professional/advice/hpg/assistanceforowners/taxrelief/#\(3\)](http://www.english-heritage.org.uk/professional/advice/hpg/assistanceforowners/taxrelief/#(3)).

¹⁶⁸ *Ibid.*

¹⁶⁹ "VAT: approved alterations to listed buildings, VAT Information Sheet 10/12, August 2012," pp. 4-5.

5.4 Public Participation

5.4.1 Application for a Listing or Designation

During the process of designation, anyone could make application to English Heritage of the following:

- List a building
- Schedule a monument
- Register a park, garden or battlefield
- Protect a wreck site

5.4.1.1 Case Study – Burton Manor, Stafford

Burton Manor Village was built in 1926 by the Hall Engineering Company for its workers. A planning application was put forth to replace a house and garden within the estate with five inappropriate new structures. The local residents took action by preparing an appraisal on the area and contacted the borough council's conservation officer in April 2008, who saw the potential for designation and was supported by English Heritage. The local residents then outlined the possible boundaries of a conservation area and received support. The Burton Manor Village Conservation Area was designed in October 2008; subsequently an Article 4 Direction was made in 2009 where the erosion of architectural details giving the houses and the area their distinctive local character was controlled. As a result, the original planning application was turned down on appeal.¹⁷⁰



Fig. 29. Residents campaign for conservation area designation at Burton Manor, Stafford. (from English Heritage, *Valuing Places: Good Practice in Conservation Areas, England*, English Heritage, 2011, pp. 7-8.)

¹⁷⁰ English Heritage, "Valuing Places: Good Practice in Conservation Areas, 2011," pp. 7-8.

5.5 Conclusion

England is a regime of well-established framework on heritage conservation. The designation system adopted the 'dot, line and plane' concept from the designation of individual building to an entire area such as a village or even a city. They offer statutory protection to the heritage assets, where consents have to be applied for any change to them.

6

JAPAN

6.1 Background

6.1.1 Scope

Under the *Law for the Protection of Cultural Properties*, the national government of Japan designates and selects the most important cultural properties and place restrictions on it as a method to protect the properties. Measures applied to tangible cultural properties (including buildings, works of fine arts and crafts, and tangible folk cultural properties) include preservation, disaster protection and acquisition, while measures applied on intangible cultural properties (such as performance arts, techniques, manners and customs) include financial incentives for training programmes and documentation.

Tangible cultural properties could be designated as Important Cultural Properties, and particularly important ones can be designated as National Treasures.

Designation can take place on a national, prefectural or municipal level.

On top of the designation system, a register system is established to provide more moderate protection for cultural properties (tangible cultural properties, tangible folk cultural properties, and monuments). The system aims at voluntary protection of cultural properties by their owners (the ones that are not designated by national or local government) through notification, guidance and advice. It is set up to complement the designation system in covering a wider definition of heritage and a broader time frame.

Japan is divided into 47 local jurisdictions – the national government, the prefectures: one metropolitan district – Tokyo; two urban prefectures – Kyoto and Osaka, forty-three rural prefectures and one district – Hokkaido. Each prefecture has its own system and regulations even though many local governments have similar procedures, but a large degree of policy standardization could be observed. Some larger jurisdictions have experimented with policies that were later adopted by the national government.

This chapter focuses on the urban prefecture Kyoto. Reference is made to other prefectures and cities where a case study could not be found in Kyoto.

Kyoto is a city with a vast amount of historical buildings; an elaborate system has been developed over the years to protect these built heritages, which in turn becomes a useful reservoir of reference. Subsequent to the Second World War, Japanese cities have experienced dramatic changes: in the 1970s, Kyoto's city development was dominated by large-scale building investments and nation-wide corporations, this was further worsened by the rocketing land price in Tokyo, pushing many developers to other major cities, and Kyoto became one of the obvious choices. The increase in the value of land in the city centre of Kyoto was consequently the highest in the whole Japan.¹⁷¹ Numerous traditional wooden structures were replaced by new-built concrete buildings. Strong private-sector development stress and high land values both had adverse

¹⁷¹ Salastie Riitta "RI", *Living Tradition or Panda's Cage? – An Analysis of Urban conservation in Kyoto, Case study: 35 Yamahoko Neighbourhoods*, Helsinki, Helsinki University of Technology, p. 69.

effects on Kyoto's built heritage, and pressed on the development of adequate town planning and heritage conservation legislation.

The conservation of cultural property is controlled by a nation-wide law – the *Law for the Protection of Cultural Properties*, implemented and operated by the Agency for Cultural Affairs under the Ministry of Education. The national law is generally copied to prefectural and municipal levels. At prefectural and municipal levels, the Board of Education is in charge of the conservation work. Among the cultural properties conserved is the preservation-district system, established to conserve an area instead of a single building, this category is responsible by the municipalities instead of the national and the prefectural governments. On the construction level, the *Building Code* and the *City Planning Law* are two basic regulatory systems that govern buildings and the city's environment. Apart from the national laws, local municipalities establish a variety of regulations such as the local townscape conservation regulations. Looking at Kyoto gives a glimpse of the different level systems at work within an urban prefecture.

6.1.2 Development of Conservation Policy in Japan

The Japanese government believes that cultural properties are essential to accurately understand the history and culture of Japan, and they form the foundations for its future cultural growth and development. They believe that it is extremely important to appropriately preserve and utilize such cultural properties.

Over one hundred years of architectural and urban conservation in Japan, concepts and practices of conservation have been transformed by economic and social changes. From the Nara period until the Meiji Restoration period in 1868, responsibility for the construction and repair of official buildings, including the most important Buddhist temples, was in the hands of government agencies. Since the early Meiji era, conservation has been part of people's duties under the laws adopted from Western countries.

At the beginning of the Meiji Era, the government and the people cultivated modern methods of development, and tended to ignore the need to protect cultural properties and traditions. From 1880, the Japanese government realised the importance of protecting its cultural heritage and granted funds for the maintenance of Buddhist temples and Shinto shrines. By 1894, 539 temples and shrines had received subsidies for repairs and reconstruction.

In 1897, the government enacted the first law for the protection of cultural properties. The *Law for the Preservation of Ancient Shrines and Temples* provided for legal protection and the granting of subsidies for preservation works. According to this law, the first historic buildings and art treasures in the possession of shrines and temples were protected as national treasures. Since then, the *Law for Preservation of Ancient Shrines and Temples* has proved an effective tool in preventing the destruction of historic treasures.

In 1929, the *Law for the Preservation of National Treasures* was enacted; the protection was expanded to cover the treasures owned by local public bodies and individuals.

Later in 1950, the *Law for the Protection of Cultural Properties* was legislated. This law also included the *Law for the Preservation of Historic Sites, Places of Scenic Beauty* of 1919, and used the term scenic zoning to protect historic areas such as the designated historic site of the Meiji Shrine, Tokyo and the scenic area of the historic core of Kyoto. Legal categories such as intangible cultural properties and folk cultural properties meant that, for the first time, the traditional performing arts and applied arts were protected.

The establishment of the Agency for Cultural Affairs supported the owners of cultural properties in being more responsible in protecting properties that allowed public access. It should be mentioned that at the end of the first stage – before the Second World War – the definition of cultural properties was expanded beyond religious buildings, and the responsibilities for preserving cultural properties began to change hands to the citizens of Japan.

From 1960-1970, economic expansion brought widespread loss of precious historic environments. This led to the formation of grass-roots movements for the protection of historic environments all over Japan.

Public concerns were not only for the protection of high value buildings but also for whole historic areas; therefore, the issue of preserving groups of historic buildings was discussed for the first time in Japan.

The second half of the 1960s and the early 1970s saw the emergence of local citizens' protests against the destruction of the scenic beauty of their surroundings and against the new construction in three areas, Kamakura, Kyoto and Nara. Even though the protests in Kyoto and Nara were unsuccessful, these initial townscape conservation movements brought about the passage of the *Law for the Preservation of Historic Landscape in Ancient Capitals* in 1966. The law protected eight ancient capitals: Asuka, Ikaruga, Kamakura, Kashihara, Kyoto, Nara, Sakurai, and Tenri.¹⁷²

Because of this Law, in 1967 Kyoto became a good example of a city that embraced two significant areas designated as Historic Landscape Preservation District and the Special Historic Landscape Preservation District, covering 60 square metres and 15 square metres respectively. The significance of the city ordinance is that it played an important role in protecting the urban area, which is 'space', rather than 'art objects' or 'buildings', which were what the laws were formerly enacted to protect.

In 1968, the *City Planning Law* was passed. This important law supported decentralisation of planning authority to local governments. Thanks to this law, master plans of urban areas can be designed at the municipal level with only a notification of decisions to the prefectural governor. In essence, this will encourage the passing of *Historic Preservation Machizukuri Ordinance* in a number of local areas.

In 1973, local governments which were interested in townscape conservation joined forces to found the Japanese Association of Towns with Historic Townscapes. In 1974, local townscape conservation group formed the Japanese Association for Townscape Conservation, originally consisting of the Friends of Tsumago Society, the Imai-cho Preservation Society and the Arimatsu Town-Making Society.

6.1.3 Heritage Designation System

There are two main systems established to protect cultural properties in Japan, the 'designation system' and a 'registration system.' A broad range of items encompassing both tangible and intangible cultural properties, ranging from traditional skills and customs, art pieces, individual buildings to a complete area are all eligible to for designation, the paper will introduce the system, but focus will be placed on the protection of individual built structures.

6.1.3.1 Designation of National Treasures & Important Cultural Properties

The *Law for the Protection of Cultural Properties* empowers the national government to designate and select the most important cultural properties that possess high historic, artistic, and academic value for Japan. Protection encompasses tangible cultural properties (including buildings, works of fine arts and crafts, and tangible folk cultural properties) and intangible cultural properties. (Such as performance arts, techniques, manners and customs) (Fig. 30)

The national government designates important tangible cultural properties, such as significant buildings, as 'Important Cultural Properties,' and those with particularly high value from the perspective of worldwide culture as 'National Treasures.' Cultural properties that are designated as important cultural properties or national treasures will be protected from export, demolition, and alterations.

¹⁷² Wimonrart Issarthumnoon, "The *machizukuri* Bottom-up Approach to Conservation of Historic Communities: Lessons for Thailand." Retrieved on 8 August 2013, website: http://utud.sakura.ne.jp/research/publications/_docs/2005ajj/wi041112.pdf.

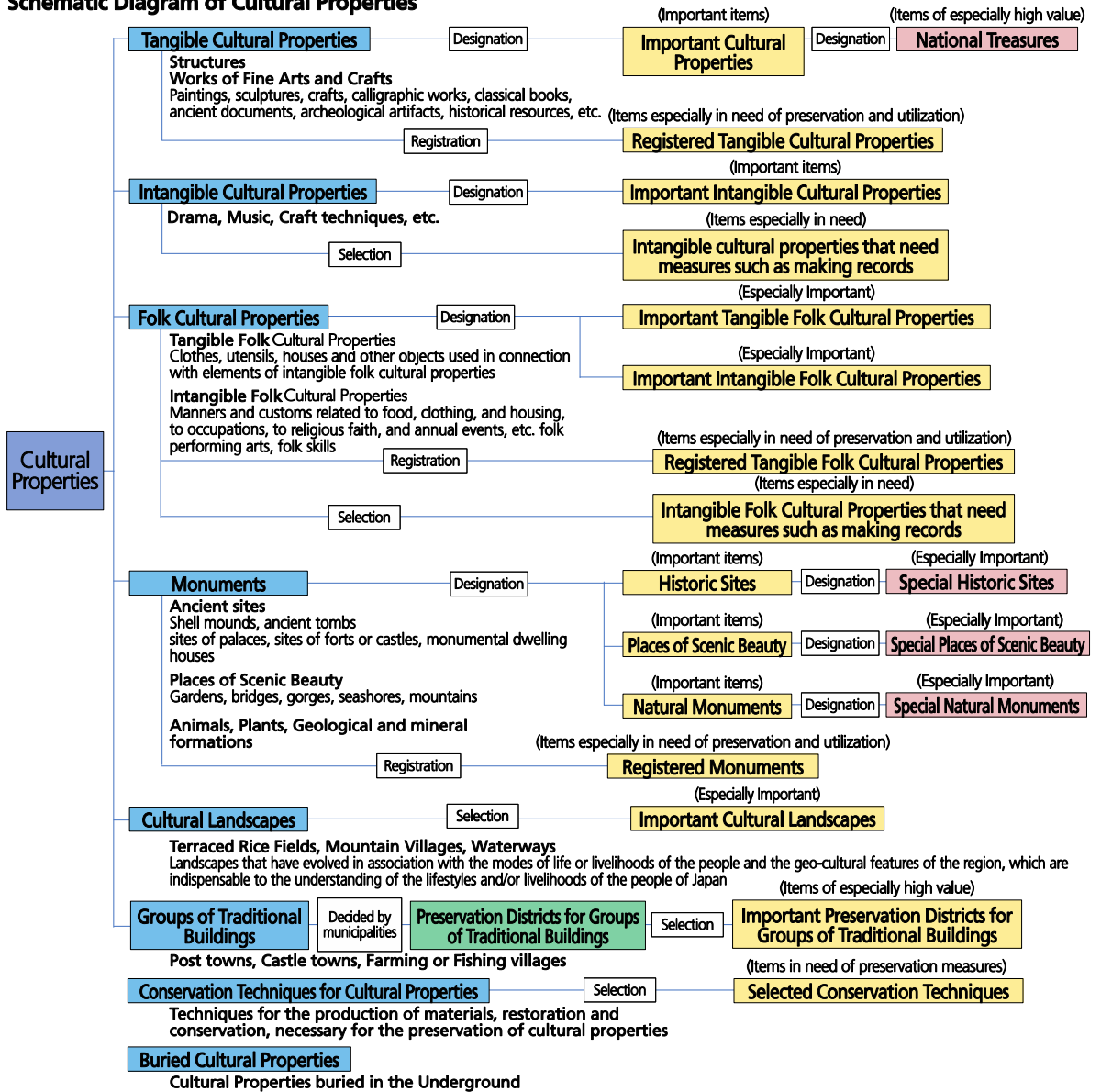
The designation and selection of cultural properties are carried out by the Minister of Education, Culture, Sports and Technology on the basis of reports submitted by the Council for Cultural Affairs in response to a ministerial inquiry.¹⁷³

Designation can take place on a national, prefectural or municipal level.

¹⁷³ "Outline of the System for Protecting Cultural Properties in Preservation and Utilization of Cultural Properties," Policy of Cultural Affairs in Japan, Japan, Agency for Cultural Affairs, Japan, 2012.

2. Schematic Diagram of Cultural Properties

Schematic Diagram of Cultural Properties



Process of Designation, Registration, and Selection of Cultural Properties

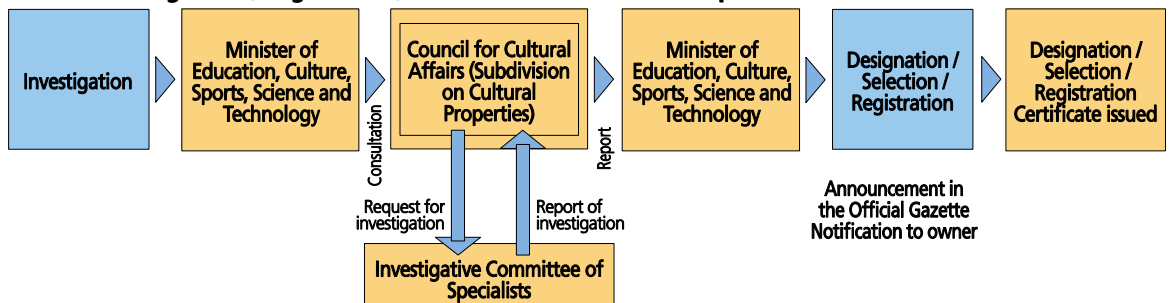


Fig. 30. Schematic Diagram of Cultural Properties.
 (From "Preservation and Utilization of Cultural Properties" in Policy of Cultural Affairs in Japan
 — Fiscal 2012, Agency for Cultural Affairs, Japan p. 35.)

Designated Tangible Cultural Properties and National Treasures are classified into the following categories under two period of time:

Pre-Modern (Early modern period or earlier)

- Shrines
- Temples
- Castles
- Estates
- Domestic Structures
- Others

Modern (Meiji period onwards)

- Places of Worship
- Domestic Structures
- Education Facilities
- Cultural Establishments
- Law and Government Buildings
- Commercial Structures
- Industrial and Transport Sites
- Others



Fig. 31. The hall, and the attached buildings of Izumo Taisha were designated National Treasures of Japan in 1952.

6.1.3.2 Designation of Monuments

Definition

Monuments is a collective term used by the Japanese government's *Law for the Protection of Cultural Properties* to denote Cultural Properties of Japan as historic locations such as shell mounds, ancient tombs, sites of palaces, sites of forts or castles, monumental dwelling houses and other sites of high historical or scientific value; gardens, bridges, gorges, mountains, and other places of great scenic beauty; and natural features such as animals, plants, and geological or mineral formations of high scientific value (see Appendix II (i)).

The national government designates significant items in three categories and seeks to preserve them:

- Historic Sites
- Places of Scenic Beauty
- Natural Monuments

Those of particularly high significance are designated as:

- Special Historic Sites
- Special Places of Scenic Beauty
- Special Natural Monuments

For monuments of the modern period whose protection is increasingly necessary due to development or other reasons, a system for registering monuments has been introduced, which provides moderate measures for protection based on notification and guidance.

6.1.3.3 Designation of Groups of Traditional Buildings

Definition

Following an amendment to the *Law for the Protection of Cultural Properties* in 1975, a new category of cultural properties was introduced under the name of Groups of Traditional Buildings, extending protection to historic cities, towns and villages including castle towns, post-station towns, and towns built around shrines and temples and other areas of historic importance throughout Japan. According to this system, municipalities designate certain areas as Preservation Districts for Groups of Traditional Buildings based on regulations, and formulate a preservation plan in accordance with the Preservation Ordinance to execute the preservation project systematically.

The Agency for Cultural Affairs provides financial support for services such as repair, landscaping and disaster prevention for the preservation of Important Preservation Districts for Groups of Traditional Buildings, while providing the necessary guidance and advice to municipal efforts. In addition, support is also given through preferential tax treatment to the owners of such buildings within the districts.

6.1.4 Assessment of Heritage for Designation

The process of heritage assessment may vary from local government to another. A criterion for designation was laid out by the Ministry of Education, Culture, Sports, Science and Technology, Japan. Local governments make arrangements for substantial compensation to land owners by purchasing designated land, and conserve the land to widely utilize such historical sites with the support of state subsidies.

6.1.4.1 Assessment of Cultural Properties

The Kyoto assessment system assesses tangible cultural properties according to a set of criteria:¹⁷⁴

- Outstanding design concept
- Properties demonstrating outstanding techniques
- High historic value
- High academic value
- Demonstrate obvious local or tribal characteristic

6.1.4.2 Assessment Criteria for Monuments Designation

Among natural properties, it should fulfil the following criteria:

- Excellent scenic landscape
- High academic value
- Reflects humanity
- High artistic value

6.1.4.3 Assessment Criteria for Groups of Traditional Buildings

The Kyoto assessment system assesses Groups of Traditional Buildings according to the following set of criteria:¹⁷⁵

- Groups of traditional buildings that show excellent design as a whole
- Groups of traditional buildings and land distribution that preserve the old state of affairs well
- Groups of traditional buildings and their surrounding environment that show remarkable regional characteristics

No distinction is made between privately- and publicly-owned properties in assessment or listing. The government seek the owner's consent for designation by offering heritage incentives.

6.1.5 Designation Procedure

The designation, selection and registration of cultural properties are handled by the Minister of Education, Culture, Sports, Science and Technology based on the report submitted by the Council for

¹⁷⁴ "Important Cultural Properties and National Treasures (Building) the specified standard." Retrieved on 8 August 2013, website: http://www.bunka.go.jp/bunkazai/shoukai/pdf/yukei_kenzoubutsu_kijun.pdf.

¹⁷⁵ Ministry of Education, Culture, Sports, Science and Technology, [重要伝統的建造物群保存地区選定基準]. "Important Historic Buildings Preservation District for Groups selection criteria." Retrieved on 16 July 2013, under Ministry of Education, Culture, Sports, Science and Technology, website: http://www.mext.go.jp/b_menu/hakusho/nc/k19751120002/k19751120002.html.

Cultural Affairs, subsequent to the inquiry by the ministry. The following chart explains the procedures for designation:



Fig. 32. Designation Procedures.
 (From "Preservation and Utilization of Cultural Properties" in Policy of Cultural Affairs in Japan
 — Fiscal 2009, Agency for Cultural Affairs, Japan, p. 35.)

6.1.6 Registration System

In 1996, the Law for the Protection of Cultural Properties was amended and a new cultural property registration system was introduced in addition to the existing designation system. Under the new system, the Minister of Education, Culture, Sports, Science and Technology can register in the Cultural Property Original Register those architectural properties and other structures (tangible cultural properties other than those designated by the national or local governments) which are in particular need of measures for protection and utilization.

A registration system is in place to provide protective measures that are more moderate¹⁷⁶ than those of the designation system. The registration system also aims to provide protection to a wider period of time, including structures erected in the modern period that are subjected to increasing threat due to land development. Through notification, guidance and advice, the system attempts at voluntary protection of cultural properties by the owners.

¹⁷⁶ Agency for Cultural Affairs, "Chapter VI - Preservation and Utilization of Cultural Properties" in Policy of Cultural Affairs in Japan — Fiscal 2012, Japan, p. 30.



Fig. 33. Completed in 1958, the Tokyo Tower was registered as a Registered Tangible Cultural Property on 21st June, 2013.

6.1.7 Opportunity Cost

As outlined in early legislation papers, architectural preservation is seen as a guardianship of the nation's important cultural identity instead of a monetary burden.

In Kyoto, the government stresses on the self-sustainability of preserved quarters, and has formed various organisation bringing developers, citizens, artists and academics together to ensure that the area could maintain a healthy income while preserving its authentic looks.

A study was done on 'The Sustainability of Town Management in the Conservation District of Traditional Architectures,' and the study included the population changes, house occupation, tourists' number and the changes in the economic activities occurred after an area was conserved. The observation was carried out for over a decade, and positive impacts were observed.

6.2 Legal Framework

6.2.1 Primary Legislation for Heritage Assets

In Japan, government-initiated arts and cultural protection has a long history. Official experts held the responsibility to classify, authenticate, and grade works of art could be traced back to the *Heian* Imperial Court and the *Muromachi* and *Tokugawa Shogunates*.¹⁷⁷ This responsibility continued in the modern Japanese government, which established a system of designation.

The Agency for Cultural Affairs, an auxiliary organ of the Ministry of Education, Science and Culture is the agency responsible for cultural affairs in current day Japan. The Agency for Cultural Affairs has three main aims: To promote and disseminate culture; execute and administrate affairs of the state concerning religion

¹⁷⁷ The Japan Times, "Mission to preserve and protect." Retrieved on 05 July 2013 from The Japan Times, website: <http://www.japantimes.co.jp/culture/2000/04/29/culture/mission-to-preserve-and-protect/#.UhlWLRnqCo>, 29/04/2010.

and to preserve and utilize cultural properties. The last task is the responsibility of the Cultural Properties Development. (Fig. 34)

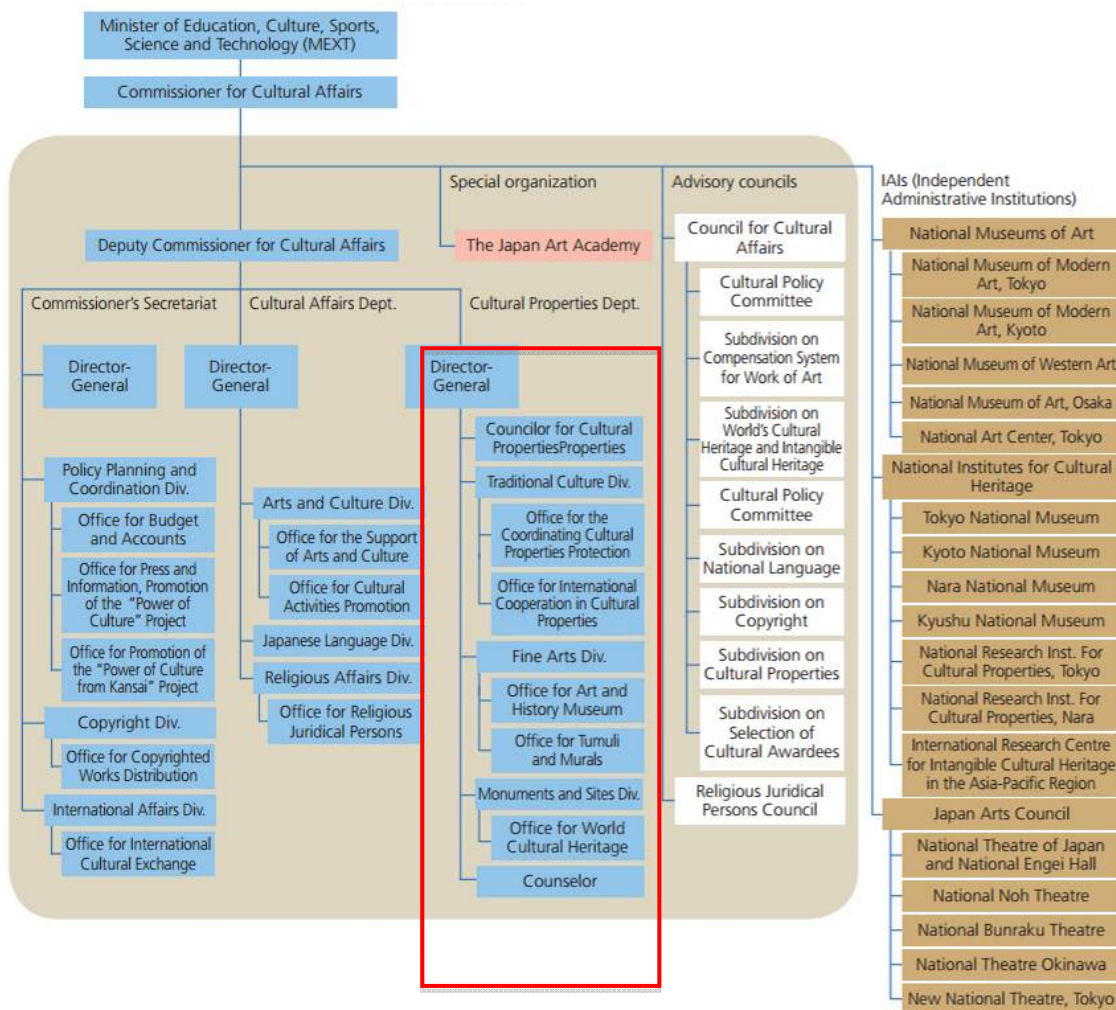


Fig. 34. The Organisation of the Agency for Cultural Affairs.
(From "Preservation and Utilization of Cultural Properties" in *Policy of Cultural Affairs in Japan – Fiscal 2012*, Agency for Cultural Affairs, Japan, p. 1.)

The legal framework for the Agency for Cultural Affairs conservation mandate is based on the *Law for the Protection of Cultural Property*, which was enacted on 29 August, 1950. The protection scope expanded with the enacting of the new law, now covering beyond tangible cultural properties into encompassing intangible cultural properties, folk properties and buried cultural properties, revolutionizing the definition of cultural heritage. Major changes were made in 1950, 1975, 1996 and 2004.

6.2.1.1 Law for the Protection of Cultural Properties (1950 – Present)

The enactment of the law was the basis for the establishment of the Committee for the Protection of Cultural Properties, the precursor of today's Agency for Cultural Affairs, which was responsible for the selection of the most important cultural properties, the setting of restrictions on alteration, reparation and export of Cultural properties, and gave guidance on the preservation and use of such properties.

Some of the articles relating to the conservation under the *Law for the Protection of Cultural Properties* today include:

Chapter III: Subsection 1. Designation – Article 27: Designation

For Tangible Cultural Properties, a two tier system was established: Important Cultural Properties and National Treasures. The Minister of Education is empowered with the ability to designate Important Cultural Properties as National Treasures if they are of "particularly high value among world culture or outstanding treasures for the Japanese people."¹⁷⁸

Chapter III: Subsection 3. Protection – Article 35: Subsidy for Management or Repairs

The article states the responsibility for the owner of an 'Important Cultural Property' to bear the expenses for management and repairs. However, government may also grant a subsidy to the expenses.

Chapter III: Subsection 3. Protection – Article 43: Restriction upon Alteration of the Status Quo

Article 43 places restriction on any alteration of 'Important Cultural Property' that might affect its preservation. According to the article, any changes that might affect the property require the permission of the Commissioner for Cultural Affairs.

Chapter III: Subsection 3. Protection – Article 46: Offer for Sale to the State

Any person who desires to onerously alienate an object of 'Important Cultural Property' shall, firstly, file in writing with the Commissioner for Cultural Affairs an offer of sale of the said property to the State, stating therein the person to whom it is to be alienated, the estimated remuneration for alienation (the estimated remuneration for alienation has to be calculated in money at the current price where it consists of things other than money; hereinafter the same applies) and any other matters stipulated by a MEXT (Ministry of Education, Culture Sports Science and Technology) ordinance.

6.2.2 Town Planning Legislation

Town planning legislation, codes and tools are used to strengthen heritage conservation, for example:

- Regional: *Scenic Landscape District Designation* (1930 in Kyoto)
- *Ancient Capitals Preservation Law* (1966)
- Regional: *City Ordinances on Urban landscape* (1972 in Kyoto)

While private property ownership is respected, the town planning legislation assists to reinforce that 'buildings might be private property, but landscape is public assets.'

A *New Landscape Policy* (Fig. 35) was established in September 2007 in Kyoto as an effort to protect the landscape of Kyoto. It has three basic concepts:

- Landscape should be developed keeping in view the outlook of the city in the coming 50 - 100 years
- Although buildings belong to private owners, the landscapes they form being to the public
- Everyone is responsible for and shares the mission to preserve Kyoto for the future generations

On the basis of such concepts, an extensive support system complemented with financial support was established to oversee the following five aspects in designated districts:

- Review of building height limitation
- Review of design standards for buildings and designation of the regulated areas
- Measures for the preservation of perspective and borrowed landscape
- Imposing more stringent regulations on outdoor advertisements

¹⁷⁸ Knut Einar Larsen, *Architectural Preservation in Japan*, ICOMOS International Wood Committee, 1994, p. 35.

- Conservation and revitalization of historical buildings including *Kyo-machiya* houses
- Design standards for landscape districts are a combination of common standards and region specific standards. Control are made on various aspects of the building design, including building height, roof palette, external wall material, design of balcony etc.

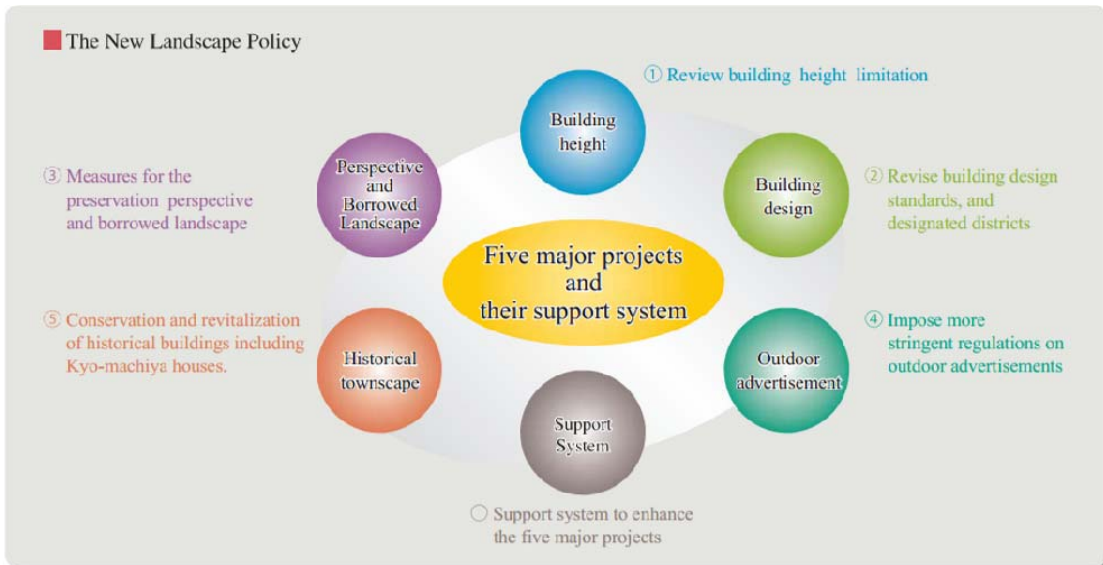


Fig. 35. The New Landscape Policy.
 (from Urban Planning Bureau urban landscape section – Policy Division, Chapter Two –
 Landscape of Kyoto, History of machizukuri, Japan: Kyoto, 2009, p.44.)

6.2.2.1 Some Relevant Regulations in Conjunction to the Landscape Policy in Kyoto¹⁷⁹

The following table shows the various levels of regulations at work through the New Landscape Policy enacted in Kyoto. The overarching landscape policy gives protection to the cultural heritage in a whole district, while posing restriction on every individual building within the area.

Town Planning Tools	Content	Relevant Acts/Regulations
Kyoto's Landscape Plan	<ul style="list-style-type: none"> ■ Designation of landscape conservation area and overall plan 	Landscape Policy, Notice
Height Restrictions Guidelines	<ul style="list-style-type: none"> ■ Selection of districts for protection as outlined in Height Control District Plan¹⁸⁰ ■ Exemption or relaxation of height restrictions for special cases, can be made through the form of Application for Special Considerations¹⁸¹ ■ Establishment of procedure for attaining exemptions or relaxation of height restrictions 	<i>City Planning Act</i>
Designation of Scenic Districts	<ul style="list-style-type: none"> ■ Selection of Districts as Scenic Districts ■ 5 Categories (Building coverage ratio, numerical criteria for height) ■ Establishment of Common Standard for building design ■ Establishment of Criteria for Special Scenic Districts 	<i>City Planning Act</i> Kyoto Scenic Districts Ordinance ¹⁸²

¹⁷⁹ "Information Pack on Kyoto Landscape Policy (Appendices) and (back cover)." Retrieved on 10 September 2013, from Kyoto City Official Website, website:

http://www.city.kyoto.lg.jp/tokei/cmsfiles/contents/0000057/57538/siryouhen_urahyouji.pdf.

¹⁸⁰ "Height Control District Plan." Retrieved on 9 September 2013, from Kyoto City Official Website, website: <http://www.city.kyoto.lg.jp/tokei/cmsfiles/contents/0000023/23106/koudo100528.pdf>.

¹⁸¹ "Application for Special Considerations." Retrieved on 7 September 2013, from Kyoto City Official Website, website: <http://www.city.kyoto.lg.jp/tokei/page/0000056865.html>.

¹⁸² *Kyoto Scenic Districts Ordinance*. Retrieved on 10 September 2013, from Kyoto City Official Website, website: <http://www.city.kyoto.lg.jp/tokei/cmsfiles/contents/0000117/117717/dai1syoun.pdf>.

Town Planning Tools	Content	Relevant Acts/Regulations
Designation of Preservation Areas for Historic Landscape (including the Special Preservation Areas for Historic Landscape)	<ul style="list-style-type: none"> ■ Selection of Districts as Preservation Areas for Historic Landscape for protection ■ Notification for Changes ■ Selection of Districts ■ Resumption of Land ■ Application for alterations 	<i>Ancient Capitals Preservation Law</i> ¹⁸³
Designation of Special Green Areas	<ul style="list-style-type: none"> ■ Selection of Districts ■ Application for alterations ■ Resumption of Land 	<i>Urban Green Area Conservation Law</i> ¹⁸⁴
		<i>Kinki Area Adjustment Act</i> ¹⁸⁵
		<i>Guideline for the Use of Urban Green Area</i> ¹⁸⁶
Structures of landscape importance	<ul style="list-style-type: none"> ■ Selection of Structures for protection ■ Imposing restrictions on demolition or removal ■ Granting subsidy on repair 	<i>Landscape Act</i>
		<i>Ordinances on the Preservation of Vistaed View</i> ¹⁸⁷

Table 4 Relevant Regulations in Conjunction to the Landscape Policy in Kyoto.

¹⁸³ *Kyoto Scenic Districts Ordinance*. Retrieved on 10 September 2013, from Kyoto City Official Website, website: <http://www.city.kyoto.lg.jp/tokei/cmsfiles/contents/0000117/117717/dai1syou.pdf>.

¹⁸⁴ *Urban Green Area Conservation Law* [《都市緑地法》]. Retrieved on 1 September 2013, from e-Gov, website: <http://law.e-gov.go.jp/htmldata/S48/S48HO072.html>.

¹⁸⁵ *Kinki Area Adjustment Act* [《近畿圏整備法》]. Retrieved on 5 September 2013, from e-Gov, website: <http://law.e-gov.go.jp/htmldata/S38/S38HO129.html>.

¹⁸⁶ *Guideline for the Use of Urban Green Area* [《都市緑地法運用指針》]. Retrieved on 10 September 2013, from Ministry of Land Infrastructure Transport and Tourism, website: <http://www.mlit.go.jp/crd/townscape/pdf/ryokuchi-shishin01.pdf>.

¹⁸⁷ *Landscape Act, Ordinances on the Preservation of Vistaed View* [《京都市市街地景観整備条例》], Retrieved on 10 September 2013, from Kyoto City Official Website, website: http://www.city.kyoto.jp/somu/bunso/REISYS/reiki_honbun/k1020748001.html.

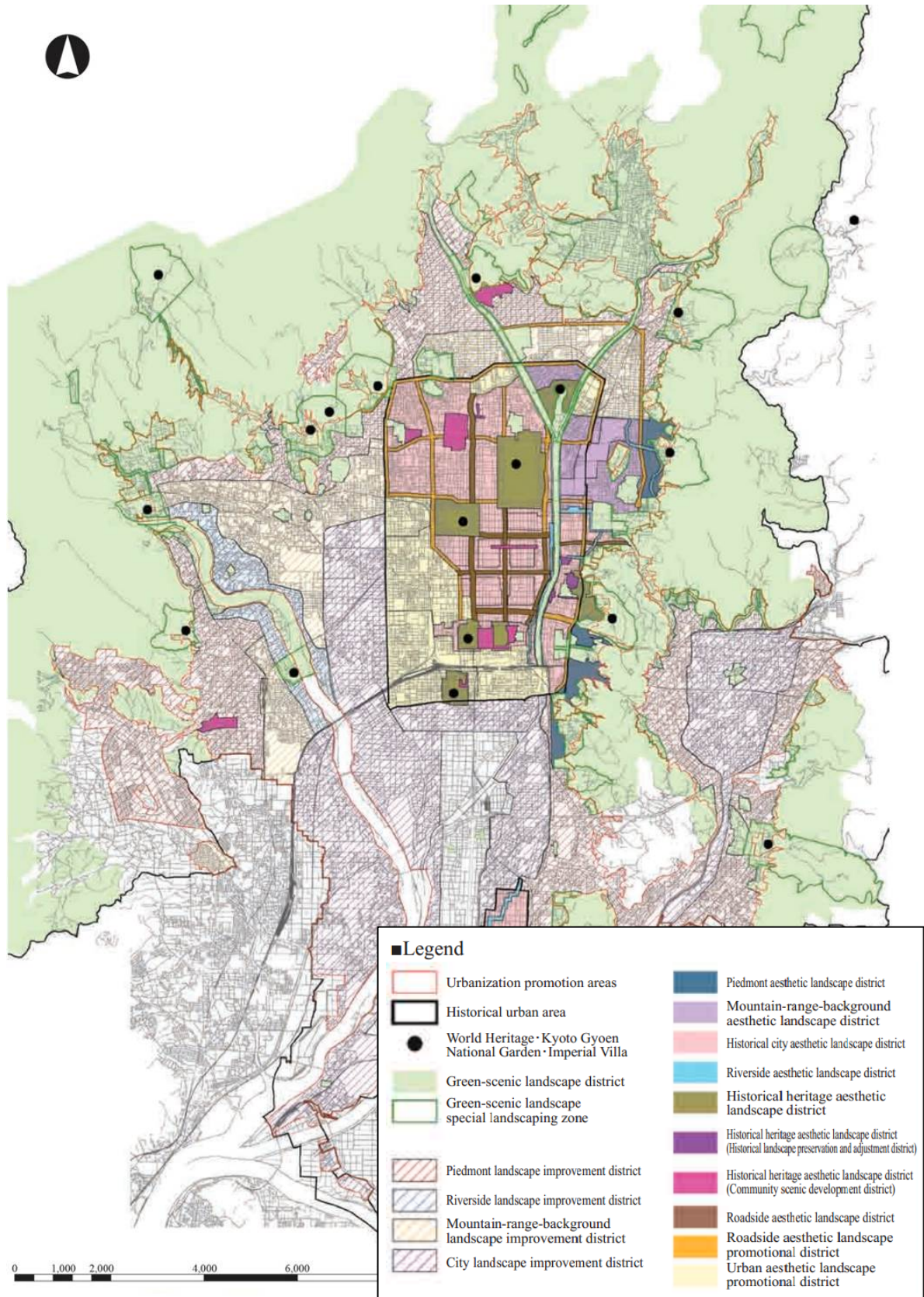


Fig. 36. Map of Aesthetic District, Aesthetic Formation District and Structure Improvement District, Kyoto, Japan. Report created in 2007.

(from Conservation, Revitalization and Creation of Kyoto Landscape. Retrieved on 16 July 2013, from Kyoto City Official Website, website:

<http://www.city.kyoto.lg.jp/tokei/cmsfiles/contents/0000057/57538/3shou.pdf>)

6.2.3 Building Control/Development

Designated structures are restricted in the extent it could be modified on the exterior. Intended changes that affect more than 25 percent of the visible surface requires prior announcement.

6.2.3.1 Exemptions

Exemptions could be made when there are justifiable reasons on the design. Public buildings such as school, hospital etc. could also be considered case by case due to the special functions.

Gionshinbashi was the first district to adopt an amended fire prevention law.¹⁸⁸ The Ordinance on measures of fire prevention in accordance with the traditional landscape preservation¹⁸⁹ was passed in 2002.¹⁹⁰ According to this revised law, inhabitants of the area are allowed to use traditional non-fire prevention materials to replace damaged parts of the building. This allows the town to maintain a uniform appearance as authentic materials were used. The use of these materials is under the condition that there are volunteers for disaster prevention willing to participate in the district, and that the area is not susceptible to fire.

¹⁸⁸ Wimonrart Issarthumnoon, "The machizukuri Bottom-up Approach to Conservation of Historic Communities: Lessons for Thailand." Retrieved on 8 August 2013, website: http://utud.sakura.ne.jp/research/publications/_docs/2005ajj/wi041112.pdf.

¹⁸⁹ Kyoto City. Chapter 3 – Basic Principles on maintaining the historical scenic landscape.[《第3章 歴史的風致の維持及び向上に関する意義と基本方針》] in Kyoto City Official Website. Retrieved on 10 October, 2013, website: <http://www.city.kyoto.lg.jp/tokei/cmsfiles/contents/0000116/116576/keikaku33.pdf>.

¹⁹⁰ Fukushima Sadamichi, *The New Policy on Kyoto's Scenic Landscape in The Sixth Urban Environment Design Seminar Recording* [第6回都市環境デザインセミナー記録「景観を考える」第3弾京都市中心部の新しい景観政策京都市] Retrieved on 10th October, 2013, website: <http://www.gakugei-pub.jp/judi/semina/s0606/fu003.htm>.

6.3 Incentives

6.3.1 Support for Registered Tangible Cultural Properties

Owners of registered cultural properties entail fewer responsibilities. Loss, damage, changes of ownership and intended changes that affect more than 25 percent of the visible surface need to be announced. On the other hand, the owners are eligible for low interest loans for maintenance and repairs, subsidies for an architect and tax reductions of up to 50 percent. This new protection level is based on notification, guidance, and advice, and aims at voluntary protection of cultural properties by their owners.

6.3.2 Tax Relief for Listed Buildings and Other Heritage Assets¹⁹¹

Category	Description		Year enforced
Ownership of Important Cultural Properties	An Important Cultural Property, Important Tangible Folk Cultural Property, Historical Site, Place of Scenic Beauty, or Natural Monument (Buildings and their plots)	Tax exempt (Fixed assets taxes, special property tax and city planning tax)	1950
	Registered Tangible Cultural Properties (building)	Exempt 50% taxable (Fixed assets taxes)	2005
	Registered Tangible Folk Cultural Property (buildings)	Exempt 50% taxable (Fixed assets taxes)	2005
	Registered Tangible Cultural Property (building and their plots)	Exempt 50% taxable (Fixed assets taxes)	2005
	Buildings forming part of an Important Place of Scenic Beauty (as defined by the Minister of MEXT)	Exempt 50% taxable (Fixed assets taxes)	2005
	Buildings designated "Traditional Buildings" that form part of a "Preservation Districts for Groups of Historic Buildings" site (as defined by the Minister of MEXT)	Tax exempt (Fixed assets taxes and city planning tax)	1989
	Plots of buildings designated "Traditional Buildings" that form part of a "Preservation Districts for Groups of Historic Buildings" site (as defined by the Minister of MEXT)	Tax exemption or reduction according to circumstances (Fixed assets taxes and city planning tax)	2000

Table 5 Incentives in the form of Tax Relief.

6.4 Public Participation

6.4.1 Machizukuri

A variety of processes involving citizen engagement in urban-space-management spread rapidly throughout Japan during the 1990s, and are widely referred as '*machizukuri*.' The roots of the *machizukuri*

¹⁹¹ Although the land tax imposed on Important Cultural Properties is now being waived as a tax exemption, the levying of land tax was abolished in fiscal 1998.

activities could be traced back to the 1960s, and was made official with the enactment of a *Machizukuri* Ordinance in many local areas in the 1980s; it has an extensive effect on engaging citizens on a local level and educating people of a community in its local heritage and environment.

The word '*machi*' could mean a small neighbourhood, a community or a street, while '*zukuri*' literally translates to the verb 'make,' carrying a primary goal to improve the standard of living in a local district area, through the participation of local citizens from an early stage, as opposed to a large scale urban planning done solely by a small group of professionals. Over the years, more than a thousand¹⁹² of *machizukuri* processes have been established across Japan.

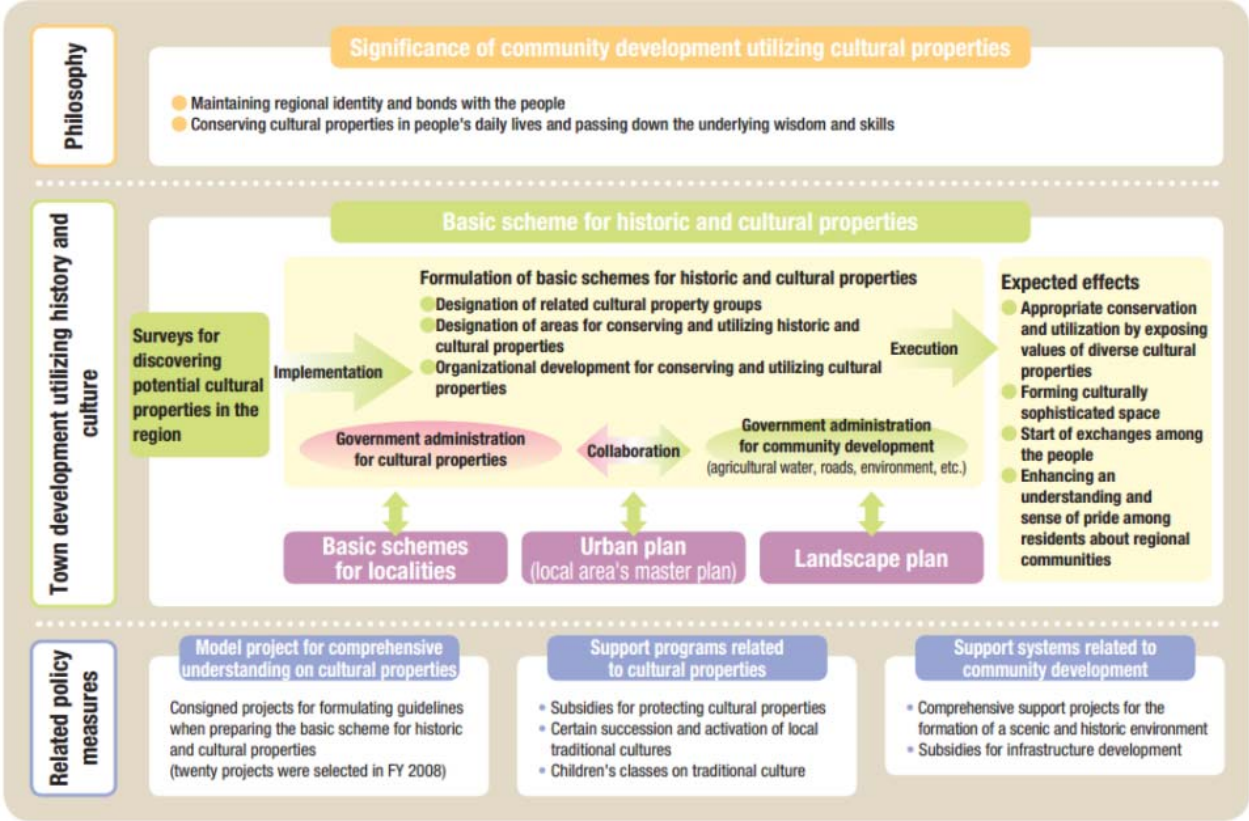


Fig. 37 Community development at localities utilizing historic and cultural features. (From "Chapter VI - Preservation and Utilization of Cultural Properties" in *Policy of Cultural Affairs in Japan - Fiscal 2009*, Agency for Cultural Affairs, Japan p. 42)

One of the significant characteristics of *machizukuri* is that it attempts the reorganisation of spaces and practice of place governance from the perspective of the values and priorities of the local citizens.¹⁹³ Today, a wide variety of *machizukuri* activities exists in different communities in Japan, all bearing the aim to make their neighbourhood a more livable and sustainable place, however, the issues concerned are not restricted to preserving historic environments, but also in creating public green space, appropriate low-rise neighbourhoods etc. Among them, historic preservation is directly linked to urban planning and the livability of a place.

¹⁹² Andre Sorensen and Carolin Funck, *Introduction in Living Cities in Japan: Citizens' movement, machizukuri and local environments*, Nissan Institute/Routledge Japanese Studies Series, 2007, p. 1.

¹⁹³ Hiroshi Nunokawa, *Machizukuri and historical awareness in the old Town Kobe in Living Cities in Japan: Citizens' movement, machizukuri and local environments*, Nissan Institute/Routledge Japanese Studies Series, 2007, p. 172.

Between the Nara period and Meiji Restoration, restoration and reparation of important buildings, including religious ones, were the responsibility of the government. A change occurred in the Meiji Era, as influenced by the laws of the foreign countries, conservation responsibilities extended beyond the government to the hands of the people.

The decentralisation of the planning authority to the local governments marked a crucial turn in public participation, and allowed municipal government to design the master plans for urban areas with just a notification of the decisions to the prefectural governor.

Realizing the shortcomings of a top down urban planning and confronted by a long period of protest from local communities gave birth eventually to the District Planning system, where the municipality prepares detailed planning and land use controls in a relatively small area as a unit. The '*machi*' in District Planning is the District Planning Area itself. Since then, the 'small area' was legally brought in city planning. District Planning required the participation of the local residents, and some advanced municipal enacted the *machizukuri* ordinances in an early stage in the 1980s to facilitate *machizukuri* activities of the residents.

6.4.2 Machizukuri in Practice

6.4.2.1 The First Machizukuri Ordinance

Kobe was the first place to have enacted the *Machizukuri Ordinance* in Japan in 1981. Alongside the ordinance, a *machizukuri* council, or a local residents organisation equivalent was institutionalized for the *machizukuri* activity.¹⁹⁴ The council is not a branch of the municipal government but stands at the perspective of the locality. On top of that is an Expert Dispatch System which was made to assist the *machizukuri* council technically. The system is important as it gives the position where consultants' professional expertise is officially brought to *machizukuri*, helping the untrained citizen in creating their district plans. A partnership system was also introduced, where the city government accepts the council's *machizukuri* plans and goes into a *machizukuri* agreement with the council for later execution. These official procedures facilitate the local people's interest and initiatives for policy making that regards their own area.

6.4.2.2 City Planning Amendment Law

The participation mechanism was also introduced into the *City Planning Amendment Law* in 1992. This Law requires that all municipalities to prepare a Master Plan through public participation.¹⁹⁵ Such public participation became a compulsory element. Workshops and community walks are developed and many municipalities began to make their Master Plans through the process of public participation.¹⁹⁶

Among the engagement processes, more advanced citizen-led activities emerged, which the citizens made their own Master Plans themselves and submitted to the authority. One of the first examples was in Komae in Tokyo, created by 20-40 volunteer citizens over two years¹⁹⁷ until they published a plan and submitted to the local authority.

¹⁹⁴ Shun-ichi J. Watanabe, *Toshi keikaku vs machizukuri: Emerging paradigm of civil society in Japan, 1950 – 1980, Living Cities in Japan: Citizens' movement, machizukuri and local environments*, Nissan Institute/Routledge Japanese Studies Series, 2007, p 51.

¹⁹⁵ Sorensen, André. *The Making of Urban Japan: Cities and Planning from Edo to the 21st Century*. London: Routledge, 2002, p. 300.

¹⁹⁶ Shun-ichi J. Watanabe, *Toshi keikaku vs machizukuri: Emerging paradigm of civil society in Japan, 1950 – 1980, Living Cities in Japan: Citizens' movement, machizukuri and local environments*, Nissan Institute/Routledge Japanese Studies Series, 2007, p. 52.

¹⁹⁷ Shun-ichi J. Watanabe, *Toshi keikaku vs machizukuri: Emerging paradigm of civil society in Japan, 1950 – 1980, Living Cities in Japan: Citizens' movement, machizukuri and local environments*, Nissan Institute/Routledge Japanese Studies Series, 2007, p. 52.

6.4.2.3 Case Study: Kyoto



Fig. 38. Preserved *machiya* in Kyoto historic centre.

Since the 1960s, Japanese urban conservation by the way of *machizukuri* method was a combined effort between local residents, investment sectors and the government authorities. Kyoto City's City Planning booklet defined it as "processes with the partnerships among local residents, investment sectors and the government authorities." Urban planning laws enable citizens to participate in the decision making process, and citizens are used to participating in a wide variety of activities regarding health, welfare, disaster prevention and city planning.

When *machizukuri* is carried out, two layers of work are involved, one being the "hardware activities", encompassing the construction works and urban planning works, and the other is "software activities", namely the regeneration of historic centres and creation of networks between people involved in conservation.

The current policy is a result of the reduction of budgets for conservation and development in municipal level, Kyoto adapted to this change by allowing citizens to participate in the developing of policy plans of the city, in particularly the local ordinances and district plans. The process involves both citizens' groups and academics, the diverse group ensures that the plans are clear, impartial and appropriate for all parties. The conservation plans eventually form part of the master plan of the city.

Town Making Promotion Section is founded to coordinate government bodies responsible for conservation and planning works, this includes the Synthesis Policy Making Section, the City Planning Section, and the Townscape Controlling Section. These collaborations do not work directly with the Cultural Properties Preservation section, which main responsibilities lie on the preservation of cultural heritage.

Another authority, the Kyoto Centre for Community Collaboration (*Machizukuri* Centre) – was set up, to provide spaces for citizen groups to discuss and for the collection of information on urban and architectural projects.

Conservation Activities

The following section will cover the various opportunities allowing the community to participate in the conservation process in Kyoto.

- Hardware Activities involve actual work in preserving historic architectures and townscapes, community are invited to participate in:
 - Drafting of new building code for Central Kyoto
 - Drafting of Revised Fire Prevention law for the Gionshimbashi District
 - The passing of the district plan for the Gionshimbashi-Minamigawa District
 - Creating the Symbiotic Community
 - Revival of the Traditional Houses (*Machiya*)
- Software Activities creating interpersonal networks among people in order to revitalise the historic centre, aim to:
 - Sustain local communities
 - Revive historic areas through commercial activities

6.4.2.4 New Building Code for Central Kyoto

The new building code for Central Kyoto was made possible with the participation of the citizens of the city, spanning over a period of almost two years, the citizens of the city joined in the process of outlining ordinance, and seminars were held by the local government, people and citizen groups.

The draft plans were then approved through public hearings. This new building codes set out the regulations for building in the historic centre of Kyoto. Under such plans made collectively by different groups of the city, the height and form of buildings in Central Kyoto are regulated: the maximum height allowed for built structures in Central Kyoto is either 20 metres within a 20-metre setback or 30 metres from a 20metre setback. The form of new buildings is required to stand in harmony with the form of the traditional townhouses (*kyo-machiya*), and to allow good ventilation in public spaces.

On top of that, regulations were laid out to preserve traditional townscapes and landscapes. The new building code helps to keep the general outlook of the town by maintaining continuous facades and roofs.

The code also made specifications on the function of the buildings on ground level. Central Kyoto has traditionally been a commercial district with famous old shops and restaurants. The building of new carparks or office blocks has often disrupted the urban streetscapes of the traditional row house. To overcome this, the new law proposes to allow developers to build taller buildings if they open up the first and second floor for commercial purposes.

6.4.2.5 Passing of the District Plan for Gionmachi-Minamigawa District

A district plan is part of the Kyoto city's master plan, these plans require the approval from all communities in the city, and specifies the land use control of different area within the city.

The Town Making Section is in charge of the drafting of the district plans, this section also drafts the guidelines for the residents. Once they are done, the plan would be passed on to public hearings before enforcement.

6.5 Conclusion

Kyoto of Japan has a regime of well-established framework on heritage conservation. The system gives protection to both individual buildings to a cluster of heritage settlements. It is evident that conservation of architectural heritage is effectively done through planning measures, and incorporated in the urban planning system. The Kyoto government also has a long history of collaborating with local communities in heritage conservation and urban planning.

7

MACAO

7.1 Background

The Portuguese started inhabiting Macao since the mid-16th century, and have since then exerted influence in the area for over nearly five centuries. During this period of time, Macao has evolved into a city with unique character with both western and Chinese cultural traces seen. In 2005, successful inscription of the Historic Centre of Macao on the World Heritage list shows the international status of Macao's heritage and has gained international recognition and community awareness. This brings benefits and opportunities to the community, and at the same time brings challenges to the protection of heritages under the rapid development of Macao. In August, 2013 a new heritage protection law, the *Cultural Heritage Protection Law* is enacted. On top of that, an amended land law and urban planning law were also enacted; further advancing the conservation policy into a more comprehensive legal framework to protect the heritages in Macao.

7.1.1 Heritage Designation System

According to the Annex I, II, III & IV of Decree No. 83/92/M, 31 December 1992, Macao's cultural heritage is classified by law into four different categories. Currently, there are a total of 128 cultural heritages. The designation system in Macao employs the concept of "dot, line and plane", from individual building to group of buildings, landscapes and sites.

	Categories	Total Numbers
1.	Monuments	52
2.	Buildings of Architectonic Interest	44
3.	Ensembles	11
4.	Classified Sites	21

Table 6. Existing Cultural Heritages in Macao.

7.1.2 Definition of Heritage

The definition of heritages is currently governed by two principal laws, Decree No. 56/84/M issued in 1984 and Decree No. 83/92/M in 1992.¹⁹⁸ A new *Cultural Heritage Protection Law* comes into effect on

¹⁹⁸ Decree No. 56/84/M. Retrieved on 30 June 2013, website: <http://www.macaoheritage.net/en/Decree/law5684m.aspx> and Decree No. 83/92/M. Retrieved on 30 June 2013, website: <http://www.macaoheritage.net/en/Decree/law8392m.aspx>.

March 2014. The definition of the built heritages under the *Cultural Heritage Protection Law* follows the previous laws generally.

7.1.2.1 Classification Criteria

In general, the classification criteria for the immovable heritage under the *Cultural Heritage Protection Law* of 2013 are as follows (Article 18 of the *Cultural Heritage Protection Law*):

- Significant in witnessing a particular life style or historical event
- Significant aesthetics, artistic, technical and material values
- Significant architectural values, with the design in harmony with the city or the landscape
- With symbolic meanings or possesses significant religious values
- Significant in cultural, historic, social and scientific areas

There is no timeline stated for demarcating heritage items under the law. Post-1950s heritage can be found in the current list of immovable heritages, for example the Court Building completed in 1951 is classified as Building of Architectonic Interest. It was once used as offices for various government departments, before it was turned into a court. It is now used as an art gallery for exhibition. The classified heritage items also include non-buildings such as stone monuments with inscriptions, fortress and old city walls. They are classified as Monuments. Archaeological sites are usually defined in the Classified Sites or Monuments, e.g. the Archaeological Site of Sao Paulo is preserved together with the ruins above ground as a museum, which is classified as a Monument.



Fig. 39. Court Building, Macao.

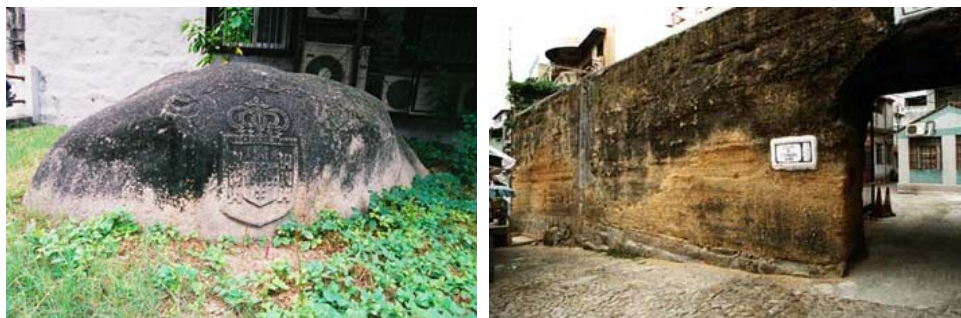


Fig. 40. Engraved stone, near Temple of Lin Fong, 1848 (Monument) (left)

Fig. 41. Old City Wall, 1569 - 1632 (Monument) (right).

(from "Resource". Retrieved on 23 July 2013, under Macao Heritage Net, Instituto Cultural do Governo da R.A.E. de Macau, website: <http://www.macausheritage.net>.)

Monuments

According to Article 4, Decree No. 56/84/M, Monuments are understood as "monumental works of architecture, sculpture or painting, inscriptions, components, groups of elements or structures of special interest from the archaeological, historical, ethnologic al, artistic or scientific point of view". Examples are individual buildings of outstanding historic value, such as churches, temples and fortresses¹⁹⁹, some famous examples include the Ruins of Sao Paulo (former Church of Madre De Deus), churchyard and staircase, and Temple of Barra, etc.

Building of Architectonic Interest

According to Article 1, Decree No. 83/92/M, Building of Architectonic Interest could be defined "through its original architectonic quality" which "is representative of an important period of the evolution of the Territory". Buildings in this category include the Moorish Barracks, the Post Office Building, and the Military Club.²⁰⁰

Ensembles

According to Article 4, Decree No. 56/84/M, ensembles / complexes are "groups of constructions and areas that, by reason of their architecture, their unity, their integration in the landscape of their social homogeneity have a special value from the architectural, urbanistic, aesthetic, historic or socio-cultural point of view". Under the *Cultural Heritage Protection Law*, Ensembles are renamed into Clusters. A group of buildings in urban settings, such as the buildings along Alemeida Riberio Avenue (San Ma Lo) and the cluster of buildings around Senado Square²⁰¹ are examples of this heritage of this category.

7.1.2.5 Classified Sites

According to Article 4, Decree No. 56/84/M, Classified Sites "combine works of man and of nature having a special value or their beauty or interest in the fields of archaeology, history, anthropology or ethnology". This also includes sites with archaeological value. Some examples of original natural or manmade landscapes with historic values are the Camões Garden, Guia Hill and Barra Hill.²⁰²

7.1.3 The Historic Centre of Macao

The Historic Centre of Macao was inscribed on the World Heritage list in 2005. This includes 22 significant monuments with high historic values representing the historic settlement of Macao, with streetscapes and urban squares that link between the monuments. They are located on the western and eastern parts of the Macao peninsula, encompassing three important landscape features; the Mount Hill, Barra Hill and Guia Hill. (see Appendix III (i))

7.1.4 Assessment of Heritage

On 7 August 1976, the Macao Government issued the first legislation on cultural heritage protection, the Decree 34/79/M. Under this Decree, the Committee for the Defence of the Urban Environmental and

¹⁹⁹ "Information Kit, The Historic Centre of Macao", under Cultural Affairs Bureau. Retrieved on 3 July 2013, website: <http://edocs.icm.gov.mo/Heritage/MWHE.pdf>, p. 122.

²⁰⁰ *Ibid.*

²⁰¹ *Ibid.*

²⁰² "Information Kit, The Historic Centre of Macao", under Cultural Affairs Bureau. Retrieved on 3 July 2013, website: <http://edocs.icm.gov.mo/Heritage/MWHE.pdf>, p. 122.

Cultural Heritage of Macao was set up, which was primarily responsible for defining and classifying the cultural heritages in Macao and lists compilation.

Later on a new committee was established to substitute the former Committee; known as the Committee for the Defence of the Architectural, Environmental and Cultural Heritage in accordance with Decree No. 56/84/M, enacted on 30 June 1984. This committee worked together with the Cultural Heritage Department, which is a technical consultative body give advices on the cultural heritage issues in Macao.²⁰³ One of the responsibilities of this committee is to appraise plans and proposals for the listing and classification of the cultural and natural heritage.²⁰⁴

Under the recently enacted *Cultural Heritage Protection Law*, a new Cultural Heritage Committee would be set up as the advisory body of Macao Government to substitute the current committee.

7.1.5 Mechanism

The Committee for the Defence of the Architectural, Environmental and Cultural Heritage will also issue opinions on the classification or revision of classification.²⁰⁵ The lists may be altered by the government after hearing the proprietors' comments if the buildings are privately owned.²⁰⁶ Comments would also be sought from the Cultural Affairs Bureau and the Culture Council.²⁰⁷

In the recent enacted *Cultural Heritage Protection Law*, the assessment of the list can be initiated by Cultural Affairs Bureau, other government departments as well as the owners.²⁰⁸ All suggestions to the list of the immovable heritages shall undergo public consultation and the consultation period shall not less than 30 days.²⁰⁹ The following will be considered before any alteration is made:

- Public consultation (not less than 30 days)
- Feedback from the owner
- Assessment by Cultural Affairs Bureau
- Advice from Cultural Heritage Committee

The government would establish an agreement with the heritage's owner in order to ensure the public interest could be incorporated during the conservation process. The owner of the heritage properties can apply for government's compensation or expropriation.

7.1.5.1 Consent from Owners

A buffer zone was drawn up in 2006 after the inscription of the Historic Centre of Macao on the World Heritage list in 2005. The consent from the private owner or the public for setting up a buffer zone was not sought or required, as it did not change the original planning condition and the public was well-informed throughout the five years application process for Macao to be inscribed into the World Heritage list. If the rights of the owner are jeopardized, he can appeal to the court, however as of December 2013, there was no court case in this regard. Previous experience in Macao shows that the setting up of a buffer zone for

²⁰³ Article 1, Decree No. 56/84/M, 1984.

²⁰⁴ Article 2, Decree No. 56/84/M, 1984.

²⁰⁵ Article 3 a, Decree No. 56/84/M, 1984.

²⁰⁶ Article 37, Decree No. 56/84/M, 1984.

²⁰⁷ Article 3, Decree No. 83/92/M, 1992. Retrieved on 5 July 2013, website: <http://www.macaupatrimony.net/en/Decree/law8392m.aspx>.

²⁰⁸ Item 1, Article 19 Initiation of the process, *Cultural Heritage Protection Law* 2013.

²⁰⁹ Article 24, Public Consultation, *Cultural Heritage Protection Law* 2013.

a specific historic building, ensures better quality of the environment within the area. It can effectively minimize the pressure on local traffic and population. In other words, the quality of life of the residents within the buffer zone can be improved through revitalization and restoration of the historic areas or buildings, and thus create a better environment for commercial activities.

7.1.6 Institutional Arrangement

The Cultural Affairs Bureau (The Cultural Institute) and the Cultural Heritage Department are the major government authorities responsible for the heritage conservation and implementation of heritage laws in Macao. (See Appendix III (ii))

7.1.6.1 Cultural Affairs Bureau

The Cultural Affairs Bureau is under the Secretariat for Social Affairs and Culture. It was formerly known as Cultural Institute of Macao. This bureau was established in 1982 under the terms of Decree No. 42/82/M. In responding to the changing phenomenon in the society, Cultural Institute of Macao was reorganised in 1989 and 1994. It is currently known by the name of Cultural Affairs Bureau, since 1999²¹⁰ after Macao's administration was handover to China. The Cultural Affairs Bureau is responsible for:²¹¹

- the protection, maintenance and revitalisation of Macao's historic, architectural and cultural heritage and to prepare guidelines ensuring their survival, growth and dissemination
- the promotion of research in fields connected to the understanding of Macao cultural heritage
- the promotion of literature by supporting the publication and distribution of books
- organisation and maintenance of libraries and archives in order to promote good reading habits and research
- promotion and support of cultural and artistic activities and festivals, seminars, lectures and other cultural meetings
- promotion of music, dance and drama education
- maintenance of the Macao Museum and support the propagation of its themes.

7.1.6.2 Cultural Heritage Department

The Cultural Heritage Department was first established together with the Cultural Institute of Macao which was formerly known as the Cultural Heritage Office in 1982.²¹² It is the execution department for the Cultural Affairs Bureau. The Cultural Heritage Department focuses on the classifying, restoring, renovating and up-grading of Macao's cultural heritage. The department also advises on the limitation imposed on building works in the protected area and prepares plans to restore historic buildings which are in a state of decay.²¹³ The department collaborates with the government to promote cultural tourism and conduct research on revitalization and planning for the protected historic buildings and area.

²¹⁰ Article 24 *Public Consultation, Cultural Heritage Protection Law 2013*. Retrieved on 25 June 2013, website: <http://www.icm.gov.mo/cn/About/Introduction.aspx>.

²¹¹ *Ibid.*

²¹² "Introduction to Cultural Heritage Department," Cultural Affairs Bureau. Retrieved on 25 June 2013, website: <http://www.macaoheritage.net/cn/Decree/dpc.aspx>.

²¹³ "Organisation Structure: Cultural Heritage." Retrieved on 25 June 2013 under the Cultural Affairs Bureau, website: <http://www.icm.gov.mo/en/Structure/StructureMain.aspx?id=5>.

7.1.6.3 Land, Public Works and Transport Bureau

The overall planning, land management and building control in Macao are mainly governed by the Land, Public Works and Transport Bureau. The Land, Public Works and Transport Bureau is responsible for:²¹⁴

- providing technical supports and giving suggestions for policy making related to Macao's physical development in the areas of land management and utilization, urban planning, infrastructures, basic services
- participation in defining guidelines for the economy and society development as well as other activities of Macao's interest

All proposed building works including works for heritage buildings are needed to submit to the Land, Public Works and Transport Bureau for approval. The Bureau will send a copy of the respective work project to the Cultural Affairs Bureau.²¹⁵

7.1.6.4 Cultural Heritage Committee

Under the *Cultural Heritage Protection Law*, a new Cultural Heritage Committee was set up as the advisory body of Macao Government to substitute the current committee. The composition and operation of this committee will be further defined by the executive rules.

Defence of the Architectural, Environmental and Cultural Heritage

The current committee of the Defence of the Architectural, Environmental and Cultural Heritage was established in accordance with Decree No. 56/84/M to substitute Committee for the Defence of the Urban Environmental and Cultural Heritage of Macao in 1984. The roles and responsibilities of this Committee are listed in Article 3, Decree No. 56/84/M. This includes the monitoring of the cultural heritage through commenting on any proposed works, as well as suggesting measures that may help the protection and revitalization of the cultural heritages:

- Issue opinions on the classification or the revision of classification of monuments, complexes and the protected areas
- Issue opinions on the delimitation of classified complexes, sites and the protected area
- Issue opinions on projects for any work or alterations to be carried out on classified monuments, complexes and sites and the respective protected areas
- Give opinions on potential uses in classified monuments and buildings forming part of classified complexes belonging to the public domain of the territory
- Give opinions as to whether preferential right should be exercised in cases of alienation of monuments, land and buildings belonging to classified complexes and sites or forming part of protected areas
- Provide technical support for the work to be carried out on heritage sites
- Propose suspension of any unauthorised work
- Propose suspension on work that is carried out incorrectly

²¹⁴ "Major Functions", Land, Public Works and Transport Bureau. Retrieved on 8 July 2013, website: <http://www.dssopt.gov.mo/en/home/aboutus/id/22>.

²¹⁵ Article 6 Technical opinion, Decree No, 83/92/M, 1992.

- Issue opinions on any ordinance plans, urbanisation projects and detailed studies relating to built heritage, prepared by private entities or effected by the government
- Collaborate with other public and private entities to ensure the urbanisation and ordinance plans of the territory take into consideration the protection of the cultural values
- Give opinions on the systematic listing of cultural heritage in the territory
- Give opinions on the coordination of inventory activities, cataloguing, recording, divulging and publication
- Comment on appropriate measures for the promotion and enhancement of the cultural and educational values of the heritage

7.2 Legal Framework

The conservation policy in the Macao is governed by the *Basic Law of Macao SAR* and two principal legislations, Decree No. 56/84/M issued in 1984 and Decree No. 83/92/M in 1992. In 2013, the *Cultural Heritage Protection Law* with effective from 1 March 2014 was enacted after the discussion in the details in the Legislative Assembly on 13 August 2013.

7.2.1 Basic Law of Macao SAR

According to Article 125 of the *Basic Law of Macao SAR*, the cultural heritages are protected by Law: “The Government of the Macao Special Administrative Region shall protect by law scenic spots, historical sites and other historical relics as well as the lawful rights and interests of the owners of antiques”.

7.2.2 Decrees for Cultural Heritages Protection

7.2.2.1 Decree No. 34/76/M

Decree No. 34/76/M promulgated in 1976 firstly classified the cultural heritages in Macao and published a list of protected properties and sites. It was the first comprehensive legislation governing cultural heritage preservation in Macao in 1976.

7.2.2.2 Decree No. 56/84/M Defence of the Architectural, Environmental and Cultural Heritage

In 1984, a new Decree No. 56/84/M revoked Decree No. 34/76/M, it provides a more comprehensive definition and categorisation of Macao’s cultural heritage. It also stipulates in details the different conservation measures for each category of cultural heritage. It controls the works to the Monuments and the buildings within the Ensembles and Classified sites. Any demolition, repair or modification requires comment from the Committee for the Defence of the Architectural, Environmental and Cultural Heritage, which is a technical consultative body that cooperates with the Department of Cultural Heritage.

It also establishes and defines the protection area, categorizing it into natural and built up setting of Monuments, Ensembles and Classified Sites. Protection areas integrate and facilitate the perception of cultural heritage. Any new construction or repair works on existing buildings within the protected areas require government’s approval before work commences.

The Decree lists out several tax incentives, including urban building tax, industrial tax, complementary income tax and income tax, conveyance tax, succession and donation duty, indirect taxes, etc. Such incentives

cover individual classified buildings and also the buildings forming part of the Ensembles and Classified Sites, and those in protected areas.²¹⁶

7.2.2.3 Decree No. 83/92/M

In 1992, Decree No. 83/92/M, a new category of heritage, Building of Architectonic Interest was introduced. An updated lists of cultural heritage under the four categories, (1) Monuments; (2) Buildings of Architectonic Interest; (3) Ensembles; (4) Classified Sites are included in the Decree and defined in maps in the annex (see Appendix III (iii)). The Decree also stated that unlicensed works of demolition, conservation works, repair or consolidation works in Buildings of Architectonic Interest is liable to a penalty between ten thousand and one hundred thousand *patacas*.²¹⁷

7.2.2.4 The Cultural Heritage Protection Law

The new *Cultural Heritage Protection Law* combines and supersedes the current heritage laws – Decree No. 56/84/M and Decree No. 83/92/M. The new Law is more comprehensive as compared to the previous one.²¹⁸ The comments from the Cultural Affairs Bureau are now mandatory. Key changes are listed in the following:

- Expansion of definition of cultural heritage to including intangible heritages and movable heritages which are associated with the immovable heritage. Under the *Cultural Heritage Protection Law*, classified immovable, movable and intangible cultural heritages are all protected by laws
- Establishment of a cultural heritage committee that will be an advisory body of the Macao Government, the main responsibility of the committee is to advise on the assessment procedures, the uses of immovable heritages, works in the buffer zones, works that would incur great impact on the heritages, and the list of intangible heritages, etc.
- Establishment of special guidelines to maintain the integrity and enhance the protection of the Historic Centre of Macao to satisfy the requirements of UNESCO
- Works in buffer zones require approval from the Cultural Affairs Bureau
- Public participation will be incorporated in the process of establishing and implementing the policy of cultural heritage protection
- Creation of consultation channels for public participation
- Clarification of rights and responsibilities for cultural heritages owners including details on compensation, taxes incentives, financial support, awards, etc.

7.2.3 Planning Control

Under the *Cultural Heritage Protection Law*, the requirements of urban planning in respect to heritage conservation are stipulated in Article 43. All urban planning works which involve classified immovable heritages, the Historic Centre of Macao as well as buffer zone are required to notify the Cultural Affairs Bureau.

²¹⁶ Section VI, Decree No. 56/84/M, 1984.

²¹⁷ Article II Sanctions, Decree No. 83/92/M, 1992.

²¹⁸ "Introduction, the Heritage Protection Law," Macao SAR Legislative Assembly, 2013. Retrieved on 23 August 2013. Website: <http://www.al.gov.mo/lei/leis/2013/2013-II/cn.htm>.

7.2.3.1 Buffer Zones

Under the *Cultural Heritage Protection Law*, heritage protection through planning control is incorporated. Buffer zones are established to protect the immovable heritages as well as the World Heritage Historic Centre of Macao. This is responding to the *Operational Guidelines for the Implementation of the World Heritage Convention* issued by the UNESCO as a heritage protection mechanism. A buffer zone is an area surrounding the nominated property which has legal and restrictions on its use and development, as stated in the UNESCO Guidelines:²¹⁹

Where necessary for the proper conservation of the property, an adequate buffer zone should be provided. For the purpose of effective protection of the nominated property, a buffer zone is an area surrounding the nominated property which has complementary legal and/or customary restrictions placed on its use and development to give an added layer of protection to the property. This should include the immediate setting of the nominated property, important views and other areas of attributes that are functionally important as a support to the property and its protection.²²⁰

In the recent enacted *Cultural Heritage Protection Law*, buffer zones are established with some limitations:²²¹

- Limitation on the building mass, appearance, street alignment, height, colour and elevations
- Creation of non-built areas
- Indication of immovable heritages that need total preservation for maintenance, repair and strengthening
- Indication of immovable heritages that cannot be demolished unless under special circumstances
- Preferential right possesses by government on the inclusion of immovable heritage into public domains if it is to be alienated

It is required that all working license for new construction or any other building works within the buffer zones shall gain approval from the Cultural Affairs Bureau, except for interior renovation, maintenance and repair works.²²² Cultural Affairs Bureau shall reply within 30 days. The comments from Cultural Affairs Bureau are legally bided and mandatory. If anyone is prohibited to carry out the buildings works within the buffer zone, he is liable to be compensated.²²³

7.2.3.2 Official Alignment Plan

The construction works in Macao are governed mainly by Decree No. 79/85/M *General Regulation for Urban Construction*. It defines the submission and approval procedures of different types of works and establishes the qualification of the professionals. Penalty for violation is also clearly listed out in this Decree.

If the owner would like to apply for approval of works in their property, all proprietors will have to first apply to the Land, Public Works and Transport Bureau and the Cartographic and Cadastre Bureau to get the *Official Alignment Plan* and *General Regulation of Urban Construction Cadastre Plan* before commencing the

²¹⁹ "The Historic Centre of Macao", Cultural Affairs Bureau. Retrieved on 10 July 2013, website <http://edocs.icm.gov.mo/Heritage/MWHE.pdf>, p. 20.

²²⁰ "Operational Guidelines for the Implementation of the World Heritage Convention," UNESCO, paragraphs 103-104.

²²¹ Article 28 & 29, Chapter 3 Buffer Zone, *Cultural Heritage Protection Law* 2013.

²²² Item 1, Article 31 Limitations in Buffer Zone, *Cultural Heritage Protection Law* 2013.

²²³ Item 3, Article 31 Limitations in Buffer Zone, *Cultural Heritage Protection Law* 2013.

building design.²²⁴ Buildings plans should be submitted to the Bureau. It is also essential to seek the comments from Cultural Affairs Bureau before the issuance of the Official Alignment Plan and Urban Plan for buildings in the Historic Centre of Macao.

Official Alignment Plan illustrates development constraints of a site. Details such as the boundaries of the related building(s), road(s), public access, allowable uses, plot ratio, height limit, and requirements for cultural heritage protection, urban planning conditions and other constraints are listed in this Plan. It is issued by the Land, Public Works and Transport Bureau, with an effective period of 12 months from the date of issue.

7.2.3.3 General Regulation of Urban Construction Cadastre Plan

The Plan demarcates the location, area and the boundaries of a property including heritage buildings. It is issued by the Cartographic and Cadastre Bureau. The Bureau would base on the Official Alignment Plan to issue the *General Regulation of Urban Construction Cadastre Plan*.

7.2.3.4 Land Use and Zoning Plan

Different districts are planned for different uses which are indicated in the District Use Plans. In the plan, the areas are zoned for different uses according to colours; some example categories are residential, commercial building, hotel, religious buildings, institutional building, school and green areas, etc. It is similar to the Outline Zoning Plan of Hong Kong. Attached to the zoning plan are list of legislations and requirements applied to this area. For example, in the area of Zona de Penha/ Barra, the applied legislations and requirements includes Decree Nos. 56/84/M & 83/92/M as well as the requirements formulated by Cultural Affairs Bureau which list out the height limit of different buildings. (see Appendix III (iv))

7.2.3.5 New Urban Planning Law and Land Law

A new *Urban Planning Law* and *Land Law* are enacted after the discussion in details in the Legislative Assembly on 13 August 2013. These laws will be effective starting from 1 March 2014. They are enacted and are effective on the same date together with the new *Cultural Heritage Protection Law*. The amendment of these two laws is due to the rapid development of Macao in the gambling industry, tourism and the dramatic change of the urban space. It is also stipulated that if any building works would affect the cultural heritage protection, the Land, Public Works and Transport Bureau should seek comments from Cultural Affairs Bureau.

7.2.4 Land Management

7.2.4.1 Expropriation

If the land of the private owner is within the non-built area of the protected areas, where new construction may not be built, the private owner can request expropriation of his land by government.²²⁵ Under Article 47 of the *Cultural Heritage Protection Law*, the government may expedite land resumption or expropriation for the classified immovable heritages after seeking the comments from Cultural Affairs Bureau and Cultural Heritage Committee if :

- the owner does not carry out his liability under the agreement with government and leading to the heritages at risk

²²⁴ "Official Alignment Plan – One-stop service", under The Land, Public Works, and Transport Bureau. Retrieved on 1 August 2013, website: http://www.dssopt.gov.mo/zh_HANT/home/information/id/80/info_id/65/type/show.

²²⁵ Article 16, Decree 56/84/M, 1984.

- the owner requests expropriation
- the building within buffer zone damages the characters and adjoining environment

Case Study: Rua das Estalagens

No. 80 Rua das Estalagens is a four storey high traditional dwelling, constructed of timber structures and pitched roof. It is believed that it was once the Chinese-Western Medicine Joint Clinic set up by Dr. Sun Yat-sen. In 2010, the historic building at No. 80 Rua das Estalagens was under the threat of demolition and subsequently quickly raised public's awareness. The Cultural Affairs Bureau then set up a focus group to gather information and carry out historical research on the building. A forum was organised and related people were invited for discussion. Various stakeholders including the Xinhai Revolution interest group, community groups, institutional groups and cultural groups, etc. came together to discuss the significance and future of this historic building. The government also set up a webpage²²⁶ to illustrate the historical information to encourage the public to provide information. The government then initiated expropriation and with the cooperation of the owner, the expropriation process is successful, and has since then added a new more spot to the heritage trail of Dr. Sun Yat-sen in Macao.



Fig. 42. Rua das Estalagens
(from 'Macao Heritage Net'. Retrieved on 23 August 2013, under Instituto Cultural do Governo da R.A.E. de Macau, website: <http://www.macauheritage.net>.)

7.2.4.2 Exchange of Land

Government may come to an agreement with the owner of private owner of a Monument, or buildings or land included in complexes, sites and protected areas, for land exchange in order to encourage preservation of the heritages.²²⁷ One of the successful examples is the preservation of Mandarin's House, which is the largest residential complex in Macao²²⁸. The Macao Government exchanged the land with the developer in 2001 and resumed the property. The Cultural Affairs Bureau then carried out the restoration works.

²²⁶ "Macao Heritage Net". Retrieved on 23 August 2013, under Instituto Cultural do Governo da R.A.E. de Macau, website: <http://www.macauheritage.net>.

²²⁷ Article 38, Decree 56/84/M, 1984.

²²⁸ "Timeline" in Mandarin's House Special web page. Retrieved on 5 August 2013, website: <http://www.wh.mo/mandarinhouse/cn/repair/>.

Case Study: Mandarin's House

Mandarin's House, which is the largest residential complex retained in Macao²²⁹ and is inscribed in the list of Macao's World Heritage within The Historic Centre of Macao. It was completed in 2009. The restored Mandarin's House was opened to public in 2010.



Fig. 43. Mandarin's House

7.2.4.3 Alienation

According to Article 7 & 12, Decree No. 56/84/M and Article 9, Decree No. 83/92/M, and Article 40 of the *Cultural Heritage Protection Law*, any alienation of Monuments, Buildings of Architectonic Interest and Buildings or land forming part of Classified Complexes must first inform the Cultural Affairs Bureau. The government has preferential right to include them in the public domains which prevails over any other legal candidate. Government would refuse to register such alienation if the owner does not follow the requirements.

7.2.4.4 Compensation

Compensation made by the government to the owner would be based on the following:

- Agreement with the owner and government
- Arbitration
- Court judgement

7.2.5 Building Control

7.2.5.1 Approval of Works

Once the owner applies to the Land, Public Works and Transport Bureau for approval of works, the Bureau would distribute related documents to the Cultural Affairs Bureau for their comments. The Cultural Heritage Department together with the Committee for the Defence of the Architectural, Environmental and Cultural Heritage would issue opinions on any conservation works that are to be carried out on the Monuments, Complexes, Sites and Protected areas in Macao. The Department may give advice on the building projects in protected area such as height limitations.

Conservation Measures as stipulated in Decree 56/84/M & 83/92/M

Decree No. 56/84/M stipulated the conservation measures for each category of cultural heritage. Works such as installation, reconstruction, modification, application, consolidation, repair or demolition,

²²⁹ "Homepage and Timeline" in Mandarin's House Special web page. Retrieved on 5 August 2013, website: <http://www.wh.mo/mandarinhouse/cn/repair/>.

wholly or in part, etc., require comments from the Committee for classified monuments, classified complexes, classified sites, within protected areas.

The following table shows the necessary requirements for each of the categories:

Categories	Conservation Requirements	Decrees
Monuments	<ul style="list-style-type: none"> i. It cannot be destroyed, wholly or in part, or undergo any work of modification, amplication, consolidation or repair before seeking comments from the Committee. ii. Seek comments from the Committee before monuments are put to use. 	Section II, Article 6, Decree No. 56/84/M
Building of Architectonic Interest	<ul style="list-style-type: none"> i. Demolition is not permitted. ii. If the destruction of a Building of Architectonic Interest occurs, the respective owner may not be permitted to develop in the land any other construction, which exceeds the volume of the destroyed building. 	Article 4, Decree No. 83/92/M
	<ul style="list-style-type: none"> iii. Works such as amplication, consolidation, alteration, reconstruction and recuperation are allowed provided that these works will not damage the original characteristics of the buildings, in terms of the building's height and facades, and after seeking the technical comments from Cultural Heritage Department. iv. The demolition of the building's interior may be allowed provided that these works will not damage the original characteristics of the buildings, in terms of the building's height and facades and after seeking the technical comments from Cultural Heritage Department 	Article 5, Decree No. 83/92/M
Complexes	<ul style="list-style-type: none"> i. Construction of buildings in classified complexes, their destruction, wholly or in part, and any modification works on the immovables of which they are composed, cannot be carried out before seeking comment from the Committee. 	Section III, Article 11, Decree No. 56/84/M
Classified Sites	<ul style="list-style-type: none"> i. Construction of new buildings or installations; reconstruction, modification, amplication, consolidation, repair or demolition, wholly or in part, of existing buildings within the classified sites are required to seek the comments from the Committee prior to commencement of works. 	Section IV, Article 14, Decree No. 56/84/M
Protected areas of Monuments, Complexes and Sites	<ul style="list-style-type: none"> i. In protected areas of classified monuments, complexes and sites, demolition, new constructions or modifications, amplication, consolidation or repair works on existing buildings. ii. Government may establish non-built zones in the protected areas, in which new buildings may not be constructed. (Remarks: for duly justified cases and the proprietors of the land on which it is forbidden to construct have the right to request expropriation by the government.) iii. The Department of Cultural Heritage after hearing the Committee, will propose the general rules governing architectural projects for construction or reconstruction within the protected areas. 	Section V, Article 16, Decree No. 56/84/M

Table 7 Conservation Requirements for Different Category of Heritage in Macao.

Decree No. 79/85/M General Regulation of Urban Construction

According to Items E and F of Article 38 of Decree No. 79/85/M *General Regulation of Urban Construction* under “*Approval of projects*”, the Land, Public Works and Transport Bureau would disapprove the project application if the proposed works affect the property, historical, and cultural and environmental values (item E), or the alterations to the classified built heritage or natural elements which will result in damages to the values of those (item F).

New Cultural Heritage Protection Law

Under the *Cultural Heritage Protection Law*, it is required that all works involving immovable heritages shall prepare a study report and work proposal by a qualified architect or other technical professional. If the study report and work proposal is considered introducing great impact on the immovable heritages, it would then need further assessment by Cultural Affairs Bureau. The Bureau would consider the project scale, construction area, site area, height, architectural design and method statements of the proposed works. Under exceptional situation, the applicant can suggest alternative solutions in their study report and work proposal if they found unfeasible to comply with current requirements in particular fire services installation and fire escape plan in order to maintain the authenticity, integrity and aesthetics of the immovable heritages. In this case, Cultural Affairs Bureau and other relevant government bureaus would then jointly establish appropriate alternative measures. When the proposed work is completed, it is also required to notify Cultural Affairs Bureau for inspection.

All proposed works such as new construction works, demolition works, etc. for the immovable heritages, including Monuments, Building of Architectonic Interest, buildings forming Ensembles, or within the Classified Sites shall get the approval from Cultural Affairs Bureau, except interior renovation, repair or maintenance works, otherwise working license will not be issued by other government bureaus.²³⁰

7.2.5.2 Unauthorised Demolition

Demolition of immovable heritages which include Monuments, Building of Architectonic Interest, Ensembles, or building within the Classified Sites is prohibited, unless approval is obtained from the Cultural Affairs Bureau and the Committee. Demolition would be permitted only if it has a risk to collapse or there is no alternative ways to conserve the immovable heritages such as relocation.

If there is objection against such requirements, the Land, Public Works and Transport Bureau would request that the restoration and reconstruction works to restore to the original state of the immovable heritages before demolition.²³¹ Government would not issue working permit for the new construction, and may request the liable party to restore and reconstruct the demolished heritage and bear all the cost. All proposed works for immovable heritages, and works within buffer zones shall get approval from Cultural Affairs Bureau except interior renovation, maintenance and repair works. Government can cease the works if the works are considered potentially damaging to the immovable heritages (include archaeological site).

7.2.5.3 Suspension of Works

Once the process of assessing the immovable heritages starts, all issued working licenses on the proposed immovable heritages shall be ceased, or re-issued unless the works have been confirmed by Cultural Affairs Bureau that it is compatible to the proposed immovable heritages. If any works which are

²³⁰ Chapter 4, Mechanism for listing the immovable heritages, *Cultural Heritage Protection Law* 2013.

²³¹ Article 32, *Cultural Heritage Protection Law*, 2013.

required to be suspended or the issued working license needed to be amended, the affected parties are liable to be compensated.²³²

7.2.5.4 Mandatory Maintenance

Under Decree Nos. 56/84/M & 83/92/M of the *Cultural Heritage Protection Law*, it is the mandatory liability of the owner to carry out all the necessary works to upkeep the immovable heritage. The owner shall allow government's representative to enter the heritages for inspection. If the owner refuses Cultural Affairs Bureau's entry, the government can apply to the Court to gain the permit for entry. If the owner does not carry out the required repair and maintenance works, government would enforce the works at the owner cost of the owner. If the owner cannot pay within the required period, government may expropriate the immovable heritages. However, the government also provides financial assistance. In addition, the Cultural Affairs Bureau also provides expert advices and technical support.

Mandatory maintenance requirements are stated in Section II, Article 8, Decree No. 56/84/M of the *Cultural Heritage Protection Law*. The decree stated that the proprietors or holders of the Monuments has the responsibility to upkeep their buildings and are obliged to execute the works as advised from the Committee. Inspection shall be conducted before the works and it is required such inspection shall be carried out by three experts, two of whom will be appointed by the Committee and the third by the proprietor or holder of the monuments in question. If the required conservation works have not been started or completed within the required period, the government may execute the required works by competent government departments and the cost would be borne by the proprietor or holder or by government unless they prove they are unable to pay for the work. In Section II, Article 9, Decree No. 56/84/M of the same Law, it is stated that the government may expropriate of the classified monument whenever the proprietor is responsible for their conservation being at risk after having heard the respective proprietor and the Committee.

Mandatory maintenance is also required on Building of Architectonic Interest. As stated in Article 7, Decree No. 83/92/M of the *Cultural Heritage Protection Law*, the "owners, in possession or in use, of Buildings of Architectonic Interest should upkeep the buildings for regular conservation, restoration and repair works." If the owners, in possession or in use do not carry out the required works, Cultural Heritage Department may carry out conservation works in the exterior of the buildings, or any other works necessary for the stability of the buildings. In Article 10, Decree No. 83/92/M of the same Law, it was stated that the "government may expropriate of the Buildings of Architectonic Interest whenever the proprietor is responsible for their conservation being at risk after having heard the respective proprietor and the Committee."

7.2.5.5 Penalty

Under the *Cultural Heritage Protection Law*, it is against the law to relocate immovable heritages and damaging the archaeological site and relics without authorisation. On the other hand, it would be liable to be fined fifty thousand to one hundred thousand *patacas* for unlicensed demolition, conservation, reparation or consolidation works.²³³

²³² Article 45, *Cultural Heritage Protection Law*, 2013.

²³³ Chapter 9, *Cultural Heritage Protection Law*, 2013.

7.3 Incentives

7.3.1 Tax Incentives

Tax incentives are available to encourage the conservation and restoration of cultural heritages by private owners. As stipulated under Decree No. 56/84/M, Section VI and the *Cultural Heritage Protection Law*, several tax incentives are available. All the conservation works for the purposes of applying the tax exemption should be certified by Cultural Affairs Bureau and the Bureau would issue a document certifying the state of conservation of the building are to the satisfactory of them. Also, there are minimum requirements for the scale of works and the expense spent before tax exemption could be considered.

Possible tax exemptions include the following:

- **Urban Building Tax – Article 86 of the *Cultural Heritage Protection Law***

If the buildings remain in a good state of repair, it can be exempted from the urban building tax, provided that the owner need to apply to Cultural Affairs Bureau and get the document that proves the building is maintained in a good condition.²³⁴
- **Industrial Tax – Article 87 of the *Cultural Heritage Protection Law***

Provided that the maintenance, repair and restoration works are in accordance with the requirements the related tax could be exempted for four years.²³⁵
- **Complementary Income Tax and Income Tax – Article 88 of the *Cultural Heritage Protection Law***

Provided that the maintenance, repair and restoration works are in accordance with the requirements the related tax could be exempted for five years.
- **Stamp Duty – Article 89 of the *Cultural Heritage Protection Law***

Stamp Duty would be exempted when alienate the immovable heritage, with a condition that the owner should not demolish the heritage building within four years, otherwise he should pay the stamp duty which have been waived before.

7.3.2 Supports from Government

According to Article 11 of the *Cultural Heritage Protection Law*, rights enjoyed by the heritages owners are listed out. In addition to tax incentives, there are financial assistance scheme and other supporting schemes offered by the government to help owners.

According to Article 91 of the *Cultural Heritage Protection Law*, the following assistances are offered by the government:

- conduct repair works on the exterior of the building, provided that the internal structure are in good conditions;
- offer technical recommendation and comments by Cultural Affairs Bureau; and
- provide financial or technical assistance after seeking comments from Cultural Heritage Committee.

Usually, the government would sign an agreement with the owner once they received the financial and technical support. The agreement would list out some conditions, such as to open the heritage for public visit and suggested compatible use.

²³⁴ Under Article 19, Section VI, Decree 56/84/M, amount of not less than 50,000 patacas are exempted.

²³⁵ Under Article 21 Section VI, Decree 56/84/M, the exempted amount would be halved.

The proprietors or holders of the classified Monuments and classified Buildings of Architectonic Interest have the responsibility to upkeep their buildings regularly and carry out conservation, repair and restoration works. Cultural Heritage Department and the Committee would provide technical advice to the private owners. However, if the private owners have not carried out the required repair and maintenance works, the works would be carried out by the government but the cost would be born by the private owner unless the private owner prove that he is not able to pay for the works. Government may expropriate the cultural heritages if the conservation works are being at risk.

Case Study: Tak Seng On

Tak Seng On is classified as Building of Architectonic Interest. It is a good case to demonstrate how the Macao Government and proprietor cooperate with each other on conservation and adaptive re-use of the heritage building. Cultural Affairs Bureau took the role for restoring Tak Seng On, including its structure, decorations, mechanical system and water supply. In return, the Macao Government gained the ownership of G/F of the pawnshop and the usufruct of the pawnshop tower for five years. Proprietor committed to managing the remaining parts according to his will, but any commercial activities involved should engage sense of culture and any corresponded interior decoration works should respect the spatial arrangement of Tak Seng On.²³⁶



Fig. 44. Tak Seng On from the view of Avenida de Almeida Ribeiro (left).

Fig. 45. The pawnshop tower of Tak Seng On from the view of Camilo Pessanha Street (right).

Case Study: Pátio Da Eterna Felicidade

Pátio da Eterna Felicidade consists of clusters of two to three storeys high traditional dwellings. It is one street block away from St. Paul's Ruins, and adjacent to Rua de Santo Antonio & Rua da Tercena, an area which is known by its antique shops. Pátio da Eterna Felicidade can be entered through a gateway from Rua da Tercena or Beco Dos Faitioes.

The traditional dwellings along Pátio da Eterna Felicidade are constructed of timber structures with Chinese tiled pitched roofs. A local developer has an initial plan to demolish these dwellings for redevelopment. Cultural Heritage Department negotiated with the developer to preserve and not to demolish these traditional dwellings for their architectural and historic values. The Department finally took the role to restore and strengthen the buildings, in return, the developer committed not to demolish the

²³⁶ Cheong Cheok Kio, "Conservation Report of Tak Seng On" [《德成按建築修復報告》], p. 26.

buildings. The developer now maintains his ownership and has the right to rent their properties after the restoration works provided that the future use would be subject to the agreement with Cultural Heritage Department. The basic strengthening works have been done and Cultural Heritage Department is now studying the compatible uses for this cluster of dwellings.²³⁷

Although the traditional dwellings in Pátio da Eterna Felicidade are not within the list of Buildings of Architectonic Interest nor classified as Monuments, the Cultural Heritage Department still provides financial and technical support to restore the heritage considering the architectural value of the traditional dwelling as well as the pátio. The government hope to introduce positive ripple effect to the surrounding context through conserving Pátio da Eterna Felicidade while this approach also match with Macao's overall conservation policy on the immovable heritages encompassing 'dot, line, plane.'²³⁸



Fig. 46. Pátio da Eterna Felicidade.

7.3.3 Planning Incentives – Exchange of Land and Expropriation

As discussed under the section of planning control, government may come to an agreement with the owner to exchange the land. Private owners of the immovable heritages can negotiate for expropriation by the government, if a mutual agreement is reached, the owner would be compensated with an amount dependent on the individual case.

7.3.4 Fund/Foundation

7.3.4.1 Cultural Fund

Financial support from government is one of the main sources to encourage conservation and cultural activities in Macao. The Cultural Fund was set up by law in 1994,²³⁹ to assist Cultural Affairs Bureau to promote and develop cultural activities and other responsibilities under laws. The sources of the fund are from:²⁴⁰

²³⁷ Interview with Mr. Cheong Cheok Kio, Chief of Cultural Heritage Department, Macao SAR. Interview carried out on 22 August 2013.

²³⁸ Interview with Mr. Cheong Cheok Kio, Chief of Cultural Heritage Department, Macao SAR, 22 August 2013.

²³⁹ Decree 26/94/M, 1994.

²⁴⁰ Article 8 & 9, Decree 26/94/M, 1994.

- Income of the fund itself, including the income for selling publication of Cultural Affairs Bureau, donations, interest, and fees received under law, etc.
- Government revenue
- Income from credits and the cash balance

The fund would provide financial support to urgent works required for Monuments, Buildings of Architectonic Interest and other cultural heritages. It would support the repair works or other works as committed by the government between the private organisations or owners.²⁴¹ In addition to the financial supports to the conservation works; the fund would support other cultural activities²⁴² which are responsible for by the Cultural Affairs Bureau:

- Organise performances, seminars, meetings and conferences
- Publish publication
- Promote cultural activities and projects

7.3.4.2 Macao Foundation

Macao Foundation was set up by law in 2001, which is the combination of Macao Foundation and Macao Development and Cooperation Foundation, established in 1984 and 1998 respectively. The main objectives of Macao Foundation are to promote the development and research on cultural, social, economic, educational, scientific, academic and philanthropic activities in Macao. The financial source of the Foundation comes mainly from the gaming industry of Macao, where the gaming operators are required to pay 1.6% of their gross revenue to the Macao Foundation. Other sources include government funding and donations, etc.²⁴³

Macao UNESCO Centre was set up under the Macao Foundation; it is responsible to communicate between the Macao Government and the UNESCO. It helps to promote the protection and restoration of cultural heritages, and promote UNESCO Asia Pacific Heritage Award. Other examples of the activities supported by Macao Foundation including, the Macao Memory Project, academic conferences and publications.

7.3.5 Awards

Other indirect incentives that the government would give are, for example, awards, to projects that are outstanding in conserving cultural heritages, such as architectural design award and heritage conservation award, etc.²⁴⁴

7.4 Public Participation

Under the *Cultural Heritage Protection Law*, public consultation is required during the following circumstances:

- Make addition to the list of immovable cultural heritage (consultation period not less than 30 days)

²⁴¹ Items e & f, Article 10, Decree 26/94/M, 1994.

²⁴² Article 10, Decree 26/94/M, 1994.

²⁴³ "Introduction" in Macao Foundation. Retrieved on 20 August 2013, website: <http://www.fnac.org.mo/summary/summaryIndex>.

²⁴⁴ Article 83, *Cultural Heritage Protection Law*, 2013.

- Establish the Conservation and Management Plan for Historic Centre of Macao prepared by Cultural Affairs Bureau. (consultation period not less than 60 days)
- Establish the intangible heritage list (consultation period not less than 30 days)

7.5 Conclusion

The wide definition of cultural heritages, ranging from individual buildings to streets and areas, all protected by legislation allows a more holistic conservation approach for a small city like Macao. The inscription into the world heritage list facilitates the needs for a new heritage protection law to cope with the rapid development of the city. The new enforced heritage protection law reinforces the authority of the heritage bureau and department, which allows better control on conservation works and coordination between various departments.

8

SINGAPORE

8.1 Background

Singapore's built-heritage conservation is an integral part of the national planning and development framework, and it is carried out by two ministries: the Ministry of National Development (MND) and the Ministry of Culture, Community and Youth (MCCY), each of which is responsible for a different category of built-heritage.

The MND, established in 1959, is one of the oldest ministries of the Singapore Government. It identifies itself as “the key government ministry responsible for national land use planning and development” and lists its top three responsibilities as “[to] guide Singapore's land use planning, urban redevelopment and building conservation.”²⁴⁵ Within the MND, the agency directly responsible for implementing its parent ministry's conservation policies is the Urban Redevelopment Authority (URA), which is a combined authority in urban planning, development and conservation. It is tasked with the conservation of a category of built-heritage known as “conservation buildings” under the urban planning and development agenda.

The MCCY, a relatively new ministry established in 2012, has taken over the role of protecting Singapore's National Monuments from the MND. It is responsible for the national development of “the arts, heritage, sports, community and youth engagement.”²⁴⁶ It aims “to build a more cohesive and vibrant society, and to deepen a sense of identity and belonging to the nation.”²⁴⁷ Within the MCCY, the agency directly responsible for implementing its parent ministry's conservation policies is the National Heritage Board (NHB). As a combined authority in developing culture and heritage, it operates museums, heritage interpretative centres, and cultural/heritage institutions. It is tasked with the conservation of a category of built-heritage known as “National Monuments” under the cultural and heritage development agenda.

8.1.1 Heritage Designation System

In Singapore, built-heritage is divided into two categories: (1) conservation buildings and (2) National Monuments.

²⁴⁵ Ministry of National Development, Singapore Government. Retrieved on 13 December 2013, website: <http://app.mnd.gov.sg/AboutUs/Introduction.aspx>.

²⁴⁶ Ministry of Culture, Community and Youth, Singapore Government. Retrieved on 13 December 2013, website: <http://www.mccy.gov.sg/en/About-us.aspx>.

²⁴⁷ *Ibid.*

8.1.1.1 Conservation Buildings

Singapore's "conservation buildings" (name not capitalized) are designated by the URA under the MND. They are heritage buildings that do not meet the criteria of National Monuments (see the next subsection), and are conserved with the objectives of bringing them back to productive life, adding variety to streetscapes, modulating the scale of urban fabric, creating visual contrast and excitement within the city, and protecting distinctive character and identity of the city to give it a sense of history and memory of place.²⁴⁸ To date, there are over 7,000 conservation buildings,²⁴⁹ divided into two typologies:

- shophouses, of pre-Second World War vintage, belong to the same typology as Hong Kong's tong lau; they are mainly located in the city centre and urban areas
- bungalows, of pre- Second World War vintage, are government-owned colonial bungalows (some have been sold to private owners); they are located at the fringes of the city centre and outside the urban areas

Conservation buildings are always located within "conservation areas" designated by the URA. These conservation areas are organised into four main groups; within which the conservation buildings are required to comply with different levels of conservation and development control:²⁵⁰

Historic Districts (11 areas in this category as of 2013)

Historic Districts are historical mixed-used areas established by the criterion that they are among the city's oldest areas settled by Singapore's four representative ethnic groups that make up the population (i.e. Chinese, Malay, Indians and Eurasians/Caucasians). The general conservation guiding principle is the retention and restoration of entire conservation buildings.

Residential Historic Districts (3 areas in this category as of 2013)

Residential Historic Districts are established by the criterion that they are historical residential areas developed close to the city centre. The general conservation guiding principle is adapting conservation buildings for modern living by allowing the construction of a new rear extension lower than the main roof.

Secondary Settlements (18 areas in this category as of 2013)

Secondary Settlements are established by the criterion that they are areas developed later than the Historic Districts – that is when people started to move out of the crowded city to live at the fringe. As there are already many new developments in the Secondary Settlements, the general conservation guiding principle is retention of the streetscape, while allowing the construction of a new rear extension up to the maximum height allowed for the area (which is usually up to four storeys).

²⁴⁸ "Preface" in Conservation Guidelines under Urban Redevelopment Authority, Singapore Government, 2011. Retrieved on 13 December 2013, website: <https://www.ura.gov.sg/uol/guidelines/conservation/~media/User%20Defined/URA%20Online/Guidelines/Conservation/Cons-Guidelines.ashx>.

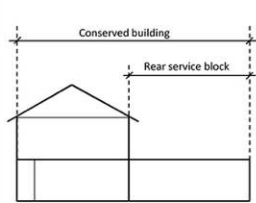
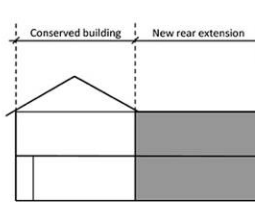
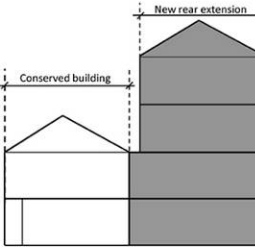
²⁴⁹ "1 Introduction" in "Part 1: Overview" in Conservation Guidelines under Urban Redevelopment Authority, Singapore Government, 2011. Retrieved on 13 December 2013, website: <https://www.ura.gov.sg/uol/guidelines/conservation/~media/User%20Defined/URA%20Online/Guidelines/Conservation/Cons-Guidelines.ashx>.

²⁵⁰ Information relating to the groups of conservation areas and their respective conservation requirements is stipulated in Conservation Guidelines under Urban Redevelopment Authority, Singapore Government, 2011. Retrieved on 13 December 2013, website: <https://www.ura.gov.sg/uol/guidelines/conservation/~media/User%20Defined/URA%20Online/Guidelines/Conservation/Cons-Guidelines.ashx>.

Bungalows (23 areas in this category as of 2013)

This is not a conservation area category *per se*, but it refers to individual – or clusters of – bungalow-type detached buildings that exhibit a variety of architectural styles and are predominantly for residential use. The general conservation guiding principle is the retention and restoration of the main house, while allowing the demolition of the outhouse for construction of a new extension to the main house. In addition, large Bungalow sites can be subdivided for flat and condominium developments, in which case the extant Bungalow can be used either for residential purposes or as a clubhouse to serve the new development.

The figure below illustrates the conservation requirements and development control of conservation buildings in Historic Districts, Residential Historic Districts and Secondary Settlements.²⁵¹

Figure 1 : Quick Guide to Development Options for Shophouses+			
	HISTORIC DISTRICTS	RESIDENTIAL HISTORIC DISTRICTS	SECONDARY SETTLEMENTS
			
The following can be introduced :			
(a) A new jackroof	✓	✓	✓
(b) Skylight at the rear slope of main roof and on rear secondary roofs	✓	✓	✓
(c) A roof mezzanine within the existing building envelope	✓	✓	✓
(d) A cover over the airwell	✓	✓	✓
(e) A cover over the rear court	✓	✓	✓
(f) New windows on the rear façade walls and the gable end wall	✓	✓	✓
(g) Replacement of the existing timber floors and staircases to reinforced concrete floors and staircases	X	X	✓
(h) Addition of secondary doors and windows	✓	✓	✓
(i) A new rear extension at the rear lower than the main roof *	X	✓	✓
(j) A new rear extension up to the maximum height allowable for the area *	X	X	✓

Note : + To refer to detail guidelines

* Owners of buildings in residential historic or secondary settlements can conserve the entire building or add a new rear extension

DEC 2011

Fig. 47. The conservation requirements and development control of conservation buildings in Historic Districts, Residential Historic Districts and Secondary Settlements. (From *Conservation Guidelines*, Singapore, Urban Redevelopment Authority, December 2011.)

8.1.1.2 National Monuments

Singapore's National Monuments (name capitalized) are designated by the National Heritage Board (NHB) under the MCCY. National Monuments are classified into four categories in terms of the specific conservation requirements:²⁵²

Category 1: The original architecture and function are preserved.

Category 2: The original architecture and function are preserved, but with enhanced value in

²⁵¹ Conservation Guidelines under Singapore, Urban Redevelopment Authority, Singapore Government, 2011. Retrieved on 13 December 2013, website:

https://www.ura.gov.sg/uol/guidelines/conservation/~/_media/User%20Defined/URA%20Online/Guidelines/Conservation/Cons-Guidelines.ashx.

²⁵² "INFORMATION NOTE: Built heritage conservation policy in Singapore," from the Hong Kong Legislative Council Secretariat. Retrieved on 13 December 2013, website: <http://www.legco.gov.hk/yr07-08/english/sec/library/0708in27-e.pdf>.

the function after restoration.

Category 3: The original architecture is preserved, but with completely new function after restoration.

Category 4: The original architecture is partially preserved, and the structure of other parts can be altered, while preserving the historical and architectural merits of the building as a whole.

As of 2013, there are 68 items on the National Monument list. (See Appendix IV (i))²⁵³

8.1.2 Definition of Heritage

8.1.2.1 Conservation Buildings

The URA defines built-heritage in the form of conservation buildings as:

Conservation of our built heritage is an integral part of urban planning and development in Singapore. The restoration of our historic areas adds variety to our streetscapes and modulates the scale of our urban fabric, creating the visual contrast and excitement within the city while protecting the important reminders and representations of our past. In addition, it adds to the distinctive character and identity of our city, giving it a sense of history and memory of place.²⁵⁴

8.1.2.2 National Monuments

The NHB's family institution, the Preservation of Sites and Monuments, defines built-heritage in the form of National Monuments as:

... worthy of preservation, based on the criteria that they are of historic, cultural, traditional, archaeological, architectural, artistic or symbolic significance and national importance.²⁵⁵

The mandate of NHB, as described by its parent ministry, the MCCY, can be seen as a broader definition of Singapore's National Monuments as well as Singapore's heritage in general:

... telling the Singapore story, sharing the Singaporean experience and imparting our Singapore spirit.²⁵⁶

²⁵³ "National Monuments" in National Heritage Board under Singapore Government. Retrieved on 3 July 2013, website: http://www.nhb.gov.sg/NHBPortal/Sites&Monuments?_afWindowId=tguknhcIk_518&_afLoop=1790825953138583&_afWindowMode=0&_adf.ctrl-state=tguknhcIk_521.

²⁵⁴ "Preface" in Conservation Guidelines under Urban Redevelopment Authority, Singapore Government, 2011. Retrieved on 13 December 2013, website: http://www.ura.gov.sg/uol/~/_media/User%20Defined/URA%20Online/Guidelines/Conservation/Cons-Guidelines.ashx.

²⁵⁵ "About Preservation of Sites & Monuments" in National Heritage Board under Singapore Government. Retrieved on 3 13 December, website: http://www.nhb.gov.sg/NHBPortal/AboutUs/OurFamily/PreservationofSitesandMonuments/AboutPSM/AboutPreservationofSitesandMonuments?_afLoop=10606068493719778&_afWindowMode=0&_afWindowId=5szwI65rg_497#%40%3F_afWindowId%3D5szwI65rg_497%26_afLoop%3D10606068493719778%26_afWindowMode%3D0%26_adf.ctrl-state%3D5szwI65rg_561.

²⁵⁶ "About Us" in Ministry of Culture, Community and Youth under Singapore Government. Retrieved on 13 December 2013, website: <http://www.mccy.gov.sg/About-us.aspx>.

8.1.3 Assessment of Heritage

8.1.3.1 Conservation Buildings

Conservation buildings are heritage buildings that do not meet the criteria of National Monuments, and assessments are carried out by the URA with the objectives of bringing them back to productive life, adding variety to streetscapes, modulating the scale of urban fabric, creating visual contrast and excitement within the city, and protecting distinctive character and identity of the city to give it a sense of history and memory of place.²⁵⁷

8.1.3.2 National Monuments

National Monuments are nationally significant buildings, structures and sites that fit into the NHB's agenda of fostering nationhood, building cultural identity and developing vibrancy in culture and heritage.²⁵⁸ Assessments for National Monuments are carried out by the Preservation of Sites & Monuments (PSM), a family institution of the NHB and the successor of the now defunct Preservation of Monuments Board. It identifies itself as "the national authority that advises on the preservation of nationally significant sites and monuments in Singapore."²⁵⁹ The assessment process is an internal exercise; the published assessment criteria for National Monuments are: "of historic, cultural, traditional, archaeological, architectural, artistic or symbolic significance and national importance."²⁶⁰

8.2 Legal Framework

8.2.1 Conservation buildings

The URA is responsible for conservation buildings within conservation areas. The legal framework for the URA's conservation mandate is based on the following ordinances (Acts):

- the *Land Acquisition Act* (Cap. 152);
- the *Urban Redevelopment Authority Act* (Cap. 340); and
- the *Planning Act* (Cap. 232).

²⁵⁷ "Preface" in Conservation Guidelines under Urban Redevelopment Authority, Singapore Government, 2011. Retrieved on 13 December 2013, website:

https://www.ura.gov.sg/uol/guidelines/conservation/~/_media/User%20Defined/URA%20Online/Guidelines/Conservation/Cons-Guidelines.ashx.

²⁵⁸ Ministry of Culture, Community and Youth, Singapore Government. Retrieved on 13 December 2013, website: <http://app.mccy.gov.sg/AboutUs.aspx>.

²⁵⁹ "About Preservation of Sites & Monuments" in National Heritage Board under Singapore Government. Retrieved on 3 December, website:

http://www.nhb.gov.sg/NHBPortal/AboutUs/OurFamily/PreservationofSitesandMonuments/AboutPSM/AboutPreservationofSitesandMonuments?_afLoop=10497405983068810&_afWindowMode=0&_afWindowId=otfti1r8q_62#%40%3F_afWindowId%3Dotfti1r8q_62%26_afLoop%3D10497405983068810%26_afWindowMode%3D0%26_adf.ctrl-state%3Dotfti1r8q_118.

²⁶⁰ "About Preservation of Sites & Monuments" in National Heritage Board under Singapore Government. Retrieved on 13 December 2013, website:

http://www.nhb.gov.sg/NHBPortal/AboutUs/OurFamily/PreservationofSitesandMonuments/AboutPSM/AboutPreservationofSitesandMonuments?_afLoop=10606068493719778&_afWindowMode=0&_afWindowId=5szw165rg_497#%40%3F_afWindowId%3D5szw165rg_497%26_afLoop%3D10606068493719778%26_afWindowMode%3D0%26_adf.ctrl-state%3D5szw165rg_561.

The overarching legal basis for facilitating conservation in conservation areas is the *Land Acquisition Act* (Cap. 152), as it is the legal basis for the Singapore Government to acquire private properties for conservation within conservation areas, with compensation based on the market value of the acquired property at the date when the preservation order is made, but with the value determined by the government and any appeal determined in court:

8.2.1.1 Notification that land is required for specific purposes

Section 5 — (1) Whenever any particular land is needed —

- for any public purpose;
- by any person, corporation or statutory board, for any work or an undertaking which, in the opinion of the Minister, is of public benefit or of public utility or in the public interest; or
- for any residential, commercial or industrial purposes,

8.2.1.2 Inquiry and award by Collector

Section 10.— (1) On the day so fixed, or on any other day to which the inquiry has been adjourned, the Collector shall proceed to inquire into the objections, if any, which any person interested has stated, pursuant to a notice published under section 8(1) or served under section 8(2), to any plan prepared under section 7 (if any) and into the value of the land and into the respective interests of the persons claiming the compensation, and shall, as soon as possible after the conclusion of the inquiry, make an award under his hand of —

- the area of the land;
 - the compensation which in his opinion should be allowed for the land; and
 - the apportionment of the compensation among all the persons known or believed to be interested in the land, of whom or of whose claims he has information, whether or not they have respectively appeared before him.
- (2) The Collector may at any time refer to the High Court for its determination any question as to —
- the true construction or validity or effect of any instrument;
 - the persons entitled to a right or interest in the land;
 - the extent or nature of such a right or interest;
 - the apportionment of the compensation or any part thereof for such a right or interest;
 - the persons to whom the compensation or any part thereof is payable; and
 - the costs of any inquiry under this Act and the persons by whom the costs shall be borne.

The *Urban Redevelopment Authority Act* empowers the URA “to undertake land planning and to manage and control the development of land in Singapore” (section 6(fa)).²⁶¹

The *Planning Act* is more specific in empowering the URA in the designation of conservation areas:

(Section 9(1))

Where in the opinion of the Minister any area is of special architectural, historic, traditional or aesthetic interest, the Minister may approve under section 8 [“Amendment to Master Plan”] a proposal to amend the Master Plan to designate the area as a conservation area.

(Section 9(2))

A conservation area may comprise —

- (a) an area;

²⁶¹ “Functions and duties of Authority” in Attorney-General’s Chambers under Singapore Government. Retrieved on 13 December, website: <http://statutes.agc.gov.sg/aol/search/display/view.w3p;ident=dbbbc0e5-689a-413f-a7ca-26b0c6a4bb84;page=0;query=DocId%3A%222ff1d469-25d0-47e3-8971-a0383ce160e2%22%20Status%3Ainforce%20Depth%3A0;rec=0#pr6-he..>

- (b) a single building; or
- (c) a group of buildings.

(Section 12(1))

No person shall without planning permission carry out any development of any land outside a conservation area.

(Section 12(2))

No person shall without conservation permission carry out any works within a conservation area.

The URA is also empowered to issue conservation guidelines for identified conservation buildings within conservation areas:

(Section 11(1))

The competent authority may, from time to time, issue guidelines for the conservation of buildings or land within a conservation area and for the protection of their setting.

While conservation buildings are not directly protected by any specific legislation, they are indirectly protected via requirements stipulated in *Conservation Guidelines*,²⁶² a URA document that caters specifically to conservation buildings. While compliance to these guidelines is not statutory, it is mandatory for obtaining the planning permission for any property development.

8.2.2 National Monuments

National Monuments are the responsibility of the NHB. The legal framework for the NHB's conservation mandate is based on the *Preservation of Monuments Act* (Cap. 239).²⁶³ Under this ordinance, a National Monument is defined as:

... any monument that is subject to a preservation order and includes any land containing or adjacent to such monument that is specified in the preservation order under section 11(3).²⁶⁴

The above-mentioned Section 11 of *Preservation of Monuments Act* (Cap. 239) explains the power of the relevant Minister to make a preservation order that places a monument under the protection of the National Heritage Board, which was established under *the National Heritage Board Act* (Cap. 196A).

The scope of legal protection of a National Monument is covered in two sections:

²⁶² "Conservation Guidelines in Singapore", Urban Redevelopment Authority under Singapore Government, 2011. Retrieved on 13 December 2013, website:

[https://www.ura.gov.sg/uol/guidelines/conservation/~/_media/User%20Defined/URA%20Online/Guidelines/Cons-Guidelines.ashx](https://www.ura.gov.sg/uol/guidelines/conservation/~/_media/User%20Defined/URA%20Online/Guidelines/Conservation/Cons-Guidelines.ashx).

²⁶³ "Preservation of Monuments ACT (CHAPTER 239)" in Attorney-General's Chambers under Singapore Government. Retrieved on 13 December 2013, website:

<http://statutes.agc.gov.sg/aol/search/display/view.w3p?page=0;query=DocId%3A850a1104-4ec2-4e62-860c-2f4c138d08ef%20Depth%3A0%20ValidTime%3A24%2F07%2F2013%20TransactionTime%3A24%2F07%2F2013%20Stat us%3Ainforce;rec=0;whole=yes>.

²⁶⁴ "PART I: PRELIMINARY" in "Preservation of Monuments ACT (CHAPTER 239)" in Attorney-General's Chambers under Singapore Government. Retrieved on 13 December 2013, website:

<http://statutes.agc.gov.sg/aol/search/display/view.w3p?page=0;query=DocId%3A850a1104-4ec2-4e62-860c-2f4c138d08ef%20Depth%3A0%20ValidTime%3A24%2F07%2F2013%20TransactionTime%3A24%2F07%2F2013%20Stat us%3Ainforce;rec=0;whole=yes>.

Section 15(1) states that

No person shall, without the prior written permission of the Board, and whether as principal or agent —

- (a) demolish, reconstruct, alter or make additions to a national monument or any part thereof;
- (b) repair, renovate, repaint or redecorate a national monument or any part thereof;
- (c) deposit any waste material on or flood the land on which a national monument stands or any part thereof; or
- (d) do in relation to the national monument or any part thereof or to the land on which the national monument is located such other act as may be prescribed as an act to which this section applies.

And section 22(1) states that

Any person who wilfully defaces, damages or otherwise interferes with any national monument shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$30,000 or to imprisonment for a term not exceeding 6 months or to both.

8.3 Incentives

There is no particular incentive offered to owners of private properties for conservation. This is because land in Singapore is a national resource, and the use of land involving conservation is an integral part of the national planning process determined by the government at a ministry level.

A limited incentive is offered to tax residents of Singapore who make monetary donations or estate gifts towards the conservation of National Monuments. This is the Tax Exemption Scheme for Donations to National Monuments in Singapore,²⁶⁵ introduced in 1994 as a form of public participation (it encourages private donations from members of the public by means of the incentive of double-tax exemption – twice the donation value – to donors) and a means of raising funds for owners/operators of gazetted National Monuments to maintain or restore their buildings. Under this scheme, a bank account in the name of Preservation of Monuments Fund is opened for each eligible monument for the deposit of public donations, which can be used by the account holder (the owner/trustee or management committee of a gazetted National Monument) for maintenance and restoration works.

The Tax Exemption Scheme is complemented by the National Monuments Fund, introduced in 2008 for structural repair and restoration of National Monuments. Eligible owners/operators of gazetted National Monuments can apply for one or both funding supports. However, there are restrictions to the National Monuments Fund:²⁶⁶

- There is a restricted list of buildings eligible for the funding – 29 buildings as of September 2010, all of which are gazetted National Monuments that are churches, temples, mosques and other religious buildings. The reasons for this limitation is because religion is closely tied to racial politics, and funding support for religious-based National Monuments is a political means of achieving social harmony
- Eligibility for applying for funding is restricted to non-profit or religious organisations that own and manage the eligible buildings (or with the owner's consent if the organisation does not own the building)
- The funding is restricted to “urgently necessary repair works”

²⁶⁵ “Tax Exemption Scheme for Donations to National Monuments in Singapore – Guide Notes” from Preservation of Monuments Board. Retrieved on 13 December 2013, website: <http://www.nhb.gov.sg/NHBPortal/content/conn/ucmnhb/uuid/dDocName%3aNHBSVRAPP61620000037852>.

²⁶⁶ National Heritage Board. Retrieved on 13 December 2013, website: <http://www.nhb.gov.sg/NHBPortal/content/conn/ucmnhb/uuid/dDocName%3aNHBSVRAPP61620000037829>.

Applicants must be able to finance the works upfront (which can be funded through the Tax Exemption Scheme) and complete the works within two years from the date of the funding approval, and the fund will be disbursed as a single payment after the works have been completed and the cost professionally certified.

Successful applicants must provide public access to the funded buildings.

8.4 Public Participation

In general, public participation in built-heritage conservation identification and designation is not part of the process by law or by any known policy. Public participation by means of consultation may be carried out for individual cases, depending on the circumstances. In most cases, the identification and designation of built-heritage, whether conservation buildings or National Monuments, are internal exercises carried out without public participation or consultation.

In terms of professional and NGO participation, the URA carries out regular review of the *Conservation Guidelines* (the key document for conserving conservation buildings) "in consultation with professional bodies and interest groups."²⁶⁷ In terms of student participation, the URA offers a comprehensive range of primary-, secondary- and tertiary-level educational materials in planning and conservation through its Singapore City Gallery website.²⁶⁸

In terms of community participation, the NHB offers a Heritage Participation Grant in support of community-oriented heritage projects in terms of exhibitions, publications, programmes and events. The grant is open to "individuals and organisations that are able to clearly demonstrate the heritage intent of the project and/or in depth engagement the community."²⁶⁹

In terms of public participation, the Tax Exemption Scheme for Donations to National Monuments in Singapore²⁷⁰ (explained in the earlier section) encourages private donations from members of the public by means of a tax-exemption incentive to donors.

8.5 Conclusion

The conclusion that can be drawn from the Singapore case is that, the conservation of built-heritage is a land use issue that is most effectively dealt with using a planning-led approach, which suits the conditions of a small city state where limited land resource supporting a large population renders high-density development the only viable option for development.

²⁶⁷ "Preface" in *Conservation Guidelines*, Singapore, Urban Redevelopment Authority, 2011.

²⁶⁸ "Resources-Worksheets" in URA's Singapore City Gallery under Urban Redevelopment Authority. Retrieved on 13 December 2013, website:

https://www.singaporecitygallery.sg/res_worksheets.html.

²⁶⁹ "Heritage Participation Grant" in National Heritage Board under Singapore Government. Retrieved on 13 December 2013, website:

http://www.nhb.gov.sg/NHBPortal/AboutUs/Grants/HeritageParticipationGrant?_afWindowId=null&_afLoop=1792799096251731&_afWindowMode=0&_adf.ctrl-state=10tfpmzajt_130#%40%3F_afWindowId%3Dnull%26_afLoop%3D1792799096251731%26_afWindowMode%3D0%26_adf.ctrl-state%3DtguhncIk_696.

²⁷⁰ "Tax Exemption Scheme for Donations to National Monuments in Singapore – Guide Notes" from Preservation of Monuments Board. Retrieved on 13 December 2013, website:

<http://www.nhb.gov.sg/NHBPortal/content/conn/ucmnhb/uuid/dDocName%3aNHBSVRAPP6162000037852>.

Secondly, the conservation of built-heritage must clearly differentiate between monuments that can be presented as societally shared cultural assets and urban heritage properties that are best integrated with development for urban economics, diversity and image. It is also apparent that the conservation of built-heritage is more effectively carried out by integrating it under the framework of an urban planning system, legally supported by a planning ordinance.

In Singapore, there is no viable incentive for private owners of heritage properties. Instead, tax incentives can be used as a means of generating funding for a heritage conservation trust.

9

UNITED STATES OF AMERICA

9.1 Background

It is important to note that the United States of America (USA) typically uses the terminology 'historic preservation' in the way most other places refer to the broader field as 'heritage conservation.' That being said it still covers the same goal of preserving, conserving and protecting buildings, districts, objects, landscapes and other artefacts of historical significance.

The USA, like Australia and Canada, is a large country with many jurisdictions – a national government, 50 states (each with their own state governments), as well as the individual local municipal governments at the city level. Although there are these various jurisdictions, there is some overlap or similarities amongst them concerning how they approach heritage conservation.

This chapter examines the overall approach of the United States of America to historic preservation. For greater understanding of the United States' system, New York State and New York City are used as case study examples of the different aspects being addressed. It is important to be aware that throughout the United States, every state and city is different, so New York State and New York City are simply two examples. They have been chosen due to the length of the state's preservation history as well as the similar density and urban landscape of New York City in comparison with Hong Kong.

As a short overview, dating back to the mid-19th century, efforts were already put into preserving sites important to the establishment of the United States of America; in particular those relating to the first USA President, George Washington.²⁷¹ However, it was the *National Historic Preservation Act* of 1966 that was the key for the modern preservation movement in the USA, as it was the first broad-based historic preservation policy, as will be discussed in section 9.2 of this chapter. The *National Historic Preservation Act* resulted in the establishment of the National Register of Historic Places, which is handled by the National Park Service, under the umbrella of the US Department of the Interior, headed by the Secretary of the Interior. The National Register resulted in a list compiled state-wide, covering historic buildings, landmarks and other cultural resources. Today, there are more than 88,000 properties listed on the national level.²⁷²

9.1.1 Heritage Designation System

The heritage designation system of the USA can be classified as follows:

²⁷¹ Virginia O. Benson and Richard Klein, *Historic Preservation for Professionals*, Kent, Ohio, The Kent State University Press, 2008, pp. 12-13.

²⁷² National Park Service, National Register of Historic Places Program: Research: About National Register Documentation. Retrieved on 22 August 2013, under National Park Services, website: <http://www.nps.gov/nr/research/>.

Properties listed in the National Register are “significant in American history, architecture, archaeology, engineering and culture,”²⁷³ and include the following:

- Buildings
- Historic Districts
- Objects
- Sites
- Structures

National Historic Landmarks (which are also included on the National Register, but not all items on the National Register are National Historic Landmarks), include:

- National Heritage Areas
- National Historic Sites
- National Historical Parks
- National Memorials
- National Military Parks/Battlefields
- National Monuments

The National Register is the nationwide heritage designation system; however, there are the state specific registers as well. So, for example, New York State has its own State Register that uses the same eligibility criteria as the National Register. As will be discussed subsequently, “the *National Historic Preservation Act* of 1966 and the *New York State Historic Preservation Act* of 1980 established the National and State Registers programs.”²⁷⁴ While that covers the federal and state level, the municipal can be more varied. So, for example, New York City has the New York City Landmarks Preservation Commission, which “is the New York City agency that is responsible for identifying and designating the City’s landmarks and the buildings in the City’s historic districts. The Commission also regulates changes to designated buildings.”²⁷⁵ The Landmarks Preservation Commission has its own designation breakdown:

- Individual Landmarks (individual structures that can range from bridges to row houses to skyscrapers; examples include the Woolworth Building, the Langston Hughes House in Harlem, and the Wonder Wheel at Coney Island);
- Interior Landmarks (building interiors that are “customarily open or accessible to the public,” such as the Marine Air Terminal at LaGuardia Airport, the RCA Building Lobby, and the Ed Sullivan Theater);
- Scenic Landmarks (city-owned parks or other landscape features, such as Prospect Park, Central Park, and Ocean Parkway); and

²⁷³ “National Register of Historic Places Program: Frequently Asked Questions”. Retrieved on 22 August 2013, under National Park Services, website: <http://www.nps.gov/nr/faq.htm#nr>.

²⁷⁴ “National Register”. Retrieved on 22 August 2013, under New York State Office of Parks, Recreation & Historic Preservation, website: <http://nysparks.com/shpo/national-register/>.

²⁷⁵ “About the Landmarks Preservation Commission”. Retrieved on 22 August 2013, under The New York City Landmarks Preservation Commission, website: <http://www.nyc.gov/html/lpc/html/about/about.shtml>.

- Historic Districts (areas of the city that possess architectural and historical significance and a distinct “sense of place,” such as Ladies Mile in Manhattan, Cobble Hill in Brooklyn, and St. George-New Brighton in Staten Island).²⁷⁶

	Categories	Total Numbers
1.	Individual Landmarks	1295
2.	Interior Landmarks	113
3.	Scenic Landmarks	10
4.	Historic Districts (this includes approximately 27,600 buildings)	106 + 16 extensions

Table 8. Heritage Designation in New York City²⁷⁷

In the USA, Historic Districts are the equivalent of Conservation Areas and, to date, there are 2,300 local historic districts in the United States.²⁷⁸ Prior to 1966, only structures or objects were designated at the federal level. It was with the introduction of the *National Historic Preservation Act* that it was recognised “that in many instances it is necessary not only to preserve a building but also the context in which it and adjacent buildings are placed.”²⁷⁹ It seems accepted that there are five reasons to establish a historic district: “(1) as protection of historic properties, (2) to control new development, (3) as a redevelopment incentive, (4) to stabilize or increase property values, and (5) to foster public relations and promotion.”²⁸⁰

In terms of the nomination process, it is the same for an individual building as it is for a district. A nomination is made to the State Historic Preservation Office (SHPO) by the property owner, a historical society, a preservation organisation, a governmental agency, another individual or a group. From there “the SHPO notifies affected property owners and local governments and solicits public comment. If the owner (or a majority of owners for a district nomination) objects, the property cannot be listed but may be forwarded to the National Park Service for a Determination of Eligibility (DOE).”²⁸¹

As mentioned above, a Historic District is one of the categories listed on the National Register of Historic Places at the federal level, which is connected to the state level. However, there are also listings at the local level as well, which in fact have the greatest protection and public involvement.²⁸² The designation

²⁷⁶ “Frequently Asked Questions About the Designation Process”. Retrieved on 22 August 2013, under The New York City Landmarks Preservation Commission, website: http://www.nyc.gov/html/lpc/html/faqs/faq_designation.shtml.

²⁷⁷ Cory S. Herrala, “Landmarks: The NYC Energy Code and the NYC Landmarks Preservation Law”. Retrieved on 22 August 2013, website: http://www.preservenys.org/energyworkshops/wp-content/uploads/2012/05/LPC_Energy-Code-03_20_12_CH.pdf.

²⁷⁸ National Park Service, “Working on the Past in Local Historic Districts” retrieved on 3 December 2013, website: <http://www.nps.gov/TPS/education/workingonthepast/index.htm>.

²⁷⁹ Norman Tyler et al., *Historic Preservation: An Introduction to Its History, Principles and Practice*, New York: W.W. Norton & Company Inc., 2009, p. 50.

²⁸⁰ *Ibid*, p. 156.

²⁸¹ National Park Service, “National Register of Historic Places Program: Fundamentals: National Register Listing Process,” retrieved on 3 December 2013, website: http://www.nps.gov/nr/national_register_fundamentals.htm.

²⁸² For a better understanding of local level Historic Districts, including the case study of New York City, please refer to Vincent L. Michael’s, *Preserving the Future: Historic Districts in New York City and Chicago in the Late 20th Century*, Chicago: University of Illinois, 2007.

process involves adopting a local preservation ordinance and creating a local preservation commission to administer it. Typically this will occur when the majority of residents in a specific neighbourhood “have decided they want to keep the look and feel of the place they call ‘home’... [and] local legislation is one of the best ways to protect the historic character of buildings, streetscapes, neighbourhoods, and special landmarks from inappropriate alterations, new constructions, and other poorly conceived work, as well as outright demolition.”²⁸³

As outlined by the National Park Service, “a preservation ordinance (1) provides a municipal policy for the protection of historic properties; (2) establishes an objective and democratic process for designating historic properties; (3) protects the integrity of designated historic properties within a design review requirement; (4) authorises design guidelines for new development within historic districts to ensure that it is not destructive to the area’s historic character; and (5) stabilizes declining neighbourhoods and protects and enhances property values.”²⁸⁴ Conversely, “a preservation ordinance does not (1) require that historic properties be open for tours; (2) restrict the sale of the property; (3) require improvements, changes, or restoration of the property; (4) require approval of interior changes or alterations; (5) prevent new construction within historic areas; or (6) require approval for ordinary repair or maintenance.”²⁸⁵

9.1.2 Definition of Heritage

As outlined in the material relating to the National Register of Historic Places: “America’s historic places [heritage] embody [their] unique spirit, character and identity. Representing important historical trends and events, reflecting the lives of significant persons, illustrating distinctive architectural, engineering, and artistic design achievement, and imparting information about America’s past, historic places tell compelling stories of the Nation and of the States and communities throughout the country.”²⁸⁶ On the state and city level, heritage is similarly defined and seen to be represented by places that embody “a special character or special historical or aesthetic interest or value as part of the development, heritage, or cultural characteristics of the city, state, or nation.”²⁸⁷

9.1.3 Assessment of Heritage

The assessment criteria laid out by the National Park Service, are as follows:

“The quality of significance in American history, architecture, archaeology, engineering, and culture is present in districts, sites, buildings, structures and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and:

- that are associated with events that have made a significant contribution to the broad patterns of our history; or
- that are associated with the lives of persons significant in our past; or

²⁸³ National Park Service, “Working on the Past in Local Historic Districts.” Retrieved on 3 December 2013, website: <http://www.nps.gov/TPS/education/workingonthepast/index.htm>.

²⁸⁴ *Ibid.*

²⁸⁵ *Ibid.*

²⁸⁶ National Park Service, “The National Register of Historic Places, Washington, D.C.: National Park Service,” 2002, p. 1.

²⁸⁷ “Frequently Asked Questions About the Designation Process”. Retrieved on 22 August 2013 under The New York City Landmarks Preservation Commission, website: http://www.nyc.gov/html/lpc/html/faqs/faq_designation.shtml.

- that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- that have yielded, or may be likely to yield, information important in prehistory or history.”²⁸⁸

However, there are exceptions to those categories listed above, which the National Park Service acknowledges will not be considered. These are addressed as follows:

Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register.²⁸⁹

That being said, the National Park Service clarifies that:

“Such properties will qualify if they are integral parts of districts that meet with criteria, or if they fall within the following categories:

- a religious property deriving primary significance from architectural or artistic distinction or historical importance; or
- a building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or
- a birthplace or grave of a historical figure of outstanding importance if there is no other appropriate site or building directly associated with his productive life; or
- a cemetery that derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or
- a reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or
- a property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own historical significance; or
- a property achieving significance within the past 50 years if it is of exceptional importance.”²⁹⁰

New York State follows the same assessment criteria as the National Register of Historic Places for its State Register of Historic Places.²⁹¹ As for New York City there are similar criteria, but the major difference is that properties are considered after 30 years. “The *Landmarks Law* requires that, to be designated, a potential landmark must be at least 30 years old and must possess special character or special historical or aesthetic interest or value as part of the development, heritage, or cultural characteristics of the city, state, or nation.”²⁹²

²⁸⁸ National Park Service, “The National Register of Historic Places,” Washington, D.C.: National Park Service, 2002, p. 20.

²⁸⁹ *Ibid.*

²⁹⁰ *Ibid.*, pp. 20-21.

²⁹¹ “National Register”. Retrieved on 22 August 2013, under New York State Office of Parks, Recreation & Historic Preservation, website: <http://nysparks.com/shpo/national-register/>.

²⁹² “Working with Landmarks”. Retrieved on 22 August 2013, under The New York City Landmarks Preservation Commission, website: http://www.nyc.gov/html/lpc/html/working_with/recommend.shtml.

9.1.4 Institutional Arrangement

There is the broader unit of the National Park Service that deals with the overall management of historic places in the USA, which is an operating unit within the US Department of the Interior. Within the National Park Service, there are smaller units dealing directly with preservation related issues. These are centers, programs and services, such as the National Historic Landmarks Program dealing with specific nominations,²⁹³ the Technical Preservation Services, which deals directly in developing historic preservation standards and guidelines, to assist those involved in the preservation and rehabilitation of historic buildings²⁹⁴ as well as the Historic Preservation Planning Program. The latter is tasked to “strengthen the integration of historic preservation into the broader public policy and land-use planning and decision-making arenas at the federal, state, tribal and local levels; increase the opportunities for broad-based and diverse public participation in planning and historic preservation activities; expand knowledge and skills in historic preservation planning; and provide maximum flexibility...to establish and carry out preservation planning programs that are responsive to their own needs and concerns.”²⁹⁵

Beyond the National Park Service, there are offices dealing with nominations. These are the SHPO,²⁹⁶ the Tribal Historic Preservation Offices²⁹⁷ and the Local Historic Preservation Offices (sometimes referred to as Historical Commissions).²⁹⁸ In addition, there are also non-governmental organisations involved in promoting the preservation of historic places, such as the National Trust for Historic Preservation, which was founded in 1949.²⁹⁹

The New York State Office of Parks, Recreation & Historic Preservation is the institution responsible for handling historic preservation matters for New York State. Clearly, its purview is more than simply historic preservation. However, within its organisational structure there is the Historic Preservation Division that oversees matters in relation to historic preservation for New York State. This division comprises: the Bureau of Historic Sites (which provides technical and program support to the state parks and historic sites), the Historic Preservation Field Services Bureau (which is the New York State Historic Preservation Office), the New York State Heritage Area System (which is a state-local partnership to promote areas of significance) and the Heritage Trails (which highlight significant sites statewide).³⁰⁰ Although each SHPO is organised differently, each SHPO is responsible to administer the State Historic Preservation Program and to:

²⁹³ “National Historic Landmarks Program”. Retrieved on 22 August 2013, under National Park Service, website: <http://www.nps.gov/nhl/>.

²⁹⁴ “Standards for Preservation and Guidelines for Preserving Historic Buildings”. Retrieved on 22 August 2013, under National Park Service, website: http://www.nps.gov/hps/tps/standguide/preserve/preserve_index.htm.

²⁹⁵ “Historic Preservation Planning Program”. Retrieved on 22 August 2013, under National Park Service, website: <http://www.nps.gov/history/hps/pad/>.

²⁹⁶ “National Register of Historic Places Program: State Historic Preservation Officers (SHPO)”. Retrieved on 22 August 2013, under National Park Service, website: <http://www.nps.gov/nr/shpolist.htm>.

²⁹⁷ “Tribal Preservation Program”. Retrieved on 22 August 2013, under National Park Service, website: <http://www.nps.gov/history/thpo/>.

²⁹⁸ Karolin Frank and Patricia Petersen, “4.4 Regional and Local Level” in *Historic Preservation in the USA*, Berlin, Springer, 2002, pp. 73-75.

²⁹⁹ “National Trust for Historic Preservation”. Retrieved on 22 August 2013, under National Trust for Historic Preservation, website: <http://www.preservationnation.org>.

³⁰⁰ “Historic Preservation”. Retrieved on 22 August 2013, under New York State Office of Parks, Recreation & Historic Preservation, website: <http://nysparks.com/historic-preservation/>.

- in cooperation with Federal and State agencies, local governments, and private organisations and individuals, direct and conduct a comprehensive statewide survey of historic properties and maintain inventories of such properties
- identify and nominate eligible properties to the National Register and otherwise administer applications for listing historic properties on the National Register
- prepare and implement a comprehensive statewide historic preservation plan
- administer the State program of Federal assistance for historic preservation within the State
- advise and assist, as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities
- cooperate with the Secretary, the Advisory Council on Historic Preservation, and other Federal and State agencies, local governments, and organisations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development
- provide public information, education and training, and technical assistance in historic preservation
- cooperate with local governments in the development of local historic preservation programs and assist local governments in becoming certified pursuant to subsection (c)
- consult with the appropriate Federal agencies in accordance with this Act on-
 - Federal undertakings that may affect historic properties; and
 - the content and sufficiency of any plans developed to protect, manage, or to reduce or mitigate harm to such properties
- advise and assist in the evaluation of proposals for rehabilitation projects that may qualify for Federal assistance.³⁰¹

As for the city level, New York City is quite unique. Its municipal level organisation that deals with historic preservation is the New York City Landmarks Preservation Commission, which was established in 1965 (before the *National Historic Preservation Act* in 1966). Due to its early establishment, it does not follow the national level standards and guidelines, but its own version, which is very similar. There is also the New York Landmarks Preservation Foundation, established in 1980, that assists the commission in promoting its activities and assisting with fundraising. Within the city there are also smaller organisations, associations and societies that address preservation issues and support the work of the Landmarks Preservation Commission. One such organisation is the non-profit, Historic Districts Council, which was founded in 1971 as an “advocate for all of New York City’s historic neighbourhoods.”³⁰²

9.2 Legal Framework

It is important to note the difficulty with which the USA established its legal basis for preservation. “Land use law, which forms the framework for most historic preservation law, was based on the premise that property owners have the right to do as they wish with their properties and that this right could be infringed upon only if the use of the property was a nuisance to the community.”³⁰³

³⁰¹ “National Historic Preservation Act of 1966 Sec. 470 (Section 101b, 3)”. Retrieved on 22 August 2013, website: <http://www.nps.gov/history/local-law/nhpa1966.htm>.

³⁰² “About”. Retrieved on 22 August 2013, under Historic Districts Council, website: <http://hdc.org/about>.

³⁰³ Norman Tyler, *Historic Preservation: An introduction to its history, principles, and practice*, New York: W.W. Norton & Company, 2000, p. 83.

9.2.1 Federal Laws

There are 23 Federal laws that deal with the preservation of the USA's cultural heritage. For the full list please refer to the 2006 publication *Federal Historic Preservation Laws: The official compilation of U.S. Cultural Heritage Statutes*.³⁰⁴ For the sake of this study, only the most prominent and pertinent will be discussed.

9.2.1.1 American Antiquities Act of 1906

The *American Antiquities Act* of 1906 was a concise and straight forward law intended to protect "any historic or prehistoric ruin or monument, or any object of antiquity."³⁰⁵ It was broken into four sections:

Section 1 covered the punishment should anyone "appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States..."³⁰⁶

Section 2 gave the President of the United States the ability "to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments..."³⁰⁷

Section 3 was in relation to permits "for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity..."³⁰⁸

Section 4 was simply a statement that the Secretaries referenced in this act, must publish these rules and regulations so they can be followed.³⁰⁹

9.2.1.2 Historic American Buildings Survey of 1934 (HABS)

Although not technically a law, the *Historic American Buildings Survey* of 1934 was an important tripartite agreement between the National Park Service, the Library of Congress, and the American Institute of Architects, which was established to document historic structures. It was an important precursor of the increasing role the Federal Government began to take in terms of historic preservation.³¹⁰ "The building selection ranged in type and style from the monumental and architect-designed to the utilitarian and vernacular."³¹¹ The result of this endeavour was the production of an invaluable archive of documented buildings and structures and the foundation for the important heritage documentation project undertaken still today.

³⁰⁴ National Park Service, *US Department of the Interior, Federal Historic Preservation Laws: The official compilation of U.S. Cultural Heritage Statutes*, Washington, DC: National Center for Cultural Resources, 2006.

³⁰⁵ "American Antiquities Act of 1906". Retrieved on 22 August 2013, website: <http://www.nps.gov/history/local-law/anti1906.htm>.

³⁰⁶ *Ibid.*

³⁰⁷ *Ibid.*

³⁰⁸ *Ibid.*

³⁰⁹ *Ibid.*

³¹⁰ Norman Tyler, "Historic American Buildings Survey (HABS)" in *Historic Preservation: An introduction to its history, principles, and practice*, New York: W.W. Norton & Company, 2000, pp. 40-41.

³¹¹ "Heritage Documentation Programs: Historic American Buildings Survey (HABS)". Retrieved on 22 August 2013, under National Park Service, website: <http://www.nps.gov/history/hdp/habs/index.htm>.

9.2.1.3 Historic Sites Act of 1935

The *Historic Sites Act* of 1935 is a more detailed law to declare that “it is a national policy to preserve for public use historic sites, buildings, and objects of national significance for the inspiration and benefit of the people of the United States.”³¹² Through six additional sections, the powers and duties of the Secretary of the Interior are outlined (Section 462); details of the National Park System Advisory Board are discussed (Section 463); cooperation between the governmental and private agencies is acknowledged (Section 464); the jurisdiction of the states is confirmed (Section 465); the requirement of specific authorisation is outlined (Section 466); and any conflict of laws is addressed (Section 467).³¹³

9.2.1.4 National Trust for Historic Preservation Act of 1949

The *National Trust for Historic Preservation Act* of 1949 is intended to further the policies outlined in the *Historic Sites Act* of 1935 and “to facilitate public participation in the preservation of sites, buildings, and objects of national significance or interest” with the establishment of a National Trust for Historic Preservation.³¹⁴ The purposes of the trust are outlined in the first section of this Act as follows:

To receive donations of sites, buildings, and objects significant in American history and culture; to preserve and administer them for public benefit; to accept, hold, and administer gifts of money, securities, or other property of whatsoever character for the purpose of carrying out the preservation program; and to execute such other functions as are vested in it by sections 1 to 5 of this Act.³¹⁵

The rest of the Act outlines the principal office of the trust (Section 468a); the administration of the trust (Section 468b); the powers and duties of the trust (Section 468c); and the authorisation of the trust to consult with the National Park System Advisory Board (the board responsible for National Parks, Historic Sites, Buildings and Monuments) (Section 468d).³¹⁶

9.2.1.5 National Historic Preservation Act of 1966

The *National Historic Preservation Act* of 1966 is the most substantial law passed in the United States in relation to historic preservation, to date. Through this law Congress declared that:

- the spirit and direction of the Nation are founded upon and reflected in its historic heritage
- the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people
- historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency
- the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans

³¹² “Historic Sites Act of 1935,” Sec. 461. Retrieved on 22 August 2013, website: <http://www.cr.nps.gov/local-law/hsact35.htm>.

³¹³ *Ibid*, Sec. 462-467.

³¹⁴ National Park Service, US Department of the Interior, “National Trust for Historic Preservation” in *Federal Historic Preservation Laws: The official compilation of U.S. Cultural Heritage Statutes*, Washington, DC: National Center for Cultural Resources, 2006, p. 25.

³¹⁵ *Ibid*.

³¹⁶ *Ibid*, pp. 25-28.

- in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation
- the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of federal and federally assisted projects and will assist economic growth and development
- although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States of America to expand and accelerate their historic preservation programs and activities³¹⁷

The rest of the Act outlines the declaration of policy for the Federal Government; the national level historic preservation programs, specifically the National Register of Historic Places and the National Historic Landmarks, including their criteria, regulations, nominations processes, owner participation, documentation and threat review; the state level historic preservation programs, specifically the designation of the SHPO, the designation of the state review board, the review of the state programs and an overview of the SHPO responsibilities and arrangements; the certification process; specific regulations for Indian tribes; the various grants available; and many other topics and issues.³¹⁸

9.2.1.6 Public Buildings Cooperative Use Act of 1976

The *Public Buildings Cooperative Use Act* of 1976 is another shorter law specifically in relation to the use of historically and architecturally significant buildings by the General Services Administration. It states that:

The Administrator [of the General Services Administration] shall:

- acquire and utilize space in suitable buildings of historic, architectural, or cultural significance, unless use of such space would not prove feasible and prudent compared with available alternatives
- encourage the location of commercial, cultural, educational, and recreational facilities and activities within public buildings
- provide and maintain space, facilities, and activities, to the extent practicable, which encourage public access to and stimulate public pedestrian traffic around, into and through public buildings, permitting cooperative improvements to and uses of the area between the building and the street, so that such activities complement and supplement commercial, cultural, educational, and recreational resources in the neighbourhood of public buildings
- encourage the public use of public buildings for cultural, educational, and recreational activities³¹⁹

³¹⁷ "National Historic Preservation Act of 1966", Sec. 470. Retrieved on 22 August 2013, website: <http://www.nps.gov/history/local-law/nhpa1966.htm>.

³¹⁸ "National Historic Preservation Act of 1966". Retrieved on 22 August 2013, website: <http://www.nps.gov/history/local-law/nhpa1966.htm>.

³¹⁹ National Park Service, US Department of the Interior, "Public Buildings Cooperative Use Act" in *Federal Historic Preservation Laws: The official compilation of U.S. Cultural Heritage Statutes*, Washington, DC: National Center for Cultural Resources, 2006, p. 138.

9.2.1.7 Tax Reform Act of 1976

The *Tax Reform Act* of 1976, a broad act, includes the alignment of the Federal tax code with the national historic preservation policy. This is “to encourage voluntary, private sector investment in preserving historic buildings.”³²⁰ “This bill introduced a number of major tax revisions designed to assist owners of historic property. Investment tax credits for the rehabilitation and continued use of historic structures was one very popular measure.”³²¹ The *Tax Reform Act* introduced the Federal Historic Preservation Tax Incentives, which “are available for buildings that are National Historic Landmarks, are listed in the National Register, and that contribute to National Register Historic Districts and certain state or local historic districts. Properties must be income-producing and must be rehabilitated according to standards set by the Secretary of the Interior. Jointly managed by the National Park Service and the Internal Revenue Service in partnership with SHPOs, the Historic Preservation Tax Incentives program rewards private investment in rehabilitating historic buildings.”³²²

It is interesting to note that there were additions made with the *Tax Reform Act* of 1986 and that some states have additional tax incentives for historic preservation, in addition to the federal ones, as will be discussed in Section 9.3 of this chapter.³²³

9.2.1.8 Archaeological Resources Protection Act of 1979

The *Archaeological Resources Protection Act* of 1979 was an act to clarify the protection of archaeological resources. In particular, “the purpose of this act is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data.”³²⁴

9.2.2 State Laws

9.2.2.1 New York State Historic Preservation Act of 1980

The *New York State Historic Preservation Act* of 1980 is similar to the *National Historic Preservation Act*, but is specifically intended to address the State of New York. It states that: “The purpose of the State Historic Preservation Act is to continue and advance the State’s historic preservation programs and activities, to continue the responsibility for the coordination of such programs and activities with the Commissioner of Parks, Recreation and Historic Preservation, to foster consistency of State activities with historic preservation policy, to encourage and assist local governments in local preservation programs and activities, and to

³²⁰ “Federal Preservation Program Notes”. Retrieved on 22 August 2013, under National Park Service, website: http://www.achp.gov/docs/BRAC/Federal_Historic_Preservation_Tax_Incentives_Program-June_06.pdf.

³²¹ Virginia O. Benson and Richard Klein, *Historic Preservation for Professionals*, United States, Kent State University Press, 2008, p. 40.

³²² “Federal Preservation Program Notes”. Retrieved on 22 August 2013 under National Park Service, website: http://www.achp.gov/docs/BRAC/Federal_Historic_Preservation_Tax_Incentives_Program-June_06.pdf.

³²³ *Ibid*.

³²⁴ National Park Service, US Department of the Interior, “Archaeological Resources Protection Act” in *Federal Historic Preservation Laws: The official compilation of U.S. Cultural Heritage Statutes*, Washington, DC: National Center for Cultural Resources, 2006, p. 140.

encourage and assist private agencies and individuals undertaking preservation by private means.”³²⁵ It goes on to describe the authority and the role of the State Board of Historic Preservation as an advisory body, outlining the board’s existing and expanded functions.

9.2.3 Municipal Laws

9.2.3.1 New York City Landmarks Law of 1965

As mentioned previously, interestingly, the *New York City Landmarks Law* pre-dates the *National Historic Preservation Act* of 1966, “in response to New Yorkers’ growing concern that important physical elements of the City’s history were being lost. . . . Events like the demolition of the architecturally distinguished Pennsylvania Station in 1963 increased public awareness of the need to protect the city’s architectural, historical, and cultural heritage.”³²⁶ This Law resulted in New York City’s Landmarks Preservation Commission being established. The Commission is “responsible for identifying and designating the city’s landmarks and the buildings in the city’s historic districts.”³²⁷

The Commission consists of eleven Commissioners and approximately fifty full-time staff members from varying professional backgrounds, such as architects, architectural historians, restoration specialists, planners and archaeologists, as well as administrative staff. As outlined in the *New York City Landmarks Law*, the Landmarks Preservation Commission was established to:

- Safeguard the city’s historic, aesthetic, and cultural heritage
- Help stabilize and improve property values in historic districts
- Encourage civic pride in the beauty and accomplishments of the past
- Protect and enhance the city’s attractions for tourists
- Strengthen the city’s economy
- Promote the use of landmarks for the education, pleasure, and welfare of the people of New York City³²⁸

From the above, one can appreciate the numerous and varied laws of the USA for addressing historic preservation, both at the federal, state and municipal levels. That being said, it is important to keep in mind that each state and city has its own approach for addressing historic preservation legislation. However, the above at least gives a broader sense of the federal approach and a case study example of a state and municipal approach as well.

9.2.4 Building Codes and Regulations

On the national, state and municipal levels, there appears to be some flexibility in complying with modern building codes and regulations for historic buildings. The National Park Service’s Technical Preservation Services, for example, has issued guides on code compliance for historic buildings. One such example is a guide published for *Modifying Historic Interior Railings to Meet Building Code*. From this document

³²⁵ “Federal & State Preservation Legislation”. Retrieved on 22 August 2013, under New York State Office of Parks, Recreation and Historic Preservation, website: <http://nysparks.com/shpo/environmental-review/preservation-legislation.aspx>.

³²⁶ “About the Landmarks Preservation Commission”. Retrieved on 22 August 2013 under The New York City Landmarks Preservation Commission, website: <http://www.nyc.gov/html/lpc/html/about/about.shtml>.

³²⁷ “Mission of the Landmarks Preservation Commission”. Retrieved on 22 August 2013 under The New York City Landmarks Preservation Commission, website: <http://www.nyc.gov/html/lpc/html/about/mission.shtml>.

³²⁸ *Ibid.*

it appears that there are exemptions and that variances in the code can be granted by code officials, however, if it is not granted, guidance is provided for how to comply with the modern building code, as sensitively as possible, following the Secretary of the Interior's *Standards for Rehabilitation*.³²⁹

As outlined in the most recent Building Code of New York State, covering Existing Buildings, there is an entire section (Chapter 11) dedicated to Historic Buildings. Sections 1101-1106 cover the codes and regulations in relation to historic buildings, where the various exceptions and exemptions are outlined.³³⁰ As for the municipal level, New York City, for example, with regards to their *Energy Conservation Code*, in section (e)(2)(i) it specifically exempts Historic Buildings from having to comply with this code. It goes further to define, what exactly is considered a historic building:

- a National- or State-designated historic building;
- a building certified as a contributing building within a National or State historic district; or
- a building certified as eligible for such designation.³³¹

It can therefore be appreciated that although historic buildings need to comply with the various modern building codes and regulations, there are exceptions and exemptions evaluated on a case-by-case basis.

9.3 Incentives

As for incentives for encouraging historic preservation in the USA, as mentioned in section 9.2.1.7, there are the Federal Historic Preservation Tax Incentives.³³² The three major tax incentives are:

- A 20% Tax Credit available for "the rehabilitation of historic, income-producing buildings that are determined by the Secretary of the Interior, through the National Park Service, to be 'certified historic structures.' The SHPOs and the National Park Service review the rehabilitation work to ensure that it complies with the Secretary of the Interior's Standards for Rehabilitation."³³³ The rehabilitation must be for commercial, industrial, agricultural or rental residential purposes,³³⁴ and must also fulfil certain Internal Revenue Service requirements.³³⁵

³²⁹ "Interpreting The Secretary of the Interior's Standards for Rehabilitation: Modifying Historic Interior Railings to Meet Building Code". Retrieved on 22 August 2013 under Technical Preservation Services, website: <http://www.nps.gov/tps/standards/applying-rehabilitation/its-bulletins/ITS46-InteriorRailing-Modifying.pdf>.

³³⁰ "2010 Existing Building Code of New York State: Chapter 11 Historic Buildings". Retrieved on 22 August 2013 under International Code Council, website: http://publicecodes.cyberregs.com/st/ny/st/b600v10/st_ny_st_b600v10_11_sec003.htm.

³³¹ "New York City Energy Conservation Code". Retrieved on 22 August 2013 under NYC Government, website: http://www.nyc.gov/html/dob/downloads/rules/1_RCN_5000-01.pdf.

³³² "Historic Preservation Tax Incentives". Retrieved on 22 August 2013 under Technical Preservation Services, website: <http://www.nps.gov/tps/tax-incentives/taxdocs/about-tax-incentives-2012.pdf>.

³³³ "Tax Incentives for Preserving Historic Properties". Retrieved on 22 August 2013 under Technical Preservation Services, website: <http://www.nps.gov/tps/tax-incentives.htm>.

³³⁴ "Historic Preservation Tax Incentives". Retrieved on 22 August 2013 under Technical Preservation Services, website: <http://www.nps.gov/tps/tax-incentives/taxdocs/about-tax-incentives-2012.pdf>, p. 4.

³³⁵ *Ibid*, pp. 9-10.

- A 10% Tax Credit available for “the rehabilitation of non-historic buildings placed in service before 1936. The building must be rehabilitated for non-residential use.”³³⁶ In order to qualify for the tax credit, the rehabilitation must fulfil certain criteria, including having the cost exceed “either US\$5,000 or the adjusted basis of the property, whichever is greater.”³³⁷ It is interesting to note that both the 20% Tax Credit and the 10% Tax Credit only apply to buildings, “not to ships, bridges or other structures.”³³⁸
- A Tax Benefit for Historic Preservation Easement, which is a voluntary agreement that permanently protects an historic property, placing “restrictions on the development of or changes to the historic property, then transferring these restrictions to a preservation or conservation organisation.”³³⁹ One such organisation, is the New York Landmarks Conservancy, discussed below. If an owner does this, he/she is potentially eligible to certain tax benefits, such as a Federal income tax deduction.³⁴⁰

It seems generally accepted that “the tax incentives stimulation of real estate development and especially urban revitalization impels the public sector to encourage several related activities: (1) Structuring community-development corporations in neighbourhoods; (2) Designating urban historic districts; (3) Promoting historic preservation tourism; and (4) Endorsing National Register nominations.”³⁴¹

Although tax incentives are the major incentive at the Federal level, most states also have their own specific incentives and grants. The incentives, for the most part, also focus on tax incentives. For example, New York State has the New York State Historic Homeownership Rehabilitation Tax Credit, which will cover 20% of the qualified rehabilitation costs of structures, up to a credit value of US\$50,000, as well as the New York State Historic Barns Credit.³⁴² To be eligible for the rehabilitation tax credit, the properties must: produce an income, be listed on the National Register and the proposed work must meet the Secretary of the Interior’s *Standards for the Treatment of Historic Properties*.³⁴³

Beyond tax incentives, there are also non-profit organisations that assist in funding work on historic places. For example, the National Trust for Historic Preservation has the National Trust Preservation Funds available “to encourage preservation at the local level by providing seed money for preservation projects.”³⁴⁴ The Trust is particularly interested in helping to fund projects that promote “building sustainable communities;

³³⁶ “Historic Preservation Tax Incentives”. Retrieved on 22 August 2013 under Technical Preservation Services, website: <http://www.nps.gov/tps/tax-incentives/taxdocs/about-tax-incentives-2012.pdf>.

³³⁷ “Historic Preservation Tax Incentives”. Retrieved on 22 August 2013 under Technical Preservation Services, website: <http://www.nps.gov/tps/tax-incentives/taxdocs/about-tax-incentives-2012.pdf>, p. 16.

³³⁸ *Ibid.*

³³⁹ “Historic Preservation Tax Incentives”. Retrieved on 22 August 2013 under Technical Preservation Services, website: <http://www.nps.gov/tps/tax-incentives/taxdocs/about-tax-incentives-2012.pdf>.

³⁴⁰ “Historic Preservation Tax Incentives”. Retrieved on 22 August 2013 under Technical Preservation Services, website: <http://www.nps.gov/tps/tax-incentives/taxdocs/about-tax-incentives-2012.pdf>.

³⁴¹ Virginia O. Benson and Richard Klein, *Historic Preservation for Professionals*, United States, Kent State University Press, 2008, p. 118.

³⁴² “Tax Credit Programs”. Retrieved on 22 August 2013 under New York State Office of Parks, Recreation & Historic Preservation, website: <http://nysparks.com/shpo/tax-credit-programs/>.

³⁴³ “Historic Preservation Field Services Bureau”. Retrieved on 22 August 2013 under Historic Preservation Field Services Bureau, website: <http://nysparks.com/historic-preservation/bhs/documents/NYFieldServiceBrochure.pdf>, p.3.

³⁴⁴ “National Trust Preservation Funds: Guidelines & Eligibility”. Retrieved on 22 August 2013 under National Trust for Historic Preservation, website: <http://www.preservationnation.org/resources/find-funding/preservation-funds-guidelines-eligibility.html#.UkUkh9Jmh8E>.

reimagining historic sites; promoting diversity and place; and protecting historic places on public lands.”³⁴⁵ Grants typically range from US\$2,500 to US\$5,000 and must be matched dollar-for-dollar by the applying organisation, whether raised internally, via fundraising, or other means.

As for New York City specifically, in addition to the applicability of the state-wide and federal tax incentives, there are also a number of grant programs available. In general, to qualify for such assistance, buildings must be listed as individual landmarks, as part of an historic district of New York City, or on the New York State or National Register of Historic Places.³⁴⁶ One such grant program is the Historic Preservation Grant Program, which is administered by the New York City Landmarks Preservation Commission. This provides US\$10,000 to US\$15,000 to help owners restore their homes, provided it is a designated or proposed New York City landmark, part of a designated historic district, or listed or eligible for listing on the National Register of Historic Places.³⁴⁷ There is also the Historic Preservation Grant Program for Non-profits, also offered by the New York City Landmarks Preservation Commission, which offers up to US\$25,000 for non-profits that fulfil similar criteria to the previous grant.

Beyond the Commission, there is also funding and assistance provided by non-profit organisations, such as the New York Landmarks Conservancy. Founded in 1973, it has since provided “more than US\$30,000,000 in grants and low-interest loans.”³⁴⁸ The Conservancy makes available both financial assistance and technical expertise. It provides a wide range of financial programs and services, such as the Historic Properties Fund, which offers “low-interest loans and project management assistance to owners of historic residential, non-profit, religious and commercial properties, mostly in low – to moderate – income communities. Loans generally apply to exterior work or structural repairs and range from US\$20,000 to US\$300,000.”³⁴⁹

They also provide the City Ventures Fund, which offers grants ranging from US\$5,000 to US\$30,000 as well as project management support to non-profit developers. It is to help them “retain and restore the historic details of architecturally significant buildings that are being converted to affordable housing or will serve as a space for other services of benefit to lower income communities. This fund is specifically for buildings that are not designated as landmarks.”³⁵⁰ According to the Conservancy, this fund has “provided over US\$1,000,000 in financial assistance, resulting in the creation of more than 800 affordable apartments.”³⁵¹

In addition to these two funding examples, as well as others, there is also the Conservancy’s Technical Services Program, which provides “expert architectural and preservation advice to property owners, developers, and contractors.”³⁵² This service has a Preservation Hotline, which is open to anyone to call or email questions about building repair, project management or in need of contractor referrals. If there is a question or concern that needs to be resolved in person, “the staff makes site visits and meets with owners,

³⁴⁵ *Ibid.*

³⁴⁶ “Financial Incentives for Historic Buildings”. Retrieved on 22 August 2013 under Historic Districts Council, website: <http://hdc.org/financial%20incentives%20brochure.pdf>, p. 2.

³⁴⁷ *Ibid.*, p. 3.

³⁴⁸ “What We Do”. Retrieved on 22 August 2013 under The New York Landmarks Conservancy, website: http://www.nylandmarks.org/about_us/what_we_do/.

³⁴⁹ “Financial Incentives for Historic Buildings”. Retrieved on 22 August 2013 under Historic Districts Council, website: <http://hdc.org/financial%20incentives%20brochure.pdf>, p. 5.

³⁵⁰ *Ibid.*

³⁵¹ “Programs & Services”. Retrieved on 22 August 2013 under The New York Landmarks Conservancy, website: http://www.nylandmarks.org/programs_services/.

³⁵² *Ibid.*

architects and contractors.”³⁵³ Through this program they also publish materials and conduct workshops to assist in promoting understanding of preservation issues and to encourage public participation in historic preservation.

9.4 Public Participation

On the federal level, as part of the National Park Service there is another subsector that is the Heritage Preservation Services, which addresses Public Participation in Historic Preservation Planning.³⁵⁴ The goals of public participation are stated as follows:

- To provide the public with information so they can understand the process, the issues, and the values, and can participate effectively.
- To provide full opportunities for the public to share their views and to influence the outcome of the planning process.
- To build consensus and public support for the vision and goals of the plan and of the entity charged with developing and implementing the plan.
- To ensure that the planning effort addresses issues of importance to those affected by the plan.³⁵⁵

A great emphasis is put from the National Park Service in promoting the importance of public participation to the State Historic Preservation Offices, as well as those involved at the municipal level. They therefore publish and/or promote numerous guides on how to best engage and include the public in historic preservation planning.³⁵⁶

It is interesting to note that from the time of the *National Historic Preservation Act* in 1966, there has been an emphasis on public involvement (see Figure below).

³⁵³ “Technical Assistance”. Retrieved on 22 August 2013 under The New York Landmarks Conservancy, website: http://www.nylandmarks.org/programs_services/technical_assistance/.

³⁵⁴ “Public Participation in Historic Preservation Planning”. Retrieved on 22 August 2013 under Heritage Preservation Services, website: <http://www.nps.gov/history/hps/pad/plancompan/publicpartic/index.html>.

³⁵⁵ “Public Participation in Historic Preservation Planning”. Retrieved on 22 August 2013 under Heritage Preservation Services, website: <http://www.nps.gov/history/hps/pad/plancompan/publicpartic/index.html>.

³⁵⁶ “Public Participation in Historic Preservation Planning”. Retrieved on 22 August 2013 under Heritage Preservation Services, website: <http://www.nps.gov/history/hps/pad/plancompan/publicpartic/index.html> and ‘Public Participation’. Retrieved on 22 August 2013 under Heritage Preservation Services, website: <http://www.nps.gov/history/hps/pad/plancompan/publicpartic/ParticSources.html>. Please also see “Reaching Out, Reaching In: A Guide to Creating Effective Public Participation for State Historic Preservation Programs”, Retrieved on 22 August 2013 under Heritage Preservation Services, website: <http://www.nps.gov/history/hps/pad/plancompan/publicpartic/RORIhome.html>.

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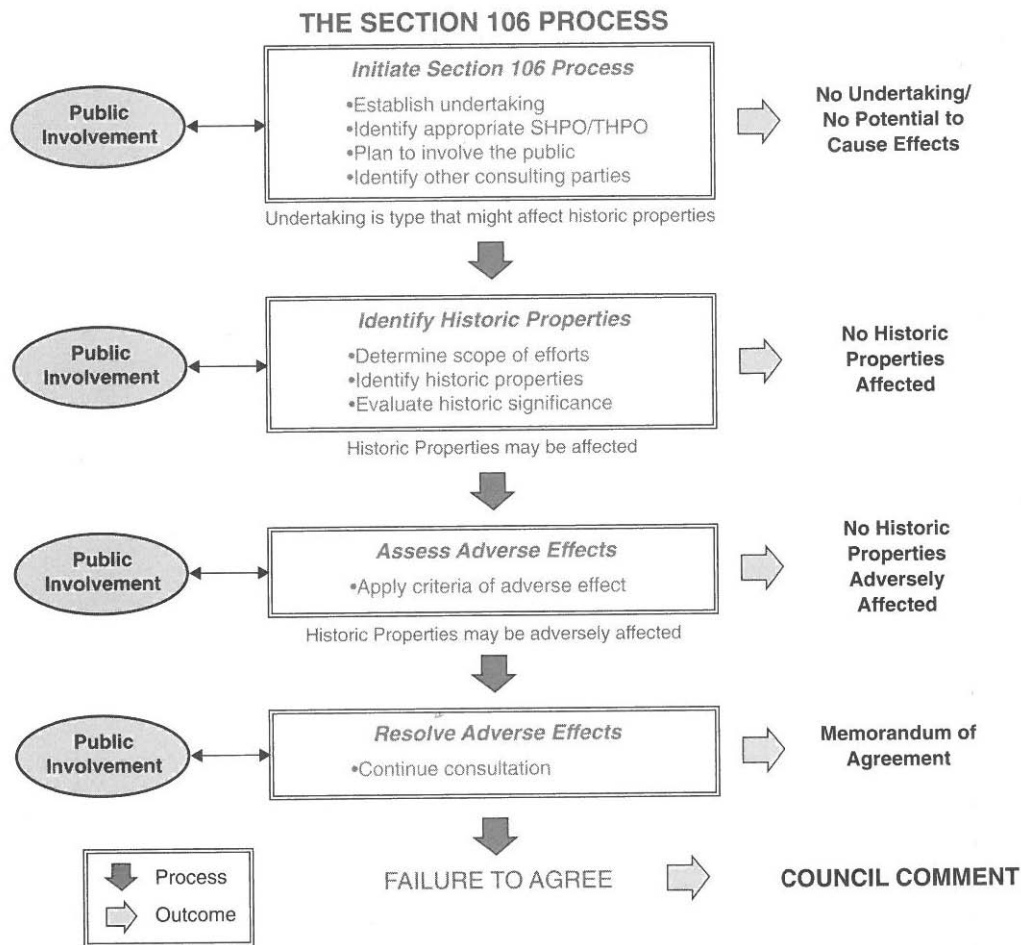


Fig. 48. "Section 106 of the *National Historic Preservation Act* serves as a system of checks and balances which governs the relationship between all agencies using federal dollars or issuing federal licenses and the Advisory Council on Historic Preservation in the identification and evaluation of historic properties. This flow chart illustrates the procedures used in the evaluation process."³⁵⁷

Today that tradition continues and a great emphasis is put on public participation and specifically appropriate public participation. That means seeking out the necessary perspectives of the public and determining how to best involve these individuals in the planning process. It is stressed that public participation should be encouraged throughout and not simply at certain stages.

A number of the organisations referenced previously, particularly in section 9.3 of this chapter in relation to incentives, are also actively involved in public participation and outreach, such as the National Trust for Historic Preservation and the New York Landmarks Conservancy. As for the state level specifically, the New York State's Historic Preservation Office, implements Preservation Plans in four or five year segments. The current one is the 2009-2013 New York State Historic Preservation Plan, prepared "to assist all New Yorkers interested in identifying, protecting, enhancing, and promoting the state's historic and cultural

³⁵⁷ William J. Murtagh, "Government and Preservation since World War II" in *Keeping Time: The History and Theory of Preservation in America*, New Jersey, John Wiley & Sons, 2006, p. 52.

resources." This plan was developed with "extensive public input" and was "designed to broaden engagement in and support for historic preservation."³⁵⁸

9.5 Conclusion

The US's heritage protection legislation dates back to the early 20th century, but has evolved and expanded over the years in response to the changing field, development trends and social demands. The system protects individual heritage buildings as well as historic districts (the equivalent of conservation areas). Incentives are mainly granted in the form of tax credits, at both the Federal and State levels, with numerous government grants and funding available for assisting in conservation work. Municipal level non-profit organisations also provide funding and assistance for protecting and maintaining historical places. Public involvement is greatly valued and elicited, especially since the enactment of the *National Historic Preservation Act* in 1966, with the aim of establishing a two-way communication system between the government and the public on heritage work.

³⁵⁸ "Preservation Plan". Retrieved on 22 August 2013 under New York State Office of Parks, Recreation and Historic Preservation, website: <http://nysparks.com/shpo/preservation-plan/>.

10

COMPARISON & ANALYSIS

10.1 Scope

This chapter compares and analyses the legislations, policies and practices of the previously selected jurisdictions with those of Hong Kong.

However this chapter has its limitation in addressing the different context such as the culture and political system of each country, there is the danger that the findings will be out of context, so it is important that the chapters of each of the countries are also studied. Notwithstanding this potential difficulty, the chart aims to give a clear and holistic picture of the various jurisdictions, as juxtaposed to Hong Kong's current policies.

Please see the Appendix V for the main findings presented in a table form for clarity and easy understanding.

10.2 Observations

Each chapter of the report commences with the definition of heritage of the countries studied. According to the findings, many countries have laid out a broad definition of heritage, encompassing an extensive time frame, and a wide variety of categories. In Australia and England, shipwrecks and wreck sites are one of the categories to be protected, and all countries have the category of conservation area, where a cluster of built heritage could be conserved as a whole.

Possible considerations for Hong Kong, based on the finding of this study are to consider a broader definition of heritage, in particularly to extent protection to conservation areas and a wider time frame to include contemporary buildings.

10.2.1 Designation and Protection

On the assessment of heritage, Hong Kong, heritage buildings, sites or structures with outstanding architectural merits and historical significance are declared as monuments for proper conservation, these declared monuments are protected from alterations. There are currently 105 declared monuments in Hong Kong. On top of declared monuments, a grading system is in place as a record of historic buildings in the city; however, the grading system does not provide legal protection to the buildings.

It is apparent from the study that Hong Kong's current system protects only a very limited number of built heritages, as compared to the other countries. In Macao, Shanghai, Australia, Japan and Canada for example, all designated properties are legally protected from demolition and alterations.

In comparison, Hong Kong shows a lack of statutory protection for graded buildings, particularly Grade I buildings that are considered significant both in the interior and the exterior.

In Australia, Canada, Japan and the United States of America, local authorities and local communities are involved in the identification process regardless of the city's size.

10.2.2 Town Planning Control

The planning and land control strategy used in different countries to complement heritage protection policy was looked into in this study. Concluding observations from various jurisdictions, it is apparent that embedding all conserved built heritage into the official town plan would be greatly helpful for a city's conservation.

The current Outline Zoning Plan in Hong Kong only maps conserved natural zones and the 105 declared monuments. Graded buildings are merely listed out in the explanatory notes, but do not carry any restrictions or guidelines.

It is worth pondering on the potential benefits that could be brought by pinning graded historic buildings onto the official zoning plan, and giving them control and protection on a town planning level. Apart from imposing restrictions through town zoning plan, some countries such as Japan and Australia involve local citizens in identifying character-defining elements of a district through the making of a map or report. Such maps are not part of the official town planning map but would be taken into consideration in the making of the district's official zoning plan.

Protection on built heritage could also be made through the tightening of land lease terms, including the imposing of height restrictions and development potentials on a land lot.

10.2.3 Building Codes

The building codes of the country would greatly affect the extent which a heritage building could be preserved and used fully in present day. Many jurisdictions studied in this report has tuned to a performance-based building code for designated or graded historic buildings and area. Non-regulatory development plan can be considered as a useful tool in governing built heritages and its context.

In countries such as Shanghai and Macao, proposals are reviewed by a special advisory committee.

A good precedent of such non-regulatory development plan is the area character statement initiated in Sydney in Australia. The statement identifies layer of different characteristics within each area. The characteristics help to anticipate the future development of the area. Such area character statement includes but is not restricted to elements such as building massing, streetscape, views, heights, use of material and function etc.

Area character is a concept often employed by urban planners but should be an equally useful concept for heritage conservation.

10.2.4 Incentives

Wide variety of incentives is provided to private historical property owners in almost all of the jurisdictions studied. Types of incentives include technical support, professional training, subsidy for restoration, heritage recognition, interest-free loan and local support etc.

Among the various incentives provided, those that give support the on a district level is particularly worthy for further considerations. Local heritage centres in each district are hubs where people learn about historical buildings in their own area, flip through related books in a library or resource centre, or seek technical advices on the restoration of their own historical properties. Similar centres are established in Japan, Macau and England, allowing people to have easy access and an accessible interactive point with the government heritage agency.

Apart from providing technical support, these centres are also an opportunity at the local level in identifying important historical structures in their own neighbourhood. English Heritage, for example, has prepared toolkit and pamphlet for owners to manage their buildings.

As observed from the jurisdictions studied, technical advices for owners is ideally be provided at a district level through the establishment of district centres in different areas, while training is best made available from the central government.

Modest amount of money is available in most of the jurisdictions studied.

Minimal incentives are professionally advised, and ideally offered within each of the districts. Based on the observation from this study, consideration could be given to phase-stepped funding, according to the relative importance of the buildings. With contentious issues, incentives would possibly have to be greater, including the transfer of development rights, additional density rights (Canada & Australia) and relaxation of land restrictions.

Procedures for the application of financial subsidy is well-laid out, in most cities and countries, all graded or designated buildings are eligible for such subsidy. An upper limit is pre-determined, private property owners would be required to fill in detailed application form, listing out the restoration details and budget estimation in order to be considered for subsidies.

Subsidy given at local level might differ from those given from the provincial, state or national level. When a large amount of money is subsidized on a private property, there is often an easement. Differences also exist between public owned and privately owned historical buildings.

10.2.5 Public Participation

The study also looked into the various channels of public participation in heritage conservation in different countries.

In some countries, such as Japan, Australia and England, people are encouraged to nominate sites that are of local, provincial regional or even national importance, a procedure of systematic consideration is in place. This process involves detailed investigation; an advisory group would often be involved in evaluation of the building, and the report would be submitted to the authority for approval. Currently, there is a lack of public participation at this level in Hong Kong.

Heritage offices at district level could involve the neighbourhood in the process of heritage identification, and promote local cultural mapping, nurturing a sense of belonging towards their own community. Such mapping exercise could also be incorporated into the school curriculum as part of class activities for schools in the district, tying heritage education into education from an early age.

10.3 Conclusion

This chapter has sought to explain conservation related matters in different countries and at the national level and sample such matters at selected lower levels – both state and local. It is hoped that the study offers a useful explanation of the heritage designation system in different countries, its definition and assessment of heritage places, its institutional arrangement(s) relating to the identification and protection of heritage, its legal framework for the identification and protection of heritage, its incentives related to the protection and care of heritage places and its engagement with the public on heritage matters.

APPENDIX I – ENGLAND

Appendix I (i) – List Entry Summary

An example of the **list entry summary** for a listed building in England:

Summary of Building

A late C20 High Tech office building and insurance market for the major insurance firm, Lloyd's. Designed from 1978, begun in 1981 and opened in 1986, to the designs of Richard Rogers Partnership (RRP). Engineers, Ove Arup & Partners (team leader Peter Rice). Lighting scheme by Imagination, 1988.

Reasons for Designation

The Lloyd's building has outstanding special interest and is listed at Grade I for the following principal reasons:

* Architectural innovation: a seminal late-C20 building by one of Britain's most significant modern architects. It exemplifies the High Tech style in Britain, with its boldly expressed services and flexibility of plan throughout the impressive exterior and interior.

* Historic interest: a purpose-built headquarters for an internationally important organisation that successfully integrates the traditions and fabric of earlier Lloyd's buildings (including the Adam Room moved originally from Bowood House, the 1925 Cooper façade and fixtures such as the Lutine Bell).

* Flexibility of design: Lloyd's was innovative for the in-built flexibility of its design that would respond to changing needs in the market. The robustness of the overall design has allowed regular changes to work satisfactorily, and the essential elements of the building survive remarkably well. New additions, while too new to be of special interest, have been thoughtfully incorporated.

* Timelessness: the building, which looked to Victorian as well as mid C20 buildings for inspiration, firmly retains the splendour of its awe-inspiring futuristic design, 25 years (at the time of listing in 2011) after it opened.

* Group value: Lloyd's, in the heart of the City of London, has many listed neighbours and it forms a wonderfully incongruous backdrop to many of these in captured vistas throughout the City. It has particular group value with the adjacent Grade II* Leadenhall Market, a significant Victorian commercial building to which Lloyd's itself nods with its glazed atrium.

* Celebrated design: one of the best known and admired modern commercial buildings in the country, with international renown that cast the image of the City of London in a new light.

History

Lloyd's takes its name from Edward Lloyd, a Welshman who opened a coffee house in Tower Street in 1688. It became a meeting place for seafarers, ship-owners, merchants, and for the first underwriters who insured the ships and their cargoes. By the 1770s this group had found accommodation in the Royal Exchange and, trading as Lloyd's, it stayed there until the 1920s, when the scale of its members' operations made a move inevitable. A site was acquired in Leadenhall Street and Sir Edwin Cooper was commissioned to design a prestigious headquarters. The site was awkward, since there was only a small frontage to Leadenhall Street, where Cooper had already designed another building, Royal Mail House. He made the most of the site by setting the building, completed in 1928, behind an imposing triumphal arch and corridor, which led to the 'Room', a grandiose 16,000 square foot space where the underwriting business was conducted, laid out on the principle that everyone should be able to see each other. But even so large a

space rapidly proved inadequate and in 1936 Lloyd's acquired Royal Mail House as additional accommodation.

Cooper's buildings survived the war unscathed, but the underwriters acquired bomb-damaged property across Lime Street, where in 1952 they began a second building, with a new 'Room', Chairman's suite and members' restaurant, traditionally called the 'Captain's Room'. Completed in 1957, it was designed by Terence Heysham, successor to Cooper's practice, in a traditional style embraced by the City. Known as the Heysham Building, it was extensively remodelled by DEGW in 1990-1 and demolished and replaced in 2006-7 by No.51 Lime Street, designed by Foster and Partners. By the late 1970s the Heysham Building had already become too small and a third building was needed, and having outgrown two permanent buildings so quickly made Lloyd's very concerned to rebuild the Cooper buildings with greater adaptability in mind. It had recently opened an administrative building in Chatham, designed by Arup Associates, but despite the success of this scheme, it eventually resolved to hold an invited competition for such a prestigious and yet sensitive brief. Cooper's original Lloyd's building was listed in 1977, which added a further consideration to the design of the new building.

The choice of a competition was encouraged by Gordon Graham, then President of the RIBA, who advised that Lloyd's needed a building strategy rather than simply a design. Twelve firms were initially invited to produce ideas, from which six were shortlisted: Piano and Rogers, Foster Associates, Arup Associates, the American I. M. Pei, Webb Zarafa Menkes Housden from Canada and the French Serete practice. Rogers, his partnership with Renzo Piano by now only a nominal one, assembled the English components of the team that had won the competition for Paris's Pompidou (Beaubourg) Centre in 1971, including architects John Young and Marco Goldschmied and the engineers Peter Rice and Jack Zunz from Ove Arup and Partners. They secured the commission, in April 1978, because they were able to develop a strategy for Lloyd's to continue to trade through building operations that were already appreciated as likely to be complex and protracted. The complex brief required two main features in addition to continuity of trading: the creation of a single trading space, or Room, and the potential for expansion and contraction. Lloyd's members overwhelmingly approved Rogers's designs in November 1978.

When design work began, personal computer technology was only just emerging and the design had to be altered following the realisation that desktop terminals would become a major part of working life. This led to heavier and more dominant service towers, to serve this new technology: power and cabling provision had to be doubled, and cooling capacity dramatically increased. Television screens and computer monitors had to be clearly readable without reflections from the glazing, which is mostly translucent. The six service towers were enlarged, losing their earlier slim and expressive qualities to become the dominant features of the design. Microchips were used in the building to monitor lifts, security and other services: an early example of this technology.

On 20th September 1979, the City's Court of Common Council accepted the recommendation of its planning committee and granted consent for the Cooper building to be demolished and outline permission for the new building on the site. The interior was stripped and the arched portal to Leadenhall Street was retained as one entrance to the new Richard Rogers Partnership building. Demolition of Cooper's building began in October 1979, and was only completed in February 1981, the underwriters and office staff having been moved piecemeal into temporary accommodation in the Heysham Building. Work on the new building began in June 1981. The Queen Mother poured concrete for one of the main columns in a ceremony in November, and returned in May 1984 for the topping-out. The building was finally occupied in May 1986.

Richard Rogers, now Lord Rogers of Riverside, was born in 1933 in Florence. He trained at the Architectural Association and Yale University before setting up the Team 4 practice with Norman Foster and others in 1962. Their house for his in-laws, Creekvean in Feock, Cornwall (1964-7) was listed Grade II in 1998 and upgraded to Grade II* in 2002. Rogers subsequently formed an architectural practice with his then

wife, Su Rogers, and from 1970-77, worked with the Italian architect Renzo Piano. Their Pompidou Centre building in Paris, which opened in 1977, is a major landmark of the High Tech style (although with a completely steel frame that was not allowed in the City). Other major works by Rogers include: the Channel 4 Building in Westminster, the law courts in Strasbourg, Bordeaux and Antwerp, the National Assembly of Wales in Cardiff, the Barajas Airport in Madrid and Terminal 5 at Heathrow Airport.

Details

Materials

In-situ concrete frame (a result of the City of London's fire regulations which would have required expensive fire protection to a steel frame) of very high quality concrete to combine strength with slimness. Six perimeter towers with stainless steel services (toilet pods, staircases, external lifts, pipes and ducts) dramatically expressed externally. The concrete frame is visible and embraced as part of the aesthetic internally. The weight of the floor grid is transferred via U-beams to the 28 columns by means of distinctive and expressed pre-cast brackets. Members of Rogers's team studied the latest American concrete techniques in the office of I. M. Pei, and the frame was carefully articulated to avoid staining. John Young, the partner in charge, said that their aim was to create 'the best concrete building in Britain'. The design appears to be paying homage to American architect Louis Kahn in the slickly finished columns, the strong grid and the coffered ceilings, as honed by Kahn in his Yale Art Gallery extension (1951-3), introduced to Rogers when studying at Yale University in the early 1960s. Stainless steel was preferred to aluminium for the external cladding, again at the behest of the fire authority, with a fine textured finish to give a bright sheen. Steel cranes, painted blue, are permanently sited on upper levels for cleaning and maintenance. The building is set on piled foundations, with propping and underpinning of adjoining buildings because of their considerable depth. The basement acts as a 'drained box' with a water-permeable layer beneath the floor slab and a drained cavity between the internal and external skins.

The central atrium is defined by a painted latticed steel and glass barrel-vaulted roof and tall window, similarly detailed, facing Leadenhall Place. The building is more highly glazed than is immediately apparent, and was designed to withstand solar gain. A clever solution using triple glazing facilitates an air conditioning system in which cool air is introduced into the building at floor level and stale air is extracted at high level via the light fittings and down a cavity in the triple glazing. Much of the glass is translucent, or 'sparkle', glass so the public cannot see into the trading floor, which is a strictly private operation. There are shallow 'vision strips' of clear glass placed at sitting or standing level depending on the floor; this was being re-ordered to allow for a greater proportion of clear glass at the time of listing (2011) in a sympathetic manner by Rogers Stirk Harbour + Partners. The window bays are divided by projecting perforated aluminium mullions, and there are 'fish tail' profiles ducts connected to the top of each window, which bring the air from the ceiling to the cavity glass of the wall.

Style

The design ethos of the Lloyd's building, which exemplifies the High Tech style in Britain, is centred on its inherent flexibility and dynamism. The aesthetic is boldly futuristic, even thirty years after design began, yet while resoundingly modern, Lloyd's was inspired and informed by the great traditions of C19 British engineering, perhaps best seen in the atrium (which responds to the adjacent Leadenhall Market). The asymmetric and soaring expressed towers have also led to the building being described as 'Gothic'. At its heart is the concept of 'served' and 'servant' space introduced by Louis Kahn, with its clear architectural expression of different functional spaces throughout the building. It is sometimes referred to as 'the inside out' building because of the strongly expressed services that define the exterior massing and style. Lloyd's combines elements of the statuesque and permanent within a dress of the lightweight and disposable. Each elevation is

different and part of the architectural excitement is glimpsing different elevations and rooflines from different parts of the City.

Plan

The building comprises a rectangular block of offices, 67m x 45.5m, set back within a cobbled well with walkways linking the building to the pavement. The rectangular concrete structure at the core of the building is defined by 28 cylindrical piers on a 10.8m x 18m grid forming a rectangular courtyard with a central atrium, while the 'satellite' stair and service towers project in a pinwheel fashion around the perimeter.

Up to 16 storeys of offices, or galleries in Lloyd's parlance (the stepped profile of the building means that not all the building is the same height) with a further two floors below ground. Main reception is currently (2011) on the Lime Street side into the lower ground floor (through replaced revolving doors). There are three other entrances: the original main entrance, with canopy, in the base of Tower 1, through the Cooper building on Leadenhall Street into the base of Tower 5 and in the base of Tower 3 on corner of Lime Street and Leadenhall Place. There is a ramp over the well from Leadenhall Street into the entrance of Tower 1. The ground and first floor is dominated by the most significant of the working spaces: double-height with a largely uninterrupted interior, where up to 6,000 underwriters and brokers can make deals and communicate face-to-face. The offices above are organised around the central, galleried atrium that extends the height of the building and culminates in the steel and glass barrel-vaulted roof. The lower seven storeys (lower ground, ground and levels 1-4) are served by a ladder of escalators within the central space; integral fixings at higher levels allow for future expansion of the escalators to upper floors. The design incorporates Robert Adam's 'Great Room' of c. 1763 from Bowood House, Wiltshire in gallery 11.

The special Lloyd's term of 'the Room' is a semi-abstract concept that refers to all the levels of the building that are occupied by the market at that time. The original design always intended this to be flexible, allowing floor area to be expanded or contracted as the market demanded, and it is considered a fundamental component of its success as a working market building. At the time of listing (2011), the market operates at ground level, and levels 1-3 (levels 4, 7, 8, 9, 10 and part of 3 are let to tenants, although this is subject to change); the Corporation of Lloyd's occupies levels 5, 6, 12 and part of level 4, while Level 11 contains the Committee suite.

Exterior

The Lloyd's Building is identified by the six different towers that engulf the rectangular core: three for escape stairs and fire-related services, the others for the external glazed lifts (in natural colours, rather than bright primary colours as at other RRP projects), the pre-fabricated lavatories (for ease of assembly and maintenance) and ducts. The highest towers are to Leadenhall Street (Towers 1, 5 and 6) and are graduated back to where the street grain is lower (next to Leadenhall Market) at Towers 3 and 4. The elevations inbetween are marked by expressed concrete columns which clasp the glazed offices (each storey is 4 horizontal panes of glazing high) with the distinctive brackets, overlapped by horizontal ductwork. The prefabricated toilet cabins are shiny steel boxes with porthole lights, slotted in to their own concrete structure with more slender corner columns and bands between each storey. To Leadenhall Place are a series of stacked meeting room pods, which start at gallery 1 above the vehicle lifts and rise through gallery 6; these steel pods externally appear quite similar to the toilet pods. The stairwells, with their curved apsidal ends are equally shiny, and the slope of the steps is expressed with a deep gap between each floor. The lifts are particularly light with entirely glazed corners and mounted steel fixings supporting the glass instead of being held in a frame. Four of the towers are topped by major three-tiered plant rooms (these are much larger than were originally planned to cope with increased air-conditioning needs and to ease access for maintenance staff). Boldly expressed and chunky cylindrical ventilation ducts (for return air and supply air) in stainless steel have a strongly vertical quality to the top where the re-circulating duct angles into the air

handling plant of the towers. The original main entrance, at the base of Tower 1, is identified by a grand cantilevered canopy with a barrel-vaulted glazed profile, which echoes the atrium roof. A small, fully-glazed cabin was added later to the entrance at Tower 1 to accommodate the 'waiters' (Lloyd's special name for its traditional red-coated staff) is too recent to be of special interest. Revolving doors have also been added to this entrance and are not of special interest. A rectangular, dark blue glazed ceramic City of London plaque, commemorating the foundation of the London Penny Post in 1680, is fixed to the wall near the main entrance.

To Leadenhall Street, the façade of the Lloyd's premises designed by Sir Edwin Cooper of 1925-28 (known as the Cooper building) is now treated as a stone screen and the entrance to Tower 5. This was listed at Grade II in 1977, and has now been consolidated within this listing. The Portland stone classical façade is all that survives. This is dominated by a doorway ornamented with swags and a balustrade, set within a colossal niche with coffered semi-dome. Single windows to 2 storeys at either side, those to ground floor at left and right now carry WWI and WWII war memorials respectively. Five square windows to the enriched upper storey and a full-width pediment with figure sculpture by C.L.J. Doman. There is a plaque to the right announcing: LLOYD'S 1925 with the names of the Chairman and Committee, and identifying Sir Edwin Cooper as the architect.

Subsidiary items

The building is tightly fitted into its site and is partly enclosed from the pavement by railings with slender steel uprights and horizontal thin circular steel sections. The railings are generally set on smooth granite copings or a shallow plinth which also form the edge of the wells below the building. The external perimeter ground surface at street level, and down into the well (including the vertical retaining walls of the well) is largely finished with square rough granite setts, of some interest for the way their placement defines the edge of the building and differentiates Lloyd's access from the public road, but repaired and replaced in a number of areas. The granite steps that lead down to the well beneath the building and up to the various entrances are included in the listing. The modest steel cylindrical bollards are of some interest, but are likely to have been moved or replaced. The two steel flagpoles, presumed to have been added soon after opening, are sited in line with the entrance canopy at Tower 1. An access ramp spans the wells to Leadenhall Street under Tower 1 and beneath Tower 4, and there are various external stairs up to entrances or down to the well and the main entrance. These have a similar railing detail, but with smaller steel section horizontals and perforated uprights. There is one public bar (called 'One Under Lime' in 2011) on the lower concourse on the southwest corner, also near Tower 4. To the south west corner (in what is known as Green Yard) are seven free-standing steel air intake vents, arranged in line, cylindrical on plan and with chamfered tops; these original features contribute to the special interest. The free-standing glass and metal bike shed, set on cobbles to the south of the building, was designed by SPPARC Architects and added in 2007, is too recent to be of special interest.

Interior

The main interior space is organised around the central, soaring atrium with its dominant concrete columnar structure, the dynamic escalators at the base and the vast swathes of glass and steel in the barrel-vaulted roof and end wall. Externally expressed ductwork supplies fresh air and extracts stale air through the build-up of the concrete floor structure. Above the floor slab is a 300mm raised floor zone through which supply air is introduced into the building. Between the floor slab and the structural grid of the coffered ceiling runs a deep services void and in each coffer is a large circular light fitting of spun aluminium through which return air is extracted. Other services are set around the light fittings. The escalators, which connect the lower floors largely given over to underwriting, are fit into one square grid of the structural frame, within the atrium. They have exposed yellow mechanisms behind clear glass panels, which contribute not only to the

ethos of exposed services, but to the feeling of dynamism in this busy working space. The escalators connecting the ground floor and level 1 have curved half-landings with curved glass balustrades providing a view into the main trading floor below.

The lower and upper basements are largely given over to staff areas, plant rooms, lavatories (fitted out like those in the towers) and kitchens. The lower ground floor houses the main entrance with controlled access to the building, the restaurant and the old library reconstructed from the Cooper building. The old library is a high space with a balcony round it, entirely lined in timber with Ionic pilasters and a narrow apse that combines classical detailing with a sunrise motif that is almost art deco in inspiration. In a corridor outside the library is a re-sited (and lit from behind) war memorial dating from 1958 and representing, in brightly coloured stained glass by Hugh Easton, a valiant St. George with sword against a sunburst with abstract dragon-like frame. The restaurant, formerly known as the Captain's Room, was designed by Eva Jiricna (who worked for Richard Rogers Partnership before launching her own practice) and had windows and screens like the sails of a ship; these fittings were removed c.2000 and the restaurant and reception were refurbished c.2007. Escalators travel from the lower ground floor to the double-height main trading floor. The main trading floor, which is sometimes likened to a cathedral nave for the great glazed end of the atrium that soars above it, is of predominantly open plan in which the underwriters have their trading 'boxes'. The wooden boxes, or underwriters' desks were designed as a 'kit of parts' by RRP in 1982 and echoed the traditional arrangement that had carried through from institution's coffee house days; most of these boxes survive but in almost all cases the original bench seating has been removed. These features are of interest but they are moveable furniture, rather than fittings, so they are not included in the listing. The pictures, carpet, lights and equipment in this room are not fixtures or utilitarian in nature and would be excluded or noted as not having special interest. Also in the main trading floor, prominently sited under the arcade roof, is the Lutine Bell, within a rostrum that takes the form of a grand wooden tempietto, or miniature colonnaded temple of circular plan, culminating in a clock, all designed by Edwin Cooper. This distinctive piece of furniture (the bell has traditionally been rung to indicate good or bad insurance-related news) holds a prominent place at the base of the atrium and is a fixture by virtue of its weight (it is owned by Lloyd's). The floor of the atrium is white marble.

The tenants' floors were designed for continuous adaptation: originally screened by timber partitions now replaced by translucent glazed partitions that are considered less oppressive and in keeping with the building's overall lightness. The galleries were designed to either have a perimeter corridor around the atrium, or be completely open plan behind a glazed screen. Galleries 1, 2 and 3 are open to the atrium by a transparent glass balustrade and the galleries above have a full height screen in this position with perforated ribs dividing each bay as in to the outside windows. Gallery 8 and part of gallery 7 retain moveable timber partitions which are of interest, but their moveable nature suggests that their interest is not uniquely tied to their current location in the building.

A few of the individual office interiors were designed by Eva Jiricna, working for RRP before she formed her own practice in 1985, but these have since been removed (those on the lower ground floor were removed in 2007), save the panelling on gallery 8. Jiricna also designed some of the furniture, some of which remains, but which is not a fixture. Jiricna was originally also to have designed the interiors of the executive floors, including the offices of the Chairman and other senior officials at Lloyd's. However, in 1983 Sir Peter Green was succeeded as Chairman by Peter Miller, who commissioned the Paris decorator Jacques Grange to fit out the executive floors in a traditional manner with marble and reproduction furniture. The result was incongruous in its setting and reduced the impact of the Bowood Room at its heart, which Rogers had intended as a 'jewel box' of great richness in an otherwise starkly modern interior. The stacked offices to Leadenhall Place (galleries 1-6 inclusive) are wood panelled and originally comprised 1 single room that could be subdivided into 4 rooms with moveable partitions; all have been modified to some degree.

Galleries 5 and 6 and part of 4 house the Corporation, or management staff, of Lloyd's. Gallery 11 contains the Committee suite and Robert Adam's 'Great Room' from Bowood House, designed in 1763 as the drawing room but used from the late 1770s as Bowood's principal dining room. The room was acquired at auction to become the committee room of the new Heysham Building, and installed in 1957 to altered proportions. RRP made space in their building for the Bowood Room to be reconstructed to its original height and width (having been reduced in size for its tenure in the Heysham Building) with some replicated elements to make up the difference. Ian Bristow was appointed consultant for the removal in January 1983, and a methodical reconstruction was made based on the surviving fragments, the drawings in the Soane Museum and photographs of the room in its original location. The original windows, shutters and architraves had been destroyed in 1956, and had to be remade, along with the chair rail and skirtings. The additional length of ceiling and wider spacings between the plaster dishes were retained, while additional arabesque panels were made between the doors to take up the additional length in the walls. The floorboards are the originals from Bowood, with some additional pieces added in 1956. The old work was supported on a steel framework to which timber grounds were fixed. The whole entity is encased in a double-height solid room in a post-modern style with a deeply rusticated plinth and simple recessed arched niches with flat architraves to each deeply-revealed opening. The original colour scheme for the room was only partially recovered, but these bright colours were deemed inappropriate for the Lloyd's building, and the paler hues of straw colour and green were adopted as a compromise. New pier glasses were specially made according to Adam's designs, and tables made based on his drawings for Syon House. The carpet, freestanding furniture, chandeliers and pictures in this room would be excluded from the listing as non-fixtures. There is also a special dining room on gallery 11 (refurbished in 2007) and a wide travertine staircase (designed by Jacques Grange) leading to gallery 12 with a small grid balustrade.

Towers 1, 3 and 5 contain a bridge to a lobby, off which there are 4 lifts to one side and lavatory and staircase pods to the other side. The staircases have double-apsidal ends, wrapped around two columns in line. They are lined with stainless steel and feature a cantilevered extruded aluminium tread. The lavatory pods are lined with stainless steel and have ceramic tile and mirrors on the wall and floor services, and solid white Carrara marble sink counters.

The following features would be considered to lack special interest in any future designation documentation: internal partitions and their doors (except for the timber partitions on gallery 8), carpets, freestanding furniture, raised floor pans and their pedestals, data cabling, mechanical systems, duct work, hidden plant, fire safety systems, internal block walls in the upper and lower basement areas, window blinds, external lighting scheme, hidden external satellite dishes and aerials on the roof and lift controls.

At the time of listing (2011), twenty-five years after its opening, the building survives remarkably well, owing to the inherent flexibility built into its original design and the careful management thus far. Changes include the unfortunate removal of the restaurant interior and meeting rooms designed by Eva Jiricna. There are also thoughtfully-designed but neutral additions such as the waiters' cabin and bike shed, which are too modern to be included in the listing. The other insertions and removals of partitions were always expected to accommodate different tenants and have been a fact of the management of Lloyd's since it opened; it is likely that furniture and partitions will continue to be moved as the building remains in active use. Other changes are minor and superficial, and were always intended as part of the flexible design ethos of this dynamic, working building.



Heritage Category:	Listing
List Entry No :	1405493
Grade:	I
County:	Greater London Authority
District:	City and County of the City of London
Parish:	Non Civil Parish

For all entries pre-dating 4 April 2011 maps and national grid references do not form part of the official record of a listed building. In such cases the map here and the national grid reference are generated from the list entry in the official record and added later to aid identification of the principal listed building or buildings.

For all list entries made on or after 4 April 2011 the map here and the national grid reference do form part of the official record. In such cases the map and the national grid reference are to aid identification of the principal listed building or buildings only and must be read in conjunction with other information in the record.

Any object or structure fixed to the principal building or buildings and any object or structure within the curtilage of the building, which, although not fixed to the building, forms part of the land and has done so since before 1st July, 1948 is by law to be treated as part of the listed building.

This map was delivered electronically and when printed may not be to scale and may be subject to distortions.

List Entry NGR:	TQ3315981082
Map Scale:	1:1250
Print Date:	25 June 2013

Name: Lloyd's Building

This is an A4 sized map and should be printed full size at A4 with no page scaling set.


ENGLISH HERITAGE

1 Waterhouse Square, 138 -142 Holborn, EC1N 2ST
Tel: 020 7973 3000 www.english-heritage.co.uk

A case on an appeal made against a refusal to grant planning permission within a conservation area.



Appeal Decision

Site visit made on 30 August 2011

by **P W Clark MA MRTPI MCMi**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 September 2011

Appeal Ref: APP/F5540/D/11/2157821
40 Oxford Road South, London W4 3DH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Mizanur Rahman against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 00847/40/P1, dated 23 March 2011, was refused by notice dated 20 May 2011.
 - The development is a single storey "granny annex" to the rear garden.
-

Decision

1. The appeal is allowed and planning permission is granted for a single storey "granny annex" to the rear garden at 40 Oxford Road South, London W4 3DH in accordance with the terms of the application, Ref 00847/40/P1, dated 23 March 2011, subject to the following conditions;
 - 1) The development hereby permitted shall be carried out in accordance with the location plan date stamped by the Council 17 February 2011 and the two unnumbered drawings date stamped by the Council 29 March 2011, submitted as part of the application.
 - 2) No further work in pursuit of the development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall thence be carried out in accordance with the approved details.
 - 3) The building hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the ground floor dwelling at 40 Oxford Road South, London W4 3DH.

Procedural matters

2. The development had been commenced, but not completed, at the time of my site visit so no condition requiring commencement is needed. It is variously described as a "kids' room", "storage" or "granny annex". There are water and power connections laid in. However it is described, I have treated it as accommodation ancillary to the ground floor dwelling at number 40 Oxford Road South. Condition 3, suggested by the Council, makes this clear.

Main Issues

3. There are two. One is its effect on the character and appearance of the Wellesley Road Conservation Area. The other is its effect on the living conditions of neighbours in terms of outlook.

Reasons

Character and appearance

4. The Council's Conservation Area Appraisal advises that its prevailing interest is in good Victorian architectural detailing. The Conservation Area is extensive but has a convoluted boundary, excluding developments of neutral or negative character. Two parts of Oxford Road South are so excluded. Those parts of Oxford Road South opposite the site but still within the Conservation Area are Edwardian or even 1930s in date and so, taken by themselves, have little cohesive or coherent character. This part of the street is dominated by the sheer brick cliff retaining wall of the elevated A4 trunk road which cuts through the Conservation Area at this point.
5. The front façade of number 40 manifests the interesting Victorian architectural detailing which is the main interest of the Conservation Area but its rear, and those of its neighbours, do not. These rear parts form the context of the site. Within this context, there are some garden sheds of various materials, with pitched roofs, but the buildings in the vicinity also display a collection of rear projections, constructed in a variety of materials and some with flat, or very shallow, pitched roofs.
6. What is under construction on site is simply a utilitarian structure which would not look out of place in this context. It does not follow all the Council's Residential Extension Guidelines which advise that detached outbuildings should have a roof style matching the existing house but, in context, that would cause no harm. Nor is it separated from the boundary by 1m all round. This would make it difficult to clad or render on all sides but it is screened by walls and fences on three sides so it not apparent that much harm would result. It would leave a garden of acceptable size for the ground floor flat.
7. The appeal development is unfinished and so, in its present state, unacceptably unattractive. On the application form, it is said that materials to be used in the external finish would match the existing. The Council suggests a condition to require those, in the event of the appeal being allowed. That would be unworkable because the outbuilding has been constructed in blockwork, implying an applied finish or cladding, whereas the rear of the main building on site is finished in stock bricks and its ground floor has a rear extension finished in stonework, so it would not be clear what finish the outbuilding would have to match. A submission of materials would be necessary, secured by condition, to achieve an acceptable finished appearance.
8. I conclude that the development, when completed, would cause no harm to, and therefore would preserve, the character and appearance of the Wellesley Road Conservation Area. It would comply with policies ENV-B.1.1(A1) and ENV-B.2.2 of the London Borough of Hounslow Unitary Development Plan (the UDP). These require development to relate to the character of adjacent townscape and to preserve the character of conservation areas. Policy H.6.4, referred to in the reason for refusal, refers to extensions and alterations rather than outbuildings and so has little relevance to this appeal scheme.

Living conditions

9. Land rises towards the rear of the site and also along Oxford Road South from south to north. In consequence, the ground floor of number 42 is about 1 m below that of number 40 and so the outbuilding the subject of this appeal would occupy an elevated position in relation to dwellings to the south.
10. Because the appeal site lies on the inside of a bend, the rear of the appeal site and those of neighbouring houses to the south of the site focus on a common point at the ends of their gardens, where the development is sited. Because of its elevated position, the appeal building would be directly in the line of sight of a number of neighbouring buildings. In its present, unfinished, state it does not provide a pretty outlook. Nevertheless, it is at a sufficient distance from the rear of neighbouring properties for that outlook not to be oppressive or unacceptable. Tall, close boarded fencing along the boundary of the site screens much of the building from view at ground level.
11. As constructed, but not finished, on site, it has window openings in its sides. These would contravene the Council's guidelines. They would overlook their neighbours and be intrusive. They would not be acceptable. These windows are not shown on the drawings. To allow the Council to ensure that the building would be completed without windows in its sides a condition is imposed to require compliance with the drawings.
12. With this condition in place, I conclude that the proposal, when finished, would not result in unacceptable living conditions for neighbours. It would comply with the spirit of UDP policy ENV-B.1.1(A5) which does not specifically refer to outlook but otherwise safeguards the interests of neighbours' amenities.

P. W. Clark

Inspector

APPENDIX II – JAPAN

Appendix II (i) – List Entry Summary

An example on the list entry summary for a listed building in Japan.

List Entry Summary

This building is listed under the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended for its special architectural or historic interest.

Name	Tokyo Tower
List Entry Number	
Location	4-2-8 Shiba-Koen, Minato, Tokyo 105-0011 County: Greater London Authority
District	Tokyo
Grade	登録有形文化財（建造物）
Date first listed	平成24年12月14日

List Entry Description

Summary of Building

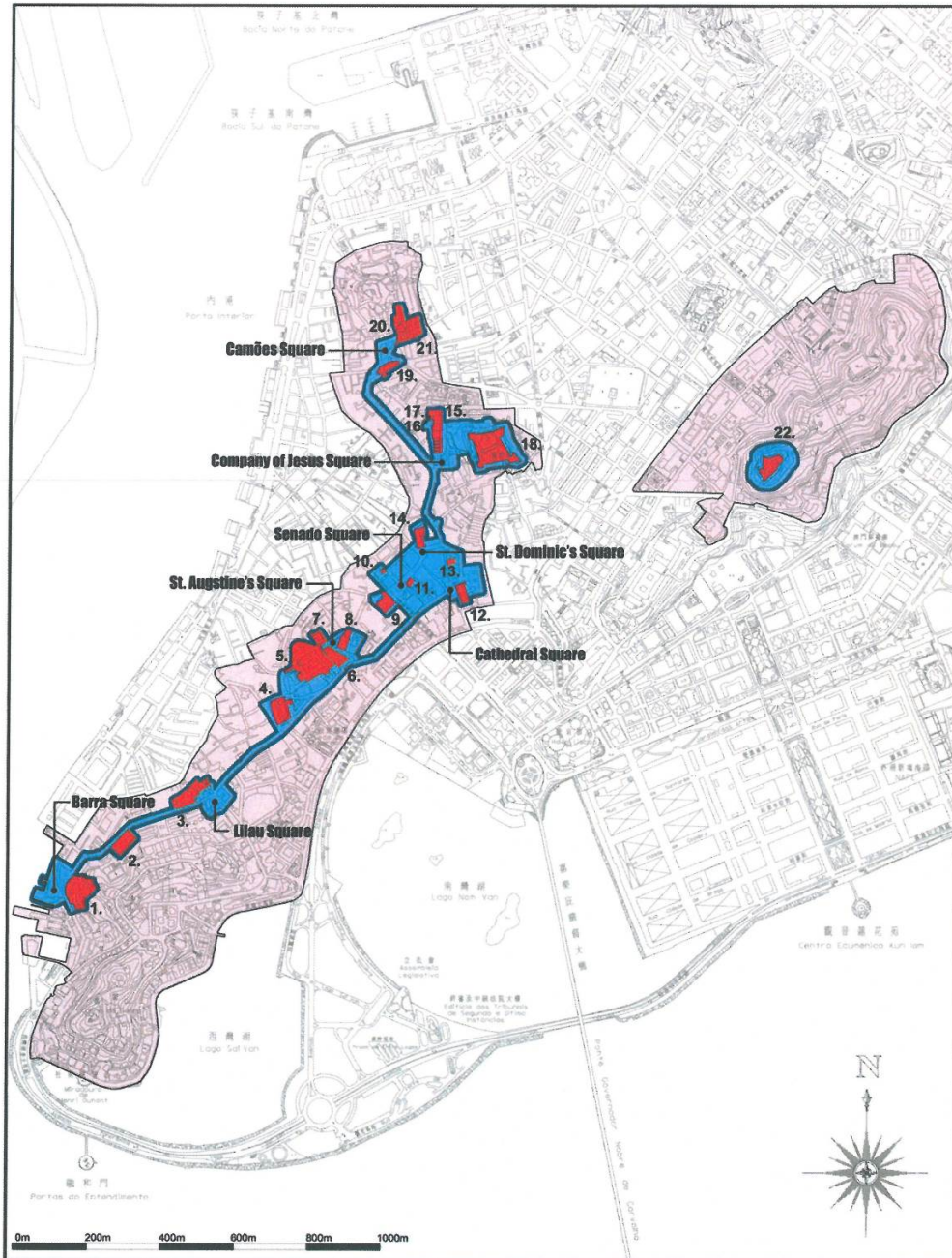
東京タワーは、テレビ放送各局の電波塔を集約するため、昭和33年に建設された。日本を代表する建築構造家、内藤ないとう多仲たちゅうが設計指導し、日建設計の設計、竹中工務店の施工になる。

Reasons for Designation

高さ333mと、建設当時にはエッフェル塔を凌ぎ、自立式鉄塔として世界最高を実現した。戦後日本の復興の象徴として、また高度経済成長の原点として、国民に広く親しまれている。

APPENDIX III - MACAO





Appendix III (i) –The Historic Centre of Macao, Cultural Affairs Bureau.



WORLD HERITAGE: THE HISTORIC CENTRE OF MACAO

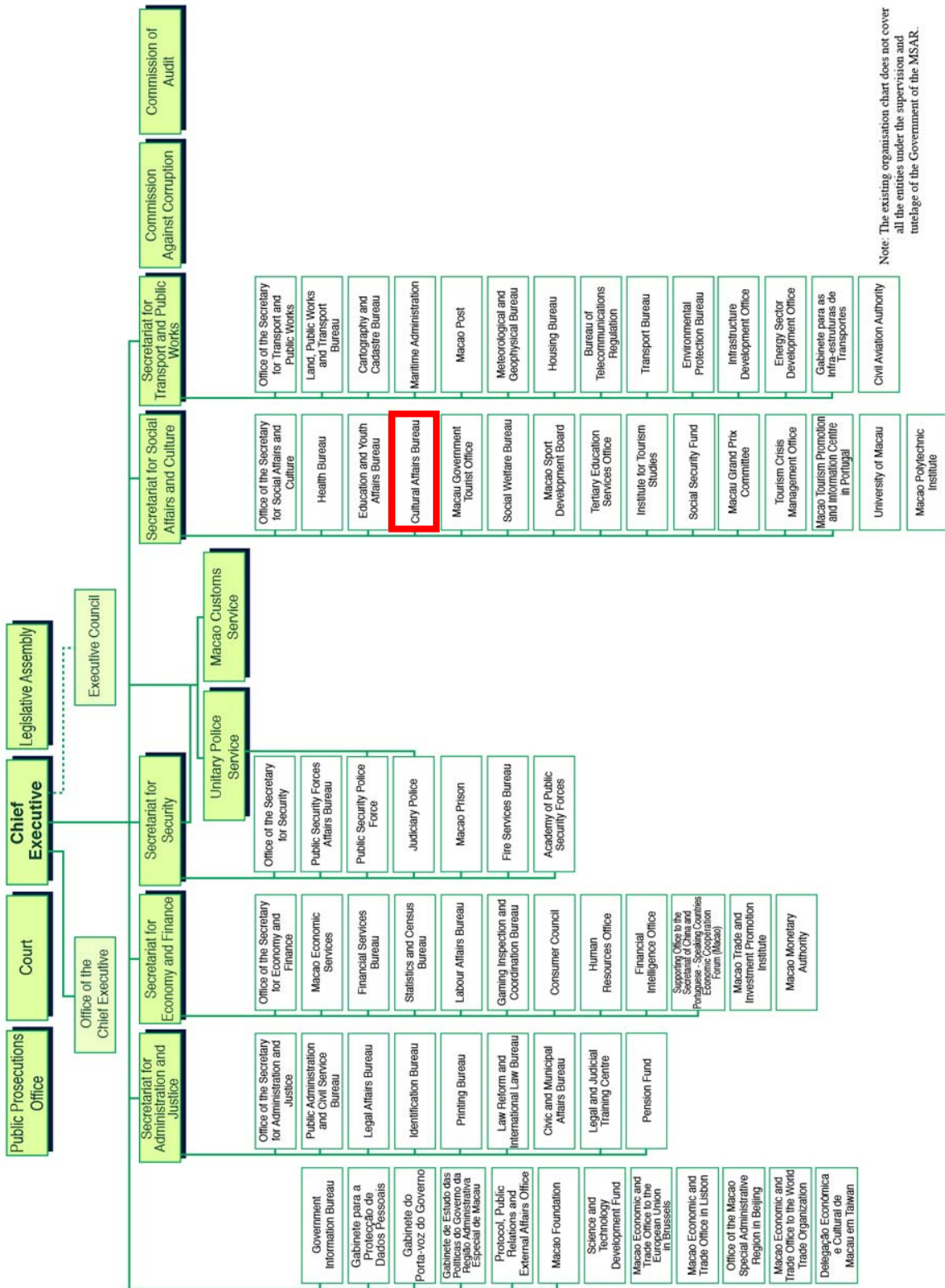
LEGEND:

MAP 2

- | | | | | |
|-----------------------------------|-------------------------------|-----------------------------------|--------------------------|--|
| 1. A-Ma Temple | 7. Sir Robert Ho Tung Library | 13. Lou Kau Mansion | 19. St. Anthony's Church |  World Heritage |
| 2. Moorish Barracks | 8. St. Augustine's Church | 14. St. Dominic's Church | 20. Casa Garden |  Monuments & Sites |
| 3. Mandarin's House | 9. "Leal Senado" Building | 15. Ruins of St. Paul's | 21. Protestant Cemetery |  Urban Squares & Streetscapes |
| 4. St. Lawrence's Church | 10. Sam Kai Vui Kun | 16. Na Tcha Temple | 22. Guia Fortress |  Buffer Zones |
| 5. St. Joseph's Seminary & Church | 11. Holy House of Mercy | 17. Section of the Old City Walls | | |
| 6. Dom Pedro V Theatre | 12. Cathedral | 18. Mount Fortress | | |

(from Cultural Affairs Bureau. Retrieved on 30 June 2013, website <http://edocs.icm.gov.mo/Heritage/MWHE.pdf>, p. 21.)

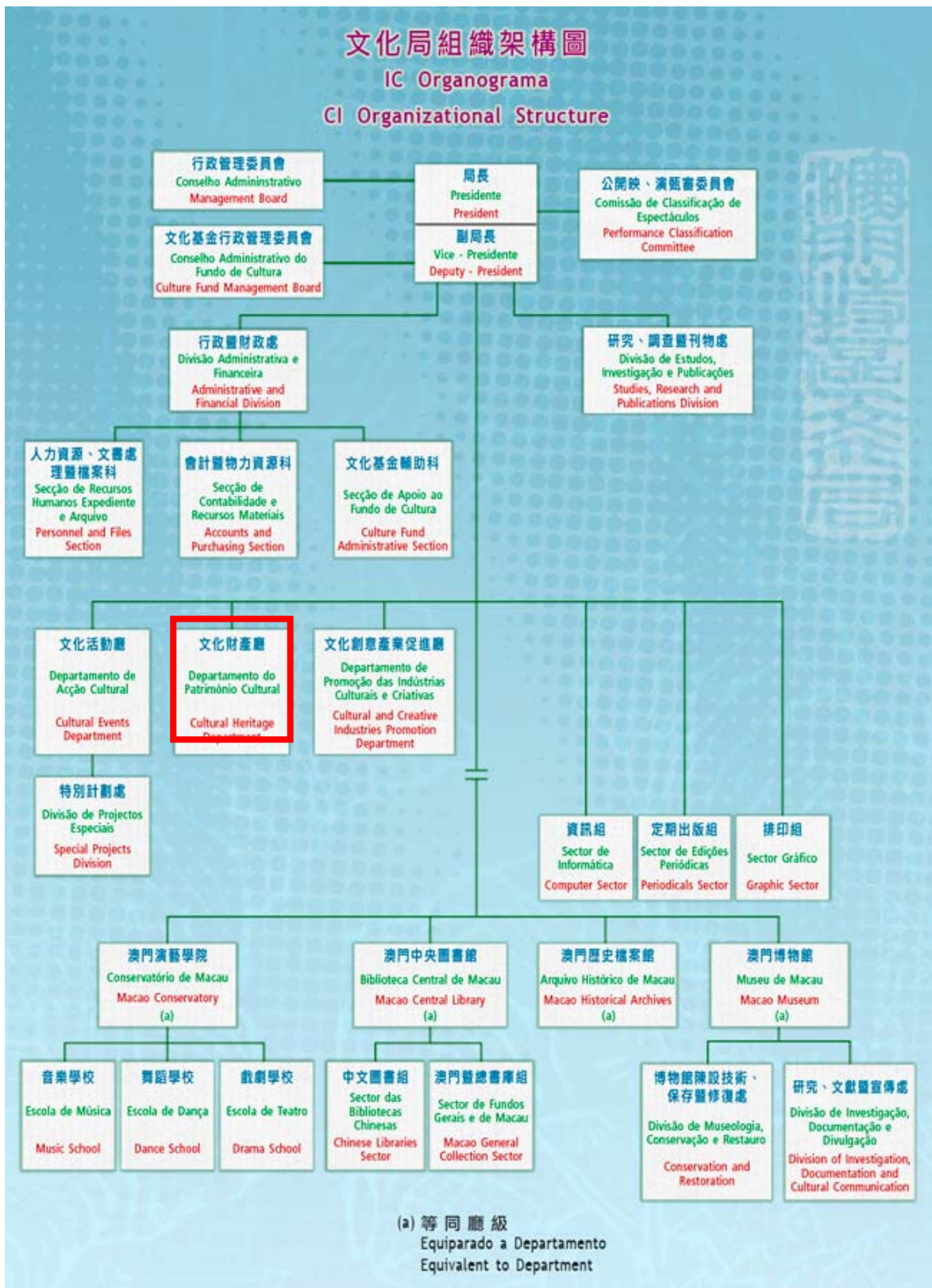
Appendix III (ii) – Organisation of Macao Government



Note: The existing organisation chart does not cover all the entities under the supervision and tutelage of the Government of the MSAR.

(from Macao SARG portal. Retrieved on 30 June 2013, website: <http://portal.gov.mo/web/guest/org-chart>.)

The following is an organisation chart of the Cultural Affairs Bureau:



(from Cultural Affairs Bureau. Retrieved on 30 June 2013, website:
<http://www.icm.gov.mo/en/>.)

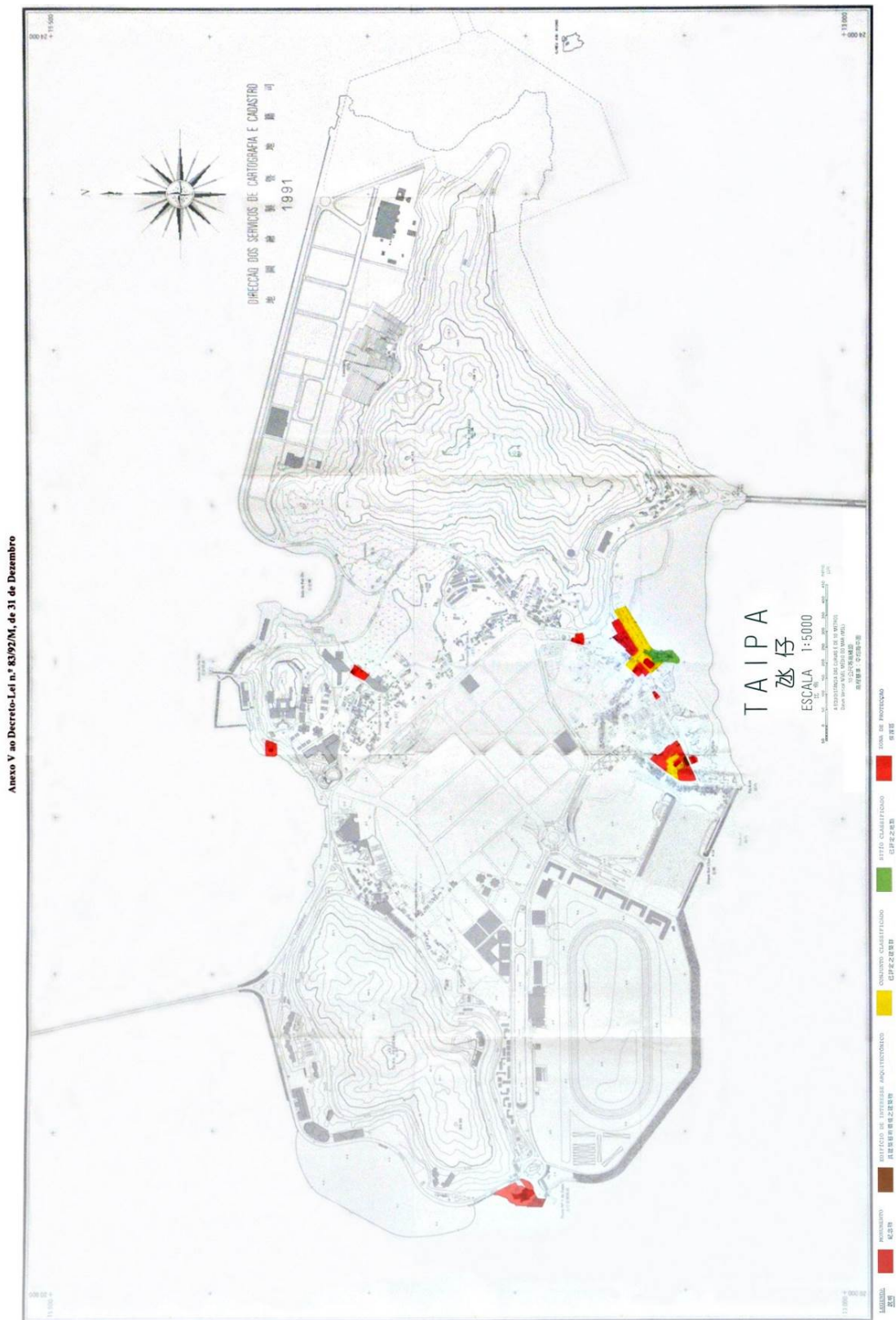
Appendix III (iii) – Annex V, Decree 83/92M

The plan shows the location of classified monument, Buildings of Architectonic Interest, Ensembles, Classified Sites and Protection Areas at Macau peninsula.

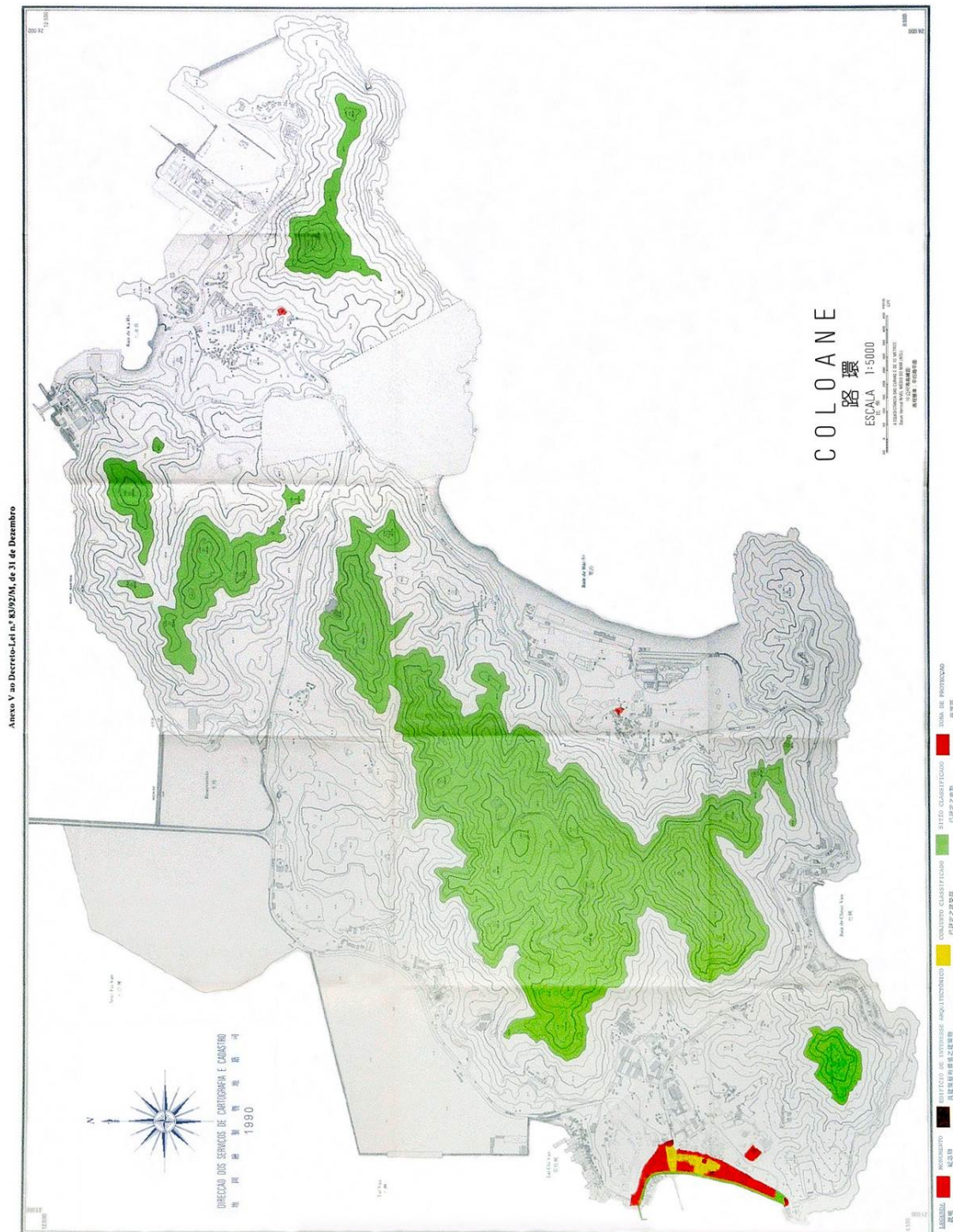


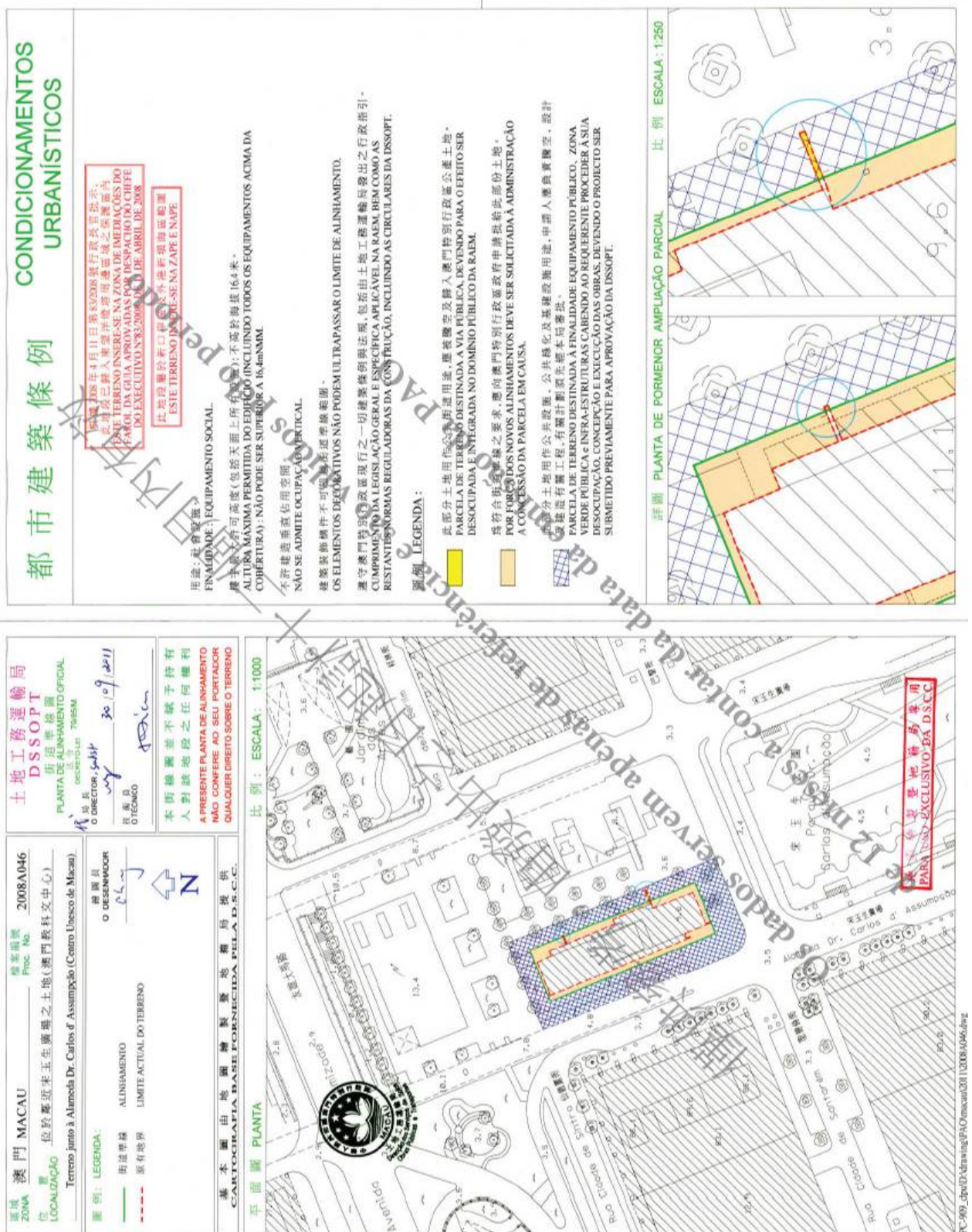
Annex V, Decree 83/92M, the plan shows the location of classified monument, Buildings of Architectonic Interest, Ensembles, Classified Sites and Protection Areas at Taipa .

Annex V, Decree 83/92M, the plan shows the location of classified monument, Buildings of Architectonic Interest, Ensembles, Classified Sites and Protection Areas at Taipa

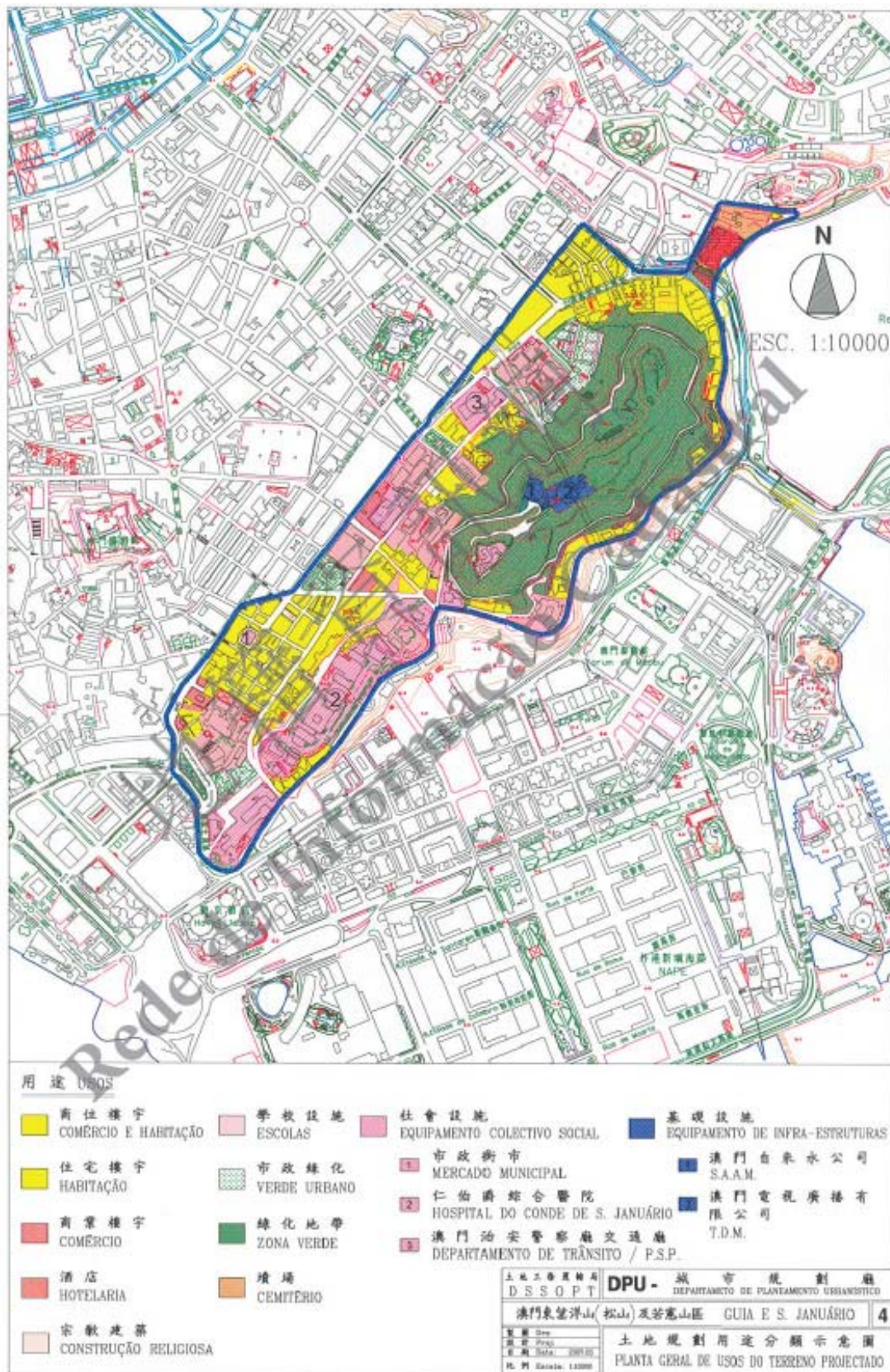


Annex V, Decree 83/92M, the plan shows the location of classified monument, Buildings of Architectonic Interest, Ensembles, Classified Sites and Protection Areas at Coloane.





Issued by Land, Public Works and Transport Bureau DSSOPT.
 (from Cartography and Cadastre Bureau. Retrieved on 30 June 2013, website:
http://cadastre.gis.gov.mo/MGSP_Cad/chn/main.html?type=5)



IUÁRIO-2007.03.DWG

Land Use Plan 土地規劃用途分類示意圖 for the area of Zona de Guia e S. Januário 東望洋山 (松山/若憲區)

(from Cartography and Cadastre Bureau. Retrieved on 30 June 2013, website: http://cadastre.gis.gov.mo/MGSP_Cad/chn/main.html?type=5)

澳門

7. 西望洋山 / 媽閣區
Zona de Penha / Barra

已批准之都市化計劃：
Estudo / Plano Urbanístico Aprovado :

沒有
Nada

一般應用之建築條例
Condiçõnes Gerais Aplicadas

- 西望洋山計劃。(有不同之樓宇高度限制，由文化局決定)
Plano de Penha / Barra. (Com várias altura dos edifícios, definidos pelo ICM)
- 文物保護法令。(法令 56/84/M 及 83/92/M)
Defesa do Património Arquitectural, Paisagístico e Cultural. (D.L. 56/84M e 83/92/M)
- 第 202/2006 號行政長官批示
Despacho do Chefe do Executivo nº 202/2006
- 都市建築總章程。
Regulamento Geral de Construções Urbanas (RGCU).
- 消防條例。(法令 24/95/M)
Regulamento de Segurança Contra Incêndios (RSCI). (D.L. 24/95/M)
- 停車場條例。(法令 42/89/M)
Regulamento de Estacionamento. (D.L. 42/89/M)
- 工務局現行之行政指引。
Circulares da DSSOPT em vigor.

7

Appendix of Land Use Plan 土地規劃用途分類示意圖 for the area Zona de Penha / Barra
西望洋山 / 媽閣區

(GUIA E S. Janeiro-2007.03.DWG, from Cartography and Cadastre Bureau. Retrieved on 30
June 2013, website: http://cadastre.gis.gov.mo/MGSP_Cad/chn/main.html?type=5)

APPENDIX IV - SINGAPORE

Appendix IV (i) – List of Singapore's National Monuments

	Building (and year of completion)	Original use	Current use	Gazette date
1	Admiralty House, Old (1939)	Military	Government	02 Dec, 2002
2	Armenian Church (1836)	Religious	Religious	06 Jul, 1973
3	Attorney-General's Chambers, Old (1839)	Government	Government	14 Feb, 1992
4	Bowyer Block at the Singapore General Hospital (1926)	Government	Government	11 Nov, 2009
5	Caldwell House (1841)	Educational	Cultural	26 Oct, 1990
6	Cathay Building (1939)	Commercial	Commercial	10 Feb, 2003
7	Cathedral of the Good Shepherd (1847)	Religious	Religious	06 Jul, 1973
8	Central Fire Station (1908)	Government	Government	18 Dec, 1998
9	Chesed-El Synagogue (1905)	Religious	Religious	18 Dec, 1988
10	Chinese High School Clock Tower Building (1925)	Educational	Educational	19 Mar, 1999
11	Church of Our Lady of Lourdes (1888)	Religious	Religious	14 Jan, 2005
12	Church of Saint Peter and Saint Paul (1870)	Religious	Religious	10 Feb, 2003
13	Church of St Teresa (1929)	Religious	Religious	11 Nov, 2009
14	Church of the Nativity of the Blessed Virgin Mary (1901)	Religious	Religious	10 Feb, 2003
15	City Hall (1929)	Government	Cultural	14 Feb, 1992
16	College of Medicine Building (1926)	Educational	Government	02 Dec, 2002
17	Command House, Former (1930s)	Military	Educational	11 Nov, 2009
18	Convent of the Holy Infant Jesus Chapel (now CHIJMES Hall) (1904)	Religious	Commercial	26 Oct, 1990
19	Empress Place Building (now Asian Civilisations Museum) (complete in stages, 1864–1920)	Government	Institutional	14 Feb, 1992

20	Ford Motor Factory, Old (1941)	Commercial	Cultural	15 Feb, 2006
21	Goodwood Park Hotel, Tower Block (1900)	Institutional	Commercial	23 Mar, 1989
22	Hill Street Police Station, Old (now the MICA Building) (1934)	Government	Government	18 Dec, 1998
23	Hong San See (1913)	Religious	Religious	10 Nov, 1978
24	House of Tan Yeok Nee (1885)	Residential	Educational	29 Nov, 1974
25	Istana (1867–1869)	Government	Government	14 Feb, 1992
26	Keng Teck Whay (1875)	Religious	Religious	11 Nov, 2009
27	MacDonald House (1949)	Commercial	Commercial	10 Feb, 2003
28	Maghain Aboth Synagogue (1878)	Religious	Religious	27 Feb, 1998
29	Masjid Abdul Gaffoor (1907)	Religious	Religious	13 Jul, 1979
30	Masjid Al-Abrar (1829)	Religious	Religious	29 Nov, 1974
31	Masjid Hajjah Fatimah (1846)	Religious	Religious	06 Jul, 1973
32	Masjid Jamae (1830)	Religious	Religious	29 Nov, 1974
33	Masjid Sultan (1928)	Religious	Religious	14 Mar, 1975
34	Ministry of Labour Building, Old (now the Subordinate Courts Family and Juvenile Division) (1928)	Government	Government	27 Feb, 1998
35	Nagore Durgha (1893)	Religious	Religious	29 Nov, 1974
36	Nanyang University Arch (1955)	Commemorative	Commemorative	18 Dec, 1998
37	Nanyang University Library and Administration Building (now the Chinese Heritage Centre) (1955)	Educational	Cultural	18 Dec, 1998
38	Nanyang University Memorial (1958)	Commemorative	Commemorative	18 Dec, 1998
39	National Museum of Singapore (formerly the Raffles Museum) (1887)	Cultural	Cultural	14 Feb, 1992
40	Parliament House and Annex Building, Old (now The Arts House at the Old Parliament) (1827)	Government	Cultural	14 Feb, 1992 & 03 Jul, 1992
41	Prinsep Street Presbyterian Church (1931)	Religious	Religious	12 Jan, 2002

42	Raffles College, Former (1929)	Educational	Educational	11 Nov, 2009
43	Raffles Hotel (1877)	Commercial	Commercial	06 Mar, 1987 & 03 Jun, 1995
44	Saint Andrew's Cathedral (1856–1861)	Religious	Religious	06 Jul, 1973
45	Saint George's Church (1913)	Religious	Religious	10 Nov, 1978
46	Saint James Power Station (1926)	Commercial	Industrial	11 Nov, 2009
47	Saint Joseph's Church (1912)	Religious	Religious	14 Jan, 2005
48	Saint Joseph's Institution, Former (now the Singapore Art Museum) (1867)	Educational	Cultural	14 Feb, 1992
49	Siong Lim Temple (1902)	Religious	Religious	17 Oct, 1980
50	Sri Mariamman Temple (1827)	Religious	Religious	06 Jul, 1973
51	Sri Srinivasa Perumal Temple (1855)	Religious	Religious	10 Nov, 1978
52	Sri Temasek (1869)	Government	Government	14 Feb, 1992
53	Sun Yat Sen Villa (now the Sun Yat Sen Nanyang Memorial Hall) (1880)	Residential	Cultural	28 Oct, 1994
54	Supreme Court, Old (1939)	Government	Government	14 Feb, 1992
55	Tan Si Chong Su (1878)	Religious	Religious	29 Nov, 1974
56	Tan Teck Guan Building (1911)	Educational	Government	2 Dec, 2002
57	Tao Nan School, Old (now Peranakan Museum) (1906)	Educational	Cultural	27 Feb, 1998
58	Telok Ayer Chinese Methodist Church (1924)	Religious	Religious	23 Mar, 1989
59	Telok Ayer Market, Former (now Lau Pa Sat) (1894)	Commercial	Commercial	6 Jul, 1973
60	Thian Hock Keng (1839–1842)	Religious	Religious	6 Jul, 1973
61	Thong Chai Medical Institution, Old (1892)	Medical	Commercial	6 Jul, 1973
62	Tou Mu Kung Temple (1881)	Religious	Religious	14 Jan, 2005
63	Victoria Theatre and Concert Hall (1862)	Cultural	Cultural	14 Feb, 1992
64	Ying Fo Fui Kun (a Hakka clan association) (1882)	Community	Community	18 Dec, 1998

65	Singapore Conference Hall (1965)	Government	Government	27 Dec, 2010
66	Lim Bo Seng Memorial (1954), Tan Kim Seng Fountain (1882) and The Cenotaph (1922)	Commemorative	Commemorative	27 Dec, 2010
67	Yueh Hai Ching Temple (1895)	Religious	Religious	28 Jun, 1996
68	Former Tanjong Pagar Railway Station, Former (1932)	Transportation	Undetermined	9 Apr, 2011

APPENDIX V – CONCLUSION & ANALYSIS

Observations

No.	Area	Observations
1.1	Definition of Heritage	<p>According to the findings of this study, many countries have laid out a broad definition of heritage, encompassing an extensive time frame, and a wide variety of categories.</p> <p>Possible considerations for Hong Kong, based on the finding of this study are to consider a broader definition of heritage, in particularly to extent protection to conservation areas and a wider time frame to include contemporary buildings.</p>
1.2	Assessment of Heritage	<p>In Hong Kong, heritage buildings, sites or structures with outstanding architectural merits and historical significance are declared as monuments for proper conservation, these declared monuments are protected from alterations. There are currently 101 declared monuments in Hong Kong.</p> <p>On top of declared monuments, a grading system is in place as a record of historic buildings in the city; however, the grading system does not provide legal protection to the buildings.</p> <p>It is apparent from the study that Hong Kong's current system protects only a very limited number of built heritages, as compared to the other countries. In Macao, Shanghai, Australia, Japan and Canada for example, all designated properties are legally protected from demolition and alterations.</p> <p>In comparison, Hong Kong shows a lack of protection for graded buildings, particularly grade one buildings that are considered significant both in the interior and the exterior.</p> <p>In Australia, Canada, Japan and the United States of America, local authorities and local communities are involved in the identification process regardless of the city's size.</p>
1.4	Opportunity Cost	<p>This is an area that has been extensively studied at different countries previously. No concrete conclusion has been exhibited up till today that could create a set of data for cross-reference.</p>
2.1	Planning and Land Control	<p>Concluding observations from various jurisdictions, it is apparent that embedding all conserved built heritage into the official town plan would be greatly helpful for a city's conservation.</p> <p>The current outline zoning plan in Hong Kong only maps conserved natural zones and the 101 declared monuments. Graded buildings are merely listed out in the explanatory notes, but do not carry any restrictions or guidelines.</p> <p>It is worth pondering on the potential benefits that could be brought by pinning graded historic buildings onto the official zoning plan, and giving it control and protection on a town planning level.</p> <p>Apart from imposing restrictions through town zoning plan, some countries such as Japan and Australia involves local citizens in identifying character-defining elements of a district through the making of a map or report. Such maps are not part of the official town planning map but would be taken into consideration in the making of the district's official zoning plan.</p> <p>Protection on built heritage could also be made through the tightening</p>

		of land lease terms, including the imposing of height restrictions and development potentials on a land lot.
2.2	Building Code	<p>Many jurisdictions studied in this report has tuned to a performance-based building code for designated or graded historic buildings and area. Non-regulatory development plan can be considered as a useful tool in governing built heritages and its context.</p> <p>In countries such as Shanghai and Macao, proposals are reviewed by a special advisory committee</p> <p>A good precedent of such non-regulatory development plan is the area character statement initiated in Sydney in Australia. The statement identifies layer of different characteristics within each area. The characteristics help to anticipate the future development of the area. Such area character statement includes but is not restricted to elements such as building massing, streetscape, views, heights, use of material and function etc.</p> <p>Area character is a concept often employed by urban planners but should be an equally useful concept for heritage conservation.</p>
3	Government support	<p>Wide variety of incentives is provided to private historical property owners in almost all of the jurisdictions studied. Types of incentives include technical support, professional training, subsidy for restoration, heritage recognition, interest-free loan and local support etc.</p> <p>Among the various incentives provided, those that give support the on a district level is particularly worthy for further considerations. Local heritage centers in each district are hubs where people learn about historical buildings in their own area, flip through related books in a library or resource center, or seek technical advices on the restoration of their own historical properties. Similar centers are established in Japan, Macau and England, allowing people to have easy access and an accessible interactive point with the government heritage agency.</p> <p>Apart from providing technical support, these centers are also an opportunity at the local level in identifying important historical structures in their own neighborhood. English Heritage, for example, has prepared toolkit and pamphlet for owners to manage their buildings.</p> <p>As observed from the jurisdictions studied, technical advices for owners is ideally be provided at a district level through the establishment of district centres in different areas, while training is best made available from the central government.</p>
3.2	Criteria for Financial Incentives	<p>Modest amount of money is available in most of the jurisdictions studied.</p> <p>Minimal incentives are professionally advised, and ideally offered within each of the districts. Based on the observation from this study, consideration could be given to phase-stepped funding, according to the relative importance of the buildings. With contentious issues, incentives would possibly have to be greater, including the transfer of development rights, additional density rights (Canada & Australia) and relaxation of land restrictions.</p> <p>Procedures for the application of financial subsidy is well-laid out, in</p>

		<p>most cities and countries, all graded or designated buildings are eligible for such subsidy. An upper limit is pre-determined, private property owners would be required to fill in detailed application form, listing out the restoration details and budget estimation in order to be considered for subsidies.</p> <p>Subsidy given at local level might differ from those given from the provincial, state or national level. When a large amount of money is subsidized on a private property, there is often an easement. Differences also exist between public owned and privately owned historical buildings.</p>
4	Public Participation	<p>In some countries, such as Japan, Australia and England, people are encouraged to nominate sites that are of local, provincial regional or even national importance, a procedure of systematic consideration is in place. This process involves detailed investigation; an advisory group would often be involved in evaluation of the building, and the report would be submitted to the authority for approval. Currently, there is a lack of public participation at this level in Hong Kong.</p> <p>Heritage offices at district level could involve the neighborhood in the process of heritage identification, and promote local cultural mapping, nurturing a sense of belonging towards their own community. Such mapping exercise could also be incorporated into the school curriculum as part of class activities for schools in the district, tying heritage education into education from an early age.</p>

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