

## BUILT HERITAGE IN TRANSITION: A CRITIQUE OF HONG KONG'S CONSERVATION MOVEMENT AND THE ANTIQUITIES AND MONUMENTS ORDINANCE

■  
*David Lung\**

*Heritage has two primary functions: to reflect the political and social developments of the past in order to inform the present, and to promote identity and self-awareness. Heritage protection in any city should enjoy a supreme position that takes precedence over development, but this is often not the case. This paper introduces the legal instruments in place for protecting Hong Kong's heritage and analyses their effectiveness and shortcomings. The existing Antiquities and Monuments Ordinance (Cap 53) offers the most comprehensive legal coverage, but to what extent has it achieved its purpose of safeguarding cultural heritage in a city with high land costs and rapid development? This paper not only assesses the effectiveness of Hong Kong's heritage law, but also outlines strategies pursued by the current administration and makes recommendations for achieving greater protection of Hong Kong's heritage.*

### **Background**

#### ***The Hong Kong Polity: One Country, Two Systems***

Hong Kong reverted to Chinese sovereignty on 1 July 1997. Under the Sino-British Joint Declaration, this former British colony, which had been occupied since 1842, was made a Special Administrative Region (SAR) of the People's Republic of China and will enjoy a unique political status, dubbed "one country, two systems", until 2047. Hong Kong's rule of law and capitalist system remain in place and it has full autonomy in administering its internal affairs, including having its own Court of Final Appeal, except for matters relating to national defence and foreign policy. Thus, most laws of China, including the heritage law, are not

\* Professor of Architecture, UNESCO Chair in Cultural Heritage Resources Management, and Dean of the Faculty of Architecture, University of Hong Kong. The Author wishes to express his gratitude to Ms Jennifer Lang for editing the paper.

applicable to Hong Kong.<sup>1</sup> This city of 6.9 million people has one layer of governance, the municipality, making it a rather simple administration. The Chief Executive, the Chief Justice and the 10 Bureau Secretaries are political appointees supported by a civil service 153,000 strong.<sup>2</sup>

### ***Administration: Land Use and Planning***

In 1841, British Foreign Minister Lord Palmerston dismissed the island of Hong Kong (or Victoria as it was then called) as a “barren rock”. He never anticipated that beneath this barren rock lies a rich and diversified cultural heritage dating back 6,500 years to the Neolithic period.

That heritage can be demarcated by the British occupation. Prior to 1842, the entire territory had been part of Xin-an County (called different names in different dynasties) of Guangdong Province. Afterwards, Hong Kong was taken over by the British in three stages, first Hong Kong Island in 1842, then Kowloon Peninsula in 1860 and finally the New Territories in 1898. Both Hong Kong Island and Kowloon were ceded in perpetuity, but the New Territories became British territory under a lease lasting 99 years. This resulted in a complicated system of land administration with a large variety of land leases,<sup>3</sup> as well as a physical division of Hong Kong’s Western and Chinese heritage. Western-style buildings are found mostly in the urban areas of Hong Kong Island and Kowloon, while most Chinese heritage structures, especially those of the Qing dynasty (1644–1911), are found in the New Territories.

Much of the land in Hong Kong, whether heritage or not, has faced development pressures. Due to the lack of any form of natural or mineral resources, land has become Hong Kong’s most precious commodity, generating revenue for the Government’s coffers. In addition, of Hong Kong’s total landmass of 1,104 square kilometres, 40 per cent is restricted for use as country parks and natural reserves and approximately 23 per cent is used for urban development. As a result, Hong Kong’s physical urban growth has relied on land reclamation from its adjoining

<sup>1</sup> The Basic Law guarantees Hong Kong’s political system; available at [www.basiclaw.gov.hk/en/index/](http://www.basiclaw.gov.hk/en/index/) (visited 26 Jan 2012). For information on the Joint Declaration, please refer to [www.cmab.gov.hk/en/issues/joint.htm](http://www.cmab.gov.hk/en/issues/joint.htm) (visited 26 Jan 2012).

Hong Kong’s neighbour, Macau, also enjoys the same “one country, two systems” treatment. Macau came under Portuguese administration in 1553 and was reunited with China in 1999. Macau was inscribed as a World Heritage site in 2005.

<sup>2</sup> For information on government structure, please refer to the Hong Kong government web site: [www.gov.hk/en/about/govdirectory/govchart/index.htm](http://www.gov.hk/en/about/govdirectory/govchart/index.htm).

<sup>3</sup> S. H. Goo and Alice Lee, *Land Law in Hong Kong* (Singapore: LexisNexis Butterworths, 2nd edn, 2005).

waters since the 1900s, including the precious harbour. It is not difficult to imagine how complex it is to balance the demands for land while maintaining sustainable growth for a population of 6.9 million.

Heritage in this context has had a precarious status in Hong Kong. Heritage has two primary functions: it deals with the political and social developments of the past in order to inform the present, as well as promoting its citizens' identity and self-awareness. Consequently, heritage protection in any city should enjoy a supreme position which takes precedence over development. But more often than not in Hong Kong precious urban sites get redeveloped, such as the site of Norman Foster's Hong Kong Bank building, which is the fourth building to occupy that site over 150 years. Heritage conservation has become a contentious issue, especially when sites are redeveloped to maximise economic value.

## Hong Kong's Heritage Law

Since there is no need for Hong Kong to consider heritage at the national or state / provincial status, the law that governs heritage protection is rather simple. The Antiquities and Monuments Ordinance (Cap 53) has been in place for more than 30 years. Similar to the United Kingdom, it is complemented by other legal instruments to protect the territory's heritage as outlined in Table 1.

### *The Heritage Law: Antiquities and Monuments Ordinance*<sup>4</sup>

The Antiquities and Monuments Ordinance (A&MO), implemented in 1976, is a law specifically dedicated to the protection of local heritage under three categories: monuments or historical buildings, archaeological sites and paleontological sites.<sup>5</sup> It does not control the development of sites or conservation works or the grading of historical buildings.

<sup>4</sup> Text of the law available at [www.legislation.gov.hk/blis\\_export.nsf/home.htm](http://www.legislation.gov.hk/blis_export.nsf/home.htm) (visited 26 Jan 2012). Click to Cap 53.

<sup>5</sup> For a more detailed account of the formation and development of the A&MO, see Hilary du Cros and Yok-shiu F. Lee, *Cultural Heritage Management in China* (London: Routledge, 2007). Discussions on archaeological and paleontological sites are outside the scope of this paper.

In s 2 of the A&MO, "antiquities" is defined as: (a) relic; and (b) a place, building, site or structure erected, formed or built by human agency before the year 1800 and the ruins or remains of any such place, building site or structure, whether or not the same has been modified, added to or restored after the year 1799. "Monument" is defined as: a place, building, site or structure

## *The Administrative Structure and Policy*

Over the years, responsibility for heritage has been moved around to different government departments. In July 2007, when the former Housing, Planning and Lands Bureau was re-formed into the Development Bureau, heritage was included in its portfolio alongside land, planning and public works. Heritage had previously been located in the Home Affairs Bureau.<sup>6</sup> Each bureau is headed by a Secretary, who is a political appointee (some bureaus also have Under Secretaries, although that does not apply to the Development Bureau). There is also a Permanent Secretary, who is a civil service appointee. Under the Permanent Secretary, different departments are headed by directors, who carry out policies and laws including enforcement.

The Secretary for Development (SDEV), as defined in the A&MO, is the Antiquities Authority and has the supreme power in declaring monuments and historical buildings. The policy statement on heritage conservation says this role is:

“To protect, conserve and revitalize as appropriate historical and heritage sites and buildings through relevant and sustainable approaches for the benefit and enjoyment of present and future generations. In implementing this policy, due regard should be given to development needs in the public interest, respect for private property rights, budgetary considerations, cross-sector collaboration and active engagement of stakeholders and the general public.”<sup>7</sup>

Under SDEV, a new Commissioner for Heritage’s Office (CHO) was established in April 2008. Its primary function is to render “dedicated support to the Secretary for Development in implementing the policy on heritage conservation and keeping it under constant review, taking forward a series of new initiatives as announced in the Chief Executive’s

which is declared to be a monument, historical building or archaeological or paleontological site or structure under s 3 of the Ordinance.

<sup>6</sup> This was at my suggestion made on several public occasions in 1998 and 1999, including the International Conference on Heritage and Tourism. See “Academic Calls for Rethink on Heritage Sites”, *South China Morning Post*, 14 December 1999, p 6; “Rowse Downs Heritage Move”, *South China Morning Post*, 16 December 16, p 7; and CPU Seminar available at [www.cpu.gov.hk/english/documents/conference/e-dlung.rtf](http://www.cpu.gov.hk/english/documents/conference/e-dlung.rtf) (visited 10 Sept 2011).

<sup>7</sup> See Government web site on Heritage Conservation: available at [www.heritage.gov.hk/tc/heritage/conservation.htm](http://www.heritage.gov.hk/tc/heritage/conservation.htm) (visited 26 Jan 2012).

Policy Address on 10 October 2007, as well as serving as a focal point of contact, both locally and overseas.”<sup>8</sup> These initiatives include:<sup>9</sup>

- 1 to conduct heritage impact assessments for new capital works projects;
- 2 to implement the Revitalizing Historic Buildings Through Partnership Scheme for Government-owned historic buildings;
- 3 to provide economic incentives for conservation of privately owned historic buildings;
- 4 to facilitate maintenance of privately owned graded historic buildings; and
- 5 to take forward conservation and revitalisation projects.

(See Appendix 1 for Secretary for Development’s Portfolio on Heritage Matters.)

### ***Enforcement of the Heritage Law***

Enforcement of heritage law comes under the domain of the Leisure and Cultural Services Department (LCSD), together with its executive arm, the Antiquities and Monuments Office (AMO). The AMO is responsible for the day-to-day operation of the protection and preservation of Hong Kong’s archaeological and built heritage. This includes such duties as assessing historic buildings and vetting adaptive reuse applications, but the actual conservation and restoration work of monuments and historic buildings is carried out by the Architectural Services Department, under the Works Branch of the Development Bureau. As of 31 December 2011 there were 101 Declared Monuments gazetted,<sup>10</sup> most of which have been properly repaired and restored. In addition, the Office also conducts rescue excavations of archaeological sites under threat of development and assists the Development Bureau in its partnership scheme to revitalise historic buildings.<sup>11</sup> The AMO also serves as the secretariat of the Antiquities Advisory Board.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*, extracted from Government web site on Heritage Conservation.

<sup>10</sup> See Government web site on Declared Monuments: available at [www.heritage.gov.hk/en/buildings/monuments.htm](http://www.heritage.gov.hk/en/buildings/monuments.htm) (visited 26 Jan 2012).

<sup>11</sup> Available at [www.amo.gov.hk/en/built3.php](http://www.amo.gov.hk/en/built3.php) (visited 26 Jan 2012).

### ***The Advisory Body: Antiquities Advisory Board (AAB)***

The law provides for setting up an advisory body whose primary function is to advise the government on any matters relating to antiquities, proposed monuments or monuments. The members are a select group of citizens appointed by the Chief Executive. The AAB's power and duties have been confined to grading buildings and recommending the declaration of monuments, which is much reduced from the period between 1989 and 2003.<sup>12</sup>

### ***Declared Monuments and Historical Buildings***<sup>13</sup>

To date, Hong Kong has 101 buildings, structures, stone carvings, stone steps and archaeological sites that have been declared as “monuments” or “historical buildings” (the same as “listed buildings” in some countries). By legal definition, all items declared under these categories are exclusively of monumental quality or status, receiving the same and equal treatment in conservation and adaptive reuse restrictions.

### ***The Grading System***

In order to arrive at an agreeable form of identification of what constitutes a “declared monument”, AAB uses a grading system, but this has been a subject of contentious debate because of its non-statutory nature. Currently, there is a list of graded buildings recorded and used

<sup>12</sup> One of the vital roles of the AAB from 1989 to 2003 was education and promotion. In 1997 alone, the year of the handover of Hong Kong to Chinese sovereignty, which was also named the Year of Heritage by the Government, the AAB and AMO organised a total of 53 activities. These included an international conference (on Heritage and Education), exhibitions, a concert, guided tours, talks to secondary and primary school children, the declaration of monuments and the offering of traditional village “basin meals” as a means to introduce intangible culture and to raise funds for heritage activities. For a detailed description of the Year of Heritage activities, see n 5 above, pp 89–90.

<sup>13</sup> In s 2 of the A&MO, “monument” is defined as “a place, building, site, or structure, which is declared to be a monument, historical building or archaeological or paleontological site or structure under s 3; (Replaced 38 of 1982 s 2)”. There is no separate legal definition for “historical building” in the Ordinance. The term “Declared Monument” covers historic buildings. For Declared Monuments and Historical Buildings, see the two lists in Antiquities and Monuments (Declaration of Monuments and Historical Buildings) (Consolidation) Notice (Cap 53B), available at [www.heritage.gov.hk/en/buildings/monuments.htm](http://www.heritage.gov.hk/en/buildings/monuments.htm) (visited 26 Jan 2012).

as a pool for future selection.<sup>14</sup> However, AMO is pressed to assess the remaining territory-wide heritage buildings and sites, which are believed to number around 6,000.<sup>15</sup> In addition, in the next few years AAB will be tasked to complete the grading of 1,444 pre-war buildings of the total 6,000 assessed,<sup>16</sup> in order that SDEV can map out a long-term strategy for securing the necessary funding resources to protect the optimal number of heritage places.

### *The grading categories*

Grade I—Building of outstanding merit for which every effort should be made to preserve if possible;

Grade II—Building of special merit; which efforts should be made to selectively preserve; and

Grade III—Buildings of some merit, but not yet qualified for consolidation as possible monuments. These buildings are to be recorded and used as a pool from which future monuments may be selected.<sup>17</sup>

## **Other Legal Frameworks Related to Heritage Protection**

### ***Town Planning Ordinance (Cap 131)***

The Town Planning Ordinance (TPO), administered by the Planning Department in association with the Town Planning Board, is intended to control development. It is the prevailing mechanism to curtail unwarranted redevelopment of properties with heritage value. Owners of property sites with in situ graded historical buildings who wish to redevelop these sites are required to obtain Town Planning Board approval if the historic sites do not already fall into the same zoning category; for instance, if an owner wishes to redevelop a historic house

<sup>14</sup> AMO web site for a list of Graded Buildings available at [www.amo.gov.hk/en/built3.php](http://www.amo.gov.hk/en/built3.php) (visited 26 Jan 2012).

<sup>15</sup> My own estimate.

<sup>16</sup> AAB's appointed chairman Bernard Chan's remark available at [http://www.bernardchan.com/temp/NPC\\_newsletter\\_5.html](http://www.bernardchan.com/temp/NPC_newsletter_5.html) (visited 31 Aug 2009). In his view, "From now on, the grading system will be directly linked to the work of AMO, which has the power to give a site monument status and therefore to protect it. This means that AMO should now automatically consider all sites we list as grade I as potential monuments. We hope that this will strengthen protection for the most valuable heritage sites".

<sup>17</sup> Available at [www.amo.gov.hk/en/built3.php](http://www.amo.gov.hk/en/built3.php) (visited 26 Jan 2012). The three-tier grading system serves as internal guidelines and carries no statutory power. Therefore, graded buildings are not statutorily protected.

into a commercial building, the owner has to apply for Town Planning Board approval.<sup>18</sup>

### *The Urban Renewal Authority Ordinance (Cap 563)*

The Urban Renewal Authority Ordinance (URAO), administered by the Urban Renewal Authority (URA), a statutory quasi-government organisation, is by far the single most effective organisation to protect historic buildings or sites of non-monument quality or status. It is mandated to carry out the actual work of saving historic buildings (graded and un-graded) as well as streetscapes and sites.<sup>19</sup>

### *The Environmental Impact Assessment Ordinance (Cap 499)*

Enacted in 1998, the Environmental Impact Assessment Ordinance (EIAO) contains a section on “Heritage Impact Assessment” (HIA) in the Technical Memorandum. HIA is required when proposals are submitted to government in the early stage of development, in order to have the situations assessed long before the commencement of work.<sup>20</sup> In response to increasing community demands for a more stringent conservation mechanism, since November 2007,<sup>21</sup> the Development Bureau has further imposed the HIA requirement on all government capital work projects.

<sup>18</sup> The Planning Department and the Town Planning Board, a statutory body of civilians appointed by the Chief Executive of Hong Kong SAR, make statutory zoning plans and vet developments covering the entire territory of Hong Kong. The Planning Department also provides “Planning Standards and Guidelines”—Chapter 10 Conservation—for the protection of natural and heritage conservation. This was first issued in 1994. Available at [http://www.pland.gov.hk/pland\\_en/tech\\_doc/hkpsg/index.html](http://www.pland.gov.hk/pland_en/tech_doc/hkpsg/index.html) (visited 26 Jan 2012).

<sup>19</sup> The URA’s “4 R mission” (redevelopment, revitalisation, preservation and rehabilitation) carries a mandate under the URAO and the UR Strategy to protect tangible and intangible heritage such as open street markets. The composition of the URA’s Board of Directors is made up of appointed civilians and the directors of the Government’s Lands Department, the Planning Department, the Buildings Department as well as the Home Affairs Department to ensure the Government’s view is heard and implemented. The URA is responsible to the Secretary for Development.

<sup>20</sup> HIA assessment is entrusted to AMO. In recent months, the Development Bureau has made further clarification of the HIA; available at [www.heritage.gov.hk/tc/heritage/conservation.htm](http://www.heritage.gov.hk/tc/heritage/conservation.htm).

<sup>21</sup> See Government web sites for the Development Bureau’s Technical Circular for HIA Submission, available at [www.heritage.gov.hk/images/impact/TC\\_Heritage.pdf](http://www.heritage.gov.hk/images/impact/TC_Heritage.pdf) (visited 26 Jan 2012); and the Environmental Protection Department web site, available at [www.epd.gov.hk/eia/english/guid/ordinance/guide1-3.html](http://www.epd.gov.hk/eia/english/guid/ordinance/guide1-3.html) (visited 26 Jan 2012).



### *The Buildings Ordinance (Cap 123)*

The actual renovation or conservation work on heritage buildings is required to meet the regulation and standards as required by the Buildings Ordinance (BO), administered by the Buildings Department. A constant complaint from the private sector is that there is only one set of uniform building codes in Hong Kong used for all new building construction (such as I. M. Pei's Bank of China tower) as well as 100-year old building conservation sites. The Buildings Department and the AMO are under pressure to find innovative solutions.<sup>22</sup> Another mechanism is the control of transfer of plot ratio (or development rights). The current law permits the residue plot ratio of a historic building to be transferred to a new development in a contiguous site, but not to a different site outside of the lot boundary.

### *The Small House Policy (Administered under Various Ordinances)*

The Small House Policy (SHP) is a major challenge for heritage conservation. Because of the leasehold nature of the New Territories, in the 1970s, the British administration agreed to allow every indigenous male descendent the right to build a small house on his own village land in accordance with traditional Qing law.<sup>23</sup> This SHP has quickened the massive destruction of privately owned traditional Chinese houses. In the past 30 years, many three-storey small houses, or "Spanish villas", a term used by locals to emulate an ideal dream house in the Western style, have sprung up and some are sold for profit.

The following table summarises the legal framework for protecting Hong Kong's heritage:

<sup>22</sup> The Buildings Department is seeking a consultancy via an open tender process (Tender Documents for BA-H01-2008) to address the statutory requirements for adaptive reuse of historic buildings. There is still no satisfactory solution found yet. Available at [www.bd.gov.hk/](http://www.bd.gov.hk/) (visited 18 Sept 2009).

<sup>23</sup> The legal framework for the Small House Policy (see L. Hopkinson and L. M. Lao, "Rethinking the Small House Policy", *Civic Exchange*, September 2003): (a) The Building (Application to the New Territories) Ordinance (Cap 121); (b) Town Planning Ordinance; (c) Discrimination Ordinance (Cap 480); (d) New Territories Ordinance (Cap 97) and (e) The Basic Law (Arts 40 and 122). In order to control the unlimited growth of small houses in the New Territories, since 1989 the Town Planning Ordinance and its associated statutory zoning plans have included a zoning called the "village zone" (v zone). Three-storey small houses can be accommodated within the v zone boundaries.

Table 1: Heritage Legislation and Policy Measures in Hong Kong

Year	Chronology of legislation and policies	Legislation amendments	Comments
1939	Town Planning Ordinance (Cap 131) (Amended 4 of 1991 s 2)	V zone: TPO s 4(1)(h) zones or districts set apart for use as village type development, agriculture or other specified rural uses. (Added 4 of 1991 s 6)	To promote the health, safety, convenience and general welfare of the community by making provision for the systematic preparation and approval of plans for the lay-out of areas of Hong Kong as well as for the types of building suitable for erection therein and for the preparation and approval of plans for areas within which permission is required for development.
1956	Buildings Ordinance (Cap 123) (Replaced 72 of 1980 s 2)		To provide for the planning, design and construction of buildings and associated works; to make provision for rendering safe dangerous buildings and land; and to make provision for matters connected therewith.
1972	Small House Policy		The New Territories Small House Policy was approved by the Executive Council and has been implemented since December 1972. It allows an indigenous villager to apply for permission to erect for himself during his lifetime a small house on a suitable site within his own village.

1971 (enacted) 1976 (implemented)	Antiquities and Monuments Ordinance (Cap 53)	To provide for the preservation of objects of historical, archaeological and paleontological interest and for matters ancillary thereto or connected therewith.
1998	Environmental Impact Assessment Ordinance (Cap 499)	To provide for assessing the impact on the environment of certain projects and proposals, for protecting the environment and for incidental matters.
2001	Urban Renewal Authority Ordinance (Cap 563)	To establish the Urban Renewal Authority for the purpose of carrying out urban renewal and for connected purposes.

## Analysis of the Issues

There is no shortage of legal instruments working in unison to protect Hong Kong's cultural heritage, however two questions remain to be answered:

- 1 Are these laws adequate in terms of coverage, ie are there any loopholes?
- 2 Are these laws outdated and do they need to be reviewed and amended to keep up with social changes?

## *Shifting Social Values in a Changing Society*

Because of the multi-disciplinary nature of heritage conservation and the complexities of land administration in Hong Kong, there is no single bureau or department that can fully cover all the ambits of heritage. Nor is there a single law with the comprehensive power to cover the entire scope of heritage protection. The recent formation of the Development Bureau vested with the power to oversee matters related to land, planning, building codes, other associated public works and the setting up of the Commissioner for Heritage's Office are steps in the right direction in response to social demands and aspirations. As I have pointed out, heritage is not solely a cultural issue. When it comes to implementation, it is an issue of land economics. Hong Kong is an especially sensitive case because there is a shortage of developable land. In striking a balance, the government will have to weigh the pros and cons of protection of certain heritage items against development. This is where the community's voice is important and needs to be taken into account.

In the past few years, several noteworthy episodes have occurred in which the community took a stand on protecting local heritage. These included the concerned efforts to protect the old Star Ferry Pier, Queen's Pier,<sup>24</sup> King Yin Lei Mansion,<sup>25</sup> the West Wing of Central Government Offices and the URA projects at Lee Tung Street and McGregor Street

<sup>24</sup> For a detailed account of the demolition of the Star Ferry Pier and the adjacent Queen's Pier to make way for the new highway by-pass linking Central to Wanchai, see J. C. Henderson, "Conserving Hong Kong's Heritage: The Case of Queens Pier" (2008) 14 *International Journal of Heritage Studies* 540, 540–54; and information available at [en.wikipedia.org/wiki/Edinburgh\\_Place\\_Ferry\\_Pier](http://en.wikipedia.org/wiki/Edinburgh_Place_Ferry_Pier) and [en.wikipedia.org/wiki/Queen's\\_Pier](http://en.wikipedia.org/wiki/Queen's_Pier) (visited 16 July 2010).

<sup>25</sup> The private development King Yin Lei, Mansion was built in 1937 and is one of only three remaining mansions in the Chinese Art Deco style on Hong Kong Island. It was silently being demolished, which triggered a public protest. Both the AAB and AMO had to make rescue plans to save the compound. Available at [www.heritage.gov.hk/tc/heritage/conservation.htm](http://www.heritage.gov.hk/tc/heritage/conservation.htm);

in Wanchai and the Graham Street open market in Central.<sup>26</sup> Protests were held in which people expressed their demands and aspirations, and on more than one occasion these protests ended in violence and the police were called in to maintain order. The public is marking out new battlegrounds. As John Earl, a British conservation professional, remarks of his UK experiences, “Local high street campaigns have fought to prevent the destruction of what historians and other experts have dismissed as *unexceptional* buildings.”<sup>27</sup>

The consequence of these actions has been a sudden surge in new grassroots concern groups, specifically The SEE Network, Heritage Watch and Heritage Hong Kong, all of whom want to have their voices heard.<sup>28</sup> Together with other established groups—the decades-old Conservancy Association, the Hong Kong Institute of Planners, the Institute of Architects, the Institute of Surveyors and the Institution of Engineers—these organisations have in one way or another exerted their influence over SDEV to keep up with the times in mapping the way forward for heritage protection. In response, SDEV swiftly launched several initiatives, including the announcement of a heritage policy statement for the next five years, the launching of the first batch of seven historic buildings under the “Revitalizing Historic Buildings through Partnership Scheme” and the setting up of the Commissioner of Heritage’s Office.<sup>29</sup>

These events are pertinent in the context of one of the critical issues that arises when a society undergoes rapid change and shifting social values: how to sustain a continuous flow of dialogue on what needs to be conserved and how to best conserve it? On the one hand are concern groups and the community at large. On the other hand are the AAB, the Government and the academia, which are considered by the majority of the Hong Kong public as “elites”. As John Earl quoting James Fitch, another well-known conservation practitioner rightly summarises:

“Historic preservation has been traditionally characterised as ‘elitist’, but this viewpoint is being modified as wider sections of the population begin to understand the cultural values of their own habit and to demand a role in the formulation of plans for its preservation. This development should by no means be regarded as undesirable (even if it poses new and not

[paper.wenweipo.com/2007/09/15/YO0709150014.htm](http://paper.wenweipo.com/2007/09/15/YO0709150014.htm) (文匯報); [en.wikipedia.org/wiki/King\\_Yin\\_Lei](http://en.wikipedia.org/wiki/King_Yin_Lei) (visited 20 Dec 2011).

<sup>26</sup> Available at [www.ura.org.hk](http://www.ura.org.hk) (visited 20 Dec 2011).

<sup>27</sup> J. Earl, *Building Conservation Philosophy* (U: Donhead, 3rd edn, 2003), p 31.

<sup>28</sup> M. Brook, “Heritage Conservation Position Paper” *Heritage Hong Kong*, April 2007 (unpublished manuscript).

<sup>29</sup> Available at [www.heritage.gov.hk/en/rhbtpr/submission.htm](http://www.heritage.gov.hk/en/rhbtpr/submission.htm) (visited 28 Dec 2011).

always easy problems for the professional). To the contrary, it presents an unparalleled opportunity to correct some of their sense of alienation which is so characteristic of modern society. It affords the opportunity for the citizens to regain a sense of identity with their own origins of which they have often been robbed by the sheer process of urbanization.”<sup>30</sup>

This observation made in the late 1980s, is prescient to Hong Kong’s situation today.

The AAB has responded to public demands for a greater say in heritage by opening up its hearings to the public. This is a positive move, but it is not sufficient on its own because the LCSD and AMO continue to operate in a conformist and dogmatic fashion that irritates the public and shrouds conservation issues in secrecy as some critics opine. The community has demanded explanations for such issues as the 50-year restriction, by which all buildings less than 50 years old are not considered as heritage; the restrictions imposed on the adaptive reuse of non-graded historical buildings by the private sector, which are more stringent than those for declared monuments and which make public-private partnerships in protecting heritage unnecessarily difficult; and a double standard in handling government development projects versus privately owned projects where there are in situ historical buildings involved.

### ***Review of the Current Heritage Law***

It is not difficult to recognise from recent social events that the current heritage law is in dire need of review and amendment. There are several issues at hand:

*First*, The single layer for declaring buildings and sites of monumental status is hardly convincing and sufficient to meet the societal aspiration; especially as the definition of monuments is no longer acceptable to the community at large. There is a need to recognise the multi-faceted nature of cultural heritage, including cultural landscapes, streetscapes, historic precincts or districts, vernacular buildings, cemeteries and intangible cultural heritage such as ancestor worship practices, which are all subsets of an integrated whole and should receive different degrees

<sup>30</sup> See n 27 above, p 33. John Earl also has similar experience and he writes, “In very recent times, preservation has moved from a situation in which the identification of what was special was largely the province of scholars to one in which public opinion is marking out new battlegrounds ... [and] where energetic local high street campaigners have fought to prevent the destruction of what historians and other experts have dismissed as unexceptional buildings”.

of intervention and protection. A more comprehensive heritage law is needed to address this burning issue.

*Second*, There is no single yardstick proven to be authoritative for measuring what is appropriate to conserve. The current practice and administration of the grading system is somewhat obscure to the public, leading to some concern over whether it breaches the spirit of the law, which is to ensure the regulation of a fair process of assessment. Since the current graded building system carries no legal protection, owners of private buildings can apply for demolition permits and the Buildings Department has no legal instrument to halt such damaging actions. In situations like these, the Antiquities Authority will have to declare these buildings as “proposed monuments” as temporary measures to buy time for negotiations with the owners under the provision of the heritage law. As such, the following questions need to be addressed: What is the statutory basis of the grading? What assessment criteria are used to grade the items? Are items graded on their own merit or in comparison with other similar items? Can the grading accorded be moved up or down from time to time? What are the consequences for a building if it is graded? Are there different degrees of conservation intervention for different grades of buildings? How are the graded items being used and by whom? It is imperative to make the system more transparent and statutorily protected.<sup>31</sup>

*Third*, Sections 8 and 9 of the heritage law deal with compensation to private owners of historic buildings; if a disagreement between the owner and the government arises, then it has to be settled in the District Court. Under the provision of Basic Law, a mini constitutional law of Hong Kong, the spirit of private ownership is being respected. These two sections of the heritage law are intended to guarantee that there is a rational and fair process, and that citizen’s rights and obligations are not jeopardised. This is the unspoken reason in explaining why all 101 declared monuments are either under government ownership or “private but communal ownership” and none in real private ownership, because of this compensation clause. As a result, approximately 50 per cent of all declared monuments fall under the public building category and 50 per cent under the so-called “private but communal ownership”

<sup>31</sup> In referring to the question of criteria for grading, AAB chairman Bernard Chan says, “The central consideration is ‘heritage significance’, which refers to things like architectural merit, rarity and historical importance”. Available at [http://www.bernardchan.com/temp/NPC\\_newsletter\\_5.html](http://www.bernardchan.com/temp/NPC_newsletter_5.html) (visited 31 Aug 2009). In Yu’s report submitted to the Legislative Council, six criteria are listed: (a) historic interest associated with historic events or places or persons; (b) architectural merit; (c) group value; (d) authenticity; (e) social value, in this case, covering “collective memory”; and (f) rarity.

category, including churches, temples, schools, universities, ancestral halls and clan study halls.

*Fourth*, There are two major issues with the compensation clauses in ss 8 and 9 that make conservation even more complicated:

- (a) AMO has completed a territory-wide assessment of all historic buildings and accorded each one a grade by AAB. There are hundreds of privately owned graded buildings. One can imagine the impediments, both legal and financial, involved in dealing with compensation under the existing heritage law. Currently, for instance, the owner of Hotung Gardens, a 1927 Chinese Art Deco style complex which sits on a piece of prime residential land of 11,000 square metres on the Peak, has refused to negotiate with the government for land exchange in return for in situ protection of the complex from being redeveloped. The Antiquities Authority, under the heritage law, has no choice, but to take the owner to court according to this section of the law, but is our heritage law fit for the purpose? This will be the first case to be tested in court.<sup>32</sup>
- (b) The URA's practice is to compensate owners of buildings of flats which are to be repossessed by the URA, with payment equivalent to the value of a similar, seven-year-old flat in the neighbourhood. This presents a perception of a double standard in compensation from the community's point of view, because owners of historic buildings, which fall outside the URA boundaries, will not receive this kind of compensation and treatment.

Compensation comes in different forms, such as in situ land exchange or transfer of development rights (TDR), or bonus plot ratio. The government needs to exhaust every means to protect heritage. Hong Kong operates on a low tax structure and therefore, tax concession is not a feasible solution. For instance, Haw Par Mansion (part of the Tiger Balm Garden complex, a 1930 Chinese Art Deco style private residence located in the mid-levels) has been conserved; the mansion and the garden was transferred to government ownership while the developer was allowed to retain the same amount of floor area in the new development as a

<sup>32</sup> "Hotung Garden Villa Owner Fights Back", *South China Morning Post*, 26 Oct 2011, p A3; "Gardens Are Mine, Hotung Relative Says", *South China Morning Post*, 19 Dec 2011; p A3; "Mansion demolition fears mount", *South China Morning Post*, 28 Jan 2012, p A3, "Hong Kong's Inadequate Heritage Preservation Law Needs Updating", *South China Morning Post*, 3 Feb 2012, p A12 and available at [http://en.wikipedia.org/wiki/Ho\\_Tung\\_Gardens](http://en.wikipedia.org/wiki/Ho_Tung_Gardens) (visited 28 Dec 2011).



form of compensation.<sup>33</sup> Another tool of interest could be the non-in situ “transfer of development rights” to alleviate the gridlock in heritage preservation. This was raised at the 1999 Hong Kong International Heritage Conference on Heritage and Tourism, in a paper by Jeff Cody, a former Associate Professor of Architecture at the Chinese University of Hong Kong. He quoted several successful North American examples.<sup>34</sup> Arguably, TDR may not be entirely applicable to Hong Kong as the number of possible receiving sites is limited. However, this instrument might be tested for URA projects as the Authority falls under the ambit of SDEV and is governed by the URA ordinance. Finally, in the case of King Yin Lei Mansion, a jurisdiction was made by Town Planning Board after hearing from the public in agreement that a piece of land zoned for “green belt” was given to the owner in exchange for the protection of the entire historic site, even though the two sites were not contiguous. The owner would still have to pay a land premium for the newly acquired site. The public was willing to give up a piece of green belt land in exchange for a historic complex without spending public revenue. This example can be considered as the first of its kind of success achieved in protecting historic buildings in private ownership.

From the aforementioned cases, no matter what form of compensation is being offered to private owners, it can be construed that the government “buys” back the ownership of the historic properties and not a single genuine case of protection of private historic buildings is successful. It can be argued that either the administration fails to encourage private owners to willingly contribute to this noble cause, or no owner is willing to give up the right to redevelopment as land is seen as a valuable commodity.

### ***Review of the Small House Policy***

The SHP, which grants indigenous males born in the New Territories the right to build a house, is an incongruous administrative mechanism

<sup>33</sup> For Haw Par Mansion and Garden, available at <http://www.heritage.gov.hk/tc/heritage/conservation.htm> (visited 26 Jan 2012); and M. Yu, *Published Research Report* (Hong Kong: Research and Library Services Division of the Legislative Council Secretariat of Hong Kong, 18 July 2008), p 50, available at <http://www.legco.gov.hk> (visited 16 Dec 2009). Another case is Kam Tong Hall, a 1914 Western style private residence. It was sold to the Church of Latter Day Saints in the 1970s. When the Church wanted to redevelop the site to build a high-rise building around the year 2000, it had to apply to the Town Planning Board for a change of zoning. The plans met obstruction here and the matter was resolved in negotiations with the Government over planning incentive as a form of compensation. See F. T. Liu, ed. by Frances McDonald, *Ho Kam Tong, a Man for All Seasons* (Hong Kong: Comprador House Limited, 2003).

<sup>34</sup> See J. Cody, “Transfer Development Rights in Hong Kong: Five Cases Implying Potential Benefits for Heritage Protection” (1999), a paper (unpublished manuscript) presented at the International Conference: Heritage and Tourism organised by the Heritage Trust and the Hong Kong Antiques and Monuments Office, 13–15 Dec 1999.

that has put cultural heritage in peril. This is a thorny issue because the rights of Hong Kong's indigenous people are guaranteed in the Basic Law and are hard to repudiate. However, we are losing our traditional Chinese heritage in no time under the current political situation and the SHP practice. As Chris Alexander has noted, "vernacular built-forms is the evidence of the timeless way of building".<sup>35</sup> Vernacular settlements are valuable living heritage that should be on an equal weighting with monuments. Several World Heritage Inscriptions display precisely this outstanding universal value. I have always maintained that the ancestral halls in the New Territories, coupled with the practice of ancestral worship, could be considered for inscription as Intangible World Heritage. However, it can be argued that vernacular settlements are a form of living heritage and in theory, as a continuing process, should be allowed to adapt to changes. Perhaps in 50 years time, the "Spanish villas" located within Qing Dynasty brick walled communal dwelling compounds will be viewed with another level of appreciation.<sup>36</sup> Such ambiguity and contradiction in architecture may present new opportunities in conservation theory. In any event, Spanish villas or traditional Chinese houses, it is the village setting and the cultural landscape that needs protection and the heritage law currently is not able to offer such kind of coverage.

### *Review of the Building Code and Practice*

There is an urgent need to develop a proper set of conservation guidelines and regulations including different modes of intervention. The current provisions, contained in a uniform building code, pose insurmountable technical problems to conservation interventions, causing extensive alterations to existing structures and unnecessary damage to building fabric. The URA's 2005 Conservation Advisory Panel (CAP) Workshop was an opportune time to call a round-table discussion to address this problem. International and local professionals were invited to present overseas and local case studies on tackling specific intervention issues vis-à-vis structural and fire safety codes, health standards and universal access requirements.<sup>37</sup>

<sup>35</sup> See C. Alexander, *The Timeless Way of Building* (Oxford: Oxford University Press, 1979).

<sup>36</sup> J. Jokilehto, "Preservation Theory Unfolding" (2006) III(1) *Future Anterior*, p 6.

<sup>37</sup> The idea was supported by the 2005 URA's Managing Director. The one-day forum was held on 17 Nov 2005 with the participation of planning, conservation, architectural and surveying professionals, the Fire Services Department and the Buildings Department. Typical examples of local conservation projects—the urban shophouses at Johnston Road (Pawn Shop), Mallory Street, and Lui Sang Chun—were brought up for discussion. See Urban Renewal

Consequently, in May 2008, a special Heritage Unit was formed within the Buildings Department to conduct a consultancy study on the formulation of a new set of building codes and guidelines for conservation and adaptive reuse of historic buildings. This was a watershed development that I have campaigned for over the past decade.<sup>38</sup>

On-the-job training programmes are long overdue for site supervisors and workmen operating on conservation projects; there is also a need to consider a registration system for qualified conservation personnel. Construction workers are the frontline soldiers who carry out the actual work in any conservation project. Inevitably, they will knock down building elements which they consider being obsolete, but which are treasures to conservation professionals. Very often, it is too late to make amends.

The 2005 CAP Workshop helped to instigate vital changes to the construction industry that could improve this situation. The then Construction Industry Training Authority, renamed the Construction Industry Council Training Academy (CICTA) in 2008,<sup>39</sup> has begun providing relevant training courses for construction workers. In December 2007, CICTA began the Conservation of Built Heritage training programme and, over the next 13 months, organised three introductory courses and one advanced course for nearly 100 candidates, including skilled and unskilled workers, contractors, site agents and supervisors, construction and project managers, as well as other building management professionals.<sup>40</sup> In 2011, recognising the importance of the construction workers role in heritage protection, the Council set up a Working Group on Heritage Maintenance to provide an alternative training programme to cater to the increasing demand for trained skill conservation workers.

CICTA's efforts not only mark their leading role in providing organised conservation training programmes in the region, but potentially could develop the agency into an authority whereby qualified competent conservation workers are duly recognised and elderly and senior

Authority, *Conservation Advisory Panel Workshop Report* (17 Nov 2005) (Unpublished workshop report).

<sup>38</sup> A tender was called in Dec 2008 by the Buildings Department for a study of building guidelines and building code exemption for adaptive reuse projects of heritage buildings. Also see D. Lung, "Notes for Central Policy Unit Seminar on Conservation and Hong Kong's Future Development" (28 Oct 1999), available at Hong Kong Government CPU web site: <http://www.cpu.gov.hk/english/documents/conference/e-dlung.rtf> (visited 05 Aug 2010); and D. Lung, "Is Heritage for Sale?" (1999b) A Keynote Speech delivered in the International Conference: Heritage and Tourism, organised by the Antiquities Advisory Board, Lord Wilson Heritage Trust and the Antiquities & Monuments Office, 13–15 Dec 1999.

<sup>39</sup> Available at <http://www.hkcic.org/eng/main.aspx> (visited 30 Jan 2012).

<sup>40</sup> See Urban Renewal Authority, *Conservation Advisory Panel Workshop Report* (17 Nov 2005) (Unpublished workshop report).

craftsmen are honoured. This new dimension could further enhance the pride, honour and respect the workers deserve.

## Conclusion

Heritage has two primary functions: to reflect the political and social developments of the past in order to inform the present, and to promote identity and self-awareness. What is Hong Kong's identity as a post-colonial territory? This question was raised 14 years ago at the time of the handover, when some Hong Kong citizens were concerned about the changing political landscape and uncertainty and anxiety hung in the air. In making reference to the significant role played by heritage conservation in a changing society, in 1998, I made the remark that, "Heritage chronometers are not reminiscent of the architectural composure, but they are measures of the time in which political struggles, social disturbances, civic commotions and economic turmoil have taken place. They are objective reminders of our cognitive presence, and help us to formulate the path to the future. These timepieces need not be monumental, but are part of daily lives".<sup>41</sup>

The protests at both the Star Ferry Pier and Queen's Pier fittingly bear witness to what I have purported. Younger generations today identify Hong Kong as their home; they no longer live in a "borrowed place and in borrowed time", a phrase Hugh Baker, a British author, used to describe the sentiment of the last generation of the Hong Kong people. This is a positive transformation because before the handover, the question of self-identity was challenged from within and without Hong Kong. In conservation practice, each generation has to define what heritage means to them. Jukka Jokilehto, an internationally renowned scholar in heritage conservation theory, reaffirms my avocation that we need the "continuation of surveying of our heritage, both cultural and natural, and the recognition of its significance as a vital component of the culturally and environmentally sustainable development of the world".<sup>42</sup> This "continual surveying" can no longer be the responsibility of government alone. He concludes, "On the contrary, it is the responsibility of the society as a whole. While the role of specialists and experts in the

<sup>41</sup> D. Lung, "Is There Room for Heritage Conservation in Hong Kong, a City of High Land Cost and Rapid Development?" (1998) *International Association for the Study of Traditional Environments Traditional Dwellings and Settlements*; Nezar AlSayyad (ed), *Working Paper Series*, Vol. 119 (UC Berkeley: Center for Environmental Design Research, 1998), p 50.

<sup>42</sup> See n 36 above, p 8; see also M. Marvelli, "Consensus or Conflict? The Power of Ideology Critique in Historic Preservation" (2006) III(2) *Future Anterior*, pp ix–xiii.

preservation process remains vital, the informed participation of additional stakeholders is imperative”.<sup>43</sup> Due to the fact that younger generations are taking a keener awareness and interest in expressing their cultural identity, the rights of future generations in the decision-making process should be respected. After all, this social and cultural right as an indispensable form of one’s dignity and development of one’s personality has long been recognised by the Universal Declaration of Human Rights document (Art 22).<sup>44</sup> As the connection between heritage conservation and human rights becomes closer, our legal instruments which present some degree of inadequacies will have to be reviewed with urgency in order to pave the way for a less contentious administration.

<sup>43</sup> See n 36 above, p 8.

<sup>44</sup> UN General Assembly, The Universal Declaration of Human Rights (adopted on 10 Dec 1948), states: “Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality”. Available at <http://www.un.org/en/documents/udhr/history.shtml> (visited 30 Dec 2011).

