

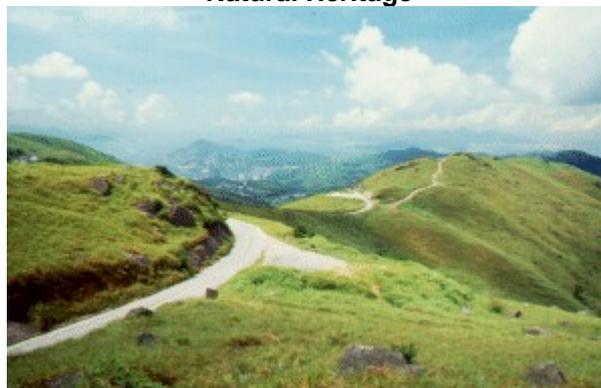
HERITAGE HONG KONG

HERITAGE CONSERVATION POSITION PAPER

Heritage Buildings



Natural Heritage



APRIL 2007

HERITAGE HONG KONG

FOR DISCUSSION : A POSITION PAPER ON HERITAGE CONSERVATION IN HONG KONG

“Historic or heritage places also contribute to the diversity and character of our environment, distinguishing our city from yet another anonymous urban place. They provide townscape variety and a sense of civic pride” – Annie Y.S. Fung

“Development may be the pumping heart of a city but heritage will always remain its soul” - David Lung

“The built heritage is the body while the intangible associations are the spirit of a place” – Laurence Loh

Introduction

This Position Paper has been prepared by **Heritage Hong Kong** (HHK) to form a basis for discussion by the various groups, associations and individuals who have expressed an interest in the identification and conservation of Hong Kong's diverse and valuable heritage assets. Hopefully, such discussion will result in the clarification of just what Hong Kong people regard as “heritage”, what they consider worthwhile to conserve, the effort and expense that they are willing to commit to such conservation and the formulation of ways and means to work with the Government to achieve what ultimately we all want to see – the conservation of the best of Hong Kong's past for the enjoyment and benefit of the present and future generations. The time seems right for such a discussion and views from as wide a range of interested parties as possible are invited.

Heritage Hong Kong is a not-for-profit grouping of concerned Hong Kong residents established with the objective of becoming a focal point for action and ideas on heritage and conservation issues in Hong Kong. It is interested in both the built and natural environment and is in the process of setting up the “Heritage Hong Kong Foundation”, an independent organisation which would function in much the same way as the National Trust in England.

HHK Mission

To ensure that natural, historic, architectural, cultural and social heritage assets in Hong Kong are protected, conserved, operated and managed in a manner which is in keeping with their intrinsic heritage and community value and to facilitate public enjoyment and participation wherever possible.

HHK Vision

To assist in further developing an appreciation and understanding in Hong Kong of the tangible and intangible value of heritage assets in building a cohesive and balanced community, comfortable with its history, its present and its future.

HHK wishes to see a “**heritage first**” approach adopted in the case of Hong Kong heritage assets and a move away from the present practice whereby commercial considerations dominate the decision making process in relation to the future role and use of such assets. Over time the objective is to achieve a situation where the stewardship of these assets is vested in an appropriately structured, not-for-profit Foundation.

In the opinion of HHK, the community should not expect Government to be solely responsible for protecting Hong Kong’s heritage as, at present at least, it is not structured or equipped to do so on a long term basis. Therefore alternative means are required to ensure that our limited stocks of such assets are not lost or damaged.

Recent events have not only generated a much higher level of community involvement in “heritage” in the widest sense but have also persuaded Government to formulate new proposals and this heightened level of interest is very welcome.

1. **Issues and challenges**

1.1 ***What is heritage?***

Heritage is what makes a community what it is today and essentially is one generation’s inheritance from the past and its bequest to the future – each generation should act as custodian for the next. Heritage is usually associated with the past, history and the historic built environment together with traditional cultural and social aspects (“collective memory”, way of life) of a community, district, city, region or country. It is not so readily associated with the natural environment, the landscape, seascape and the flora and fauna which inhabit them. However, both the natural and built environment are inherited and both go to make up, in Hong Kong’s case, the city’s “heritage” and as such are the subject of this paper.

1.2 ***Why is heritage important?***

Heritage serves to shape values, ground aspirations and inspire creativity and a sense of belonging within a community. It contributes to social stability, civic pride and a richer quality of life by providing a framework upon which a community, district, even a country, can continue to grow and develop socially and, in some cases, economically.

Active awareness and protection of heritage assets promotes sustainability of the social framework as well as the natural and built environments and recognises the intangible values brought by honoring the past while planning for the future.

Heritage is commonly thought to be a “public” or “government” issue, hence heritage assets should, wherever possible, be under public control with the public being involved in the process of their identification and stewardship. If the community is not involved in this process, it feels disenfranchised and alienated from its own heritage and a feeling of helplessness develops in so far as its conservation is concerned.

Heritage is not always a priority for the general public in times of rapid or dramatic social & economic change. However, Hong Kong has now reached a point in its history where people increasingly want more from life than

simply trying to provide for their family and this new focus involves, among others issues, a wish to develop roots and become part of the city which they now call home.

1.3 ***What are heritage assets?***

“Architectural significance” is currently the only test under the law in Hong Kong when considering legal protection for our built environment no matter what unique, historical, social or cultural value may be attached to a particular property, group of properties or even a neighbourhood. This means that many of our more interesting buildings and neighbourhoods – the Wanchai Market/Blue House area, the old terraces in Western, are examples – may simply disappear merely because there is no policy or process to facilitate their protection – there is no recognition at present of broader “social” and cultural values.”

In so far as the conservation of the countryside is concerned, the Country Parks Ordinance was enacted in 1976 to provide a legal framework for the designation, development and management of Country Parks and Special Areas.

There are many types of heritage asset which may be broadly classified under the following headings:

- Monuments
- Landscapes
- Archeological objects
- Seascapes/seashore
- Buildings of architectural importance/significance
- Historical buildings
- Places with significant historic, cultural or social associations
- Flora and fauna and their habitats
- Historic gardens and parks
- Streetscapes
- Festivals
- Language
- Legends/myths/folklore
- Music/dance/opera
- Literature
- Drama
- Infrastructure of historic, architectural, engineering or social significance

1.4 ***How should “heritage” be identified?***

Coordinated and collective effort is required to identify what people in a community as diverse as that of Hong Kong regard as its “heritage”. There is a need to broaden, reinforce and institutionalize people’s participation in determining how heritage of all forms connects to their lives and values, so making public engagement the key to defining what heritage matters to Hong Kong and why.

Such public engagement requires a pro-active approach with a strong educational element so as to raise the public consciousness of the issues relating to key heritage assets and their protection and conservation. The aim should be to identify a list of both tangible structures/places and intangible heritage which is considered to be of significance and importance to the community and which should be pro-actively preserved.

The Antiquities and Monuments Ordinance (AMO) came into effect in 1976 to ensure that the best examples of Hong Kong's monuments were under appropriate protection. However, this only protects buildings over 50 years old and other types of heritage identified above have no formal statutory protection or status.

In the same year the Antiquities Advisory Board (AAB) and the Antiquities and Monuments Office (A&M Office) were also established. So far over 230 archaeological sites have been identified and 496 heritage buildings have been graded (in addition to the 81 declared "monuments" which have been designated).

Current definition of grading:

- Grade 1 Buildings of outstanding merit of which every effort should be made to preserve if possible
- Grade II Buildings of special merit; efforts should be made to selectively preserve
- Grade III Buildings of some merit, but not yet qualified for consideration as possible monuments. These are recorded and used as a pool for future selection

Currently there are 117 Grade 1 buildings, 185 Grade II buildings and 194 in the Grade III category. Of this total of 496, 232 are in Government ownership, 218 are owned privately and 46 are Chinese Temples or properties owned by other similar bodies.

The Country Parks Ordinance provided for the establishment of a Country and Marine Parks Board to advise the Director of Agriculture, Fisheries and Conservation who, as Country and Marine Parks Authority, is responsible for all matters on Country Parks and Special Areas.

Country Parks are designated for the purposes of nature conservation, countryside recreation and outdoor education. Special Areas are created mainly for the purpose of nature conservation and together the Parks and Special Areas cover some 415.82 square kilometres.

The Country Parks Ordinance does afford some protection but these areas can and do fall prey to commercial and practical interests (such as the proposed chipping away of Clearwater Bay Country Park for an expansion of the Tseung Kwan O landfill facility, an entirely inappropriate land use) and an overall comprehensive and holistic policy or approach to their conservation is severely lacking and sorely needed.

1.5 ***Recognition/assessment of intangible value***

In a heritage awareness study carried out by The Heritage Council in Ireland published in 2000 (the "Study"), it was established that "heritage" is perceived by most people as being largely physical in nature, and is particularly associated with old or significant buildings. However, as the outcry over the demolition of the Star Ferry Pier and the active efforts being made to preserve Queen's Pier demonstrate, this "traditional" view appears to be changing, at least in Hong Kong, and there is a recognition, especially among younger people, that certain places have a value to society which goes beyond the physical structures within them. The Star Ferry Pier as such was not a very old or very impressive architecturally. However, the events that took place there and the practicality and pleasure which people associate with the ferry itself became embodied in the place developing an emotional value or, as it is now known in Hong Kong, a "collective memory".

Taking the case of the Star Ferry and Queen's Piers one step further, it has been argued that the demolition of Star Ferry Pier has had the effect of undermining the heritage value of Queen's Pier in that the setting surrounding it has been destroyed. With collective memory the setting is important, not just the specific location itself. It appears that those charged with both planning in Hong Kong and with protecting our heritage to not properly understand the criteria for what should be kept and how it should be conserved. This is further demonstrated by the plans of the URA to demolish Wanchai's Lee Tung Street and parts of the Peel, Graham and Gage Streets in Central. These are neighbourhoods, not single buildings as currently listed under the AMO.

This intangible value, the collective social memory, is not always appreciated until it comes under threat and there is a need to develop a mechanism to identify places, sites and settings to which such value is attached so that they can be recognised and protected prior to any threat arising. Such identification would forewarn planners and developers of sensitive areas and enable appropriate protective measures to be put in place.

1.6 **Requirement for a clear Government policy on conservation - Revenue versus Value**

No one Bureau within Government is totally responsible for heritage buildings and their future use with the Antiquities Advisory Board (AAB) advising the Home Affairs Bureau but Government Property Agency, Treasury and Lands Department looking not only to limit the costs of conservation to Government but actually to raise revenues from heritage assets. A revenue as against value approach has largely been the order of the day with heritage buildings being seen primarily in terms of their value to the tourism industry and their ability to secure Government revenues whether through premium payments or commercial rents. Ironically, in many cases the development community has been viewed as the natural "conservation agent" but this has led to the grant of inappropriate development rights for which higher premium payments can be secured.

There needs to be a change in mindset which accepts that heritage conservation adds value intrinsically to the community and that this added, but difficult to quantify intangible value, outweighs the “cost” of not receiving the highest level of premium or the maximum level of rent.

There also needs to be an appreciation that “heritage” value cannot be transferred to a building simply by replicating the design of a former structure since demolished. The new Star Ferry Pier is a case in point. Similarly, the plans to demolish and then replicate some of the old shop houses in the Peel Street redevelopment is at minimum ill-conceived in that all that results is a pastiche, certainly not heritage conservation.

It is unhelpful to consider the protection of heritage buildings and sites in isolation given the land ownership, administration and planning regime in Hong Kong. Any review of heritage policy must be integrated with a similar review of our planning and land use policies in the heritage context in that they need to recognise intangible as well as the tangible value – this is an intrinsic element of the conservation debate. If this aspect is ignored, no amount of consultation will improve the current situation.

Another key element of Government policy which needs to be addressed is that of the rigid application of Building Regulations in respect of heritage buildings. The effect is not only to increase the expense of renovations and refurbishment, in many cases to unaffordable levels, but also to compromise or even destroy the heritage integrity of the properties. There should be a review of the current building regulations with provision to facilitate the conservation of heritage buildings for beneficial use or adaptive re-use. There are genuine technical and physical constraints associated with many heritage structures which make it difficult to them to comply with current statutory or licencing standards. More sympathetic requirements should be adopted without compromising public safety.

Finally, there appears to be no leadership or driving force for the documentation of heritage assets so that proper decisions can be taken by the community and the administration on the formulation of policies and actions.

1.7 The treatment of privately held heritage assets

One of the key issues is that many such buildings or sites are in the hands of private owners and it seems to be generally accepted in Hong Kong that it is not equitable simply to designate the properties for conservation purposes without adequately compensating their owners for the loss of re-sale or redevelopment value, no matter how strongly the community may wish to preserve the buildings or the countryside for future generations. At present there is no dedicated source of funding for the purchase or upkeep of sites or buildings considered worthy of preservation, although there have been more frequent calls recently for this to be addressed and a growing acceptance that the cost should be one borne, at least to some extent, by the community as a whole.

In some countries, buildings and areas are “listed” as being of particular heritage or environmental value or historic interest and this listing imposes restrictions on what can and cannot be done by way of demolition, alteration or future usage. The owner has little say in the listing process

and is not compensated for any loss in value as he retains actual ownership, even though his control over the property may have been significantly compromised. However, the imposition of restrictions is recognised as having created an additional financial burden for the owner and grants are made available to assist with repairs and upkeep as these are frequently more expensive than in the case of modern buildings.

In other jurisdictions, it is the Government that takes the lead, setting aside funds to buy, maintain and manage privately held buildings and sites which have been recommended for conservation by specialist statutory boards, similar to Hong Kong's Antiquities Advisory Board. Whilst this resolves most of the issues, it is an expensive option and one that the Hong Kong Government has been reluctant to assume.

Finally, the owners of buildings of historic or social significance could perhaps be persuaded to preserve them voluntarily if Government was more flexible in its attitude to adaptation and re-use – sensible interpretation of building regulations or, even better, the introduction of a special code for heritage buildings, together with more sympathetic internal layout and building services requirements could go a long way to extending the economic life of many buildings currently at risk.

All or any of these proposals require more detailed consideration but may present workable solutions where, at the moment, there seem to be few, if any, on the table. However, no matter which of the above approaches might be adopted, there is a need for an independent, suitably structured and qualified organisation to assume responsibility for the renovation, operation, maintenance and management of these heritage assets.

1.8 **Who should endorse/verify?**

Heritage belongs first and foremost to the community in which it exists and whose economic, social and cultural development it reflects and, therefore the community at large should participate in the process of identifying and evaluating what should be conserved and protected.

It is encouraging to see that the diverse groups which have an interest in heritage conservation in Hong Kong has recently joined together to establish Heritage Watch and this together with the new inter-active Heritage Hong Kong website should enable a greater number of people to contribute to and be part of the heritage debate. Government, for its part, needs to establish regular dialogue with all those interested to take part and at all levels, particularly in the period between now and the time when the new conservation policy and the rewritten Antiquities & Monuments Ordinance are introduced.

The academic world is essential for researching and recording heritage assets and assisting in the evaluation process. Too much of the city's heritage is undocumented and should, for whatever reason, some of it be lost, it will be forever as there will be no images or records to which future generations can refer.

1.9 Education

There is a real need to educate the community as to what heritage is, why it is important and how a society benefits from the conservation and enjoyment of its heritage assets. This should start in school, forming part of the curriculum for history and civics and visits/exposure to places and events of heritage interest should form part of school life.

There are several well established charters and conventions about which schools should educate their students and about which both the community and sections of Government should learn more – in particular the “Principles for the Conservation of Heritage Sites in China” (the “China Principles”) which were adopted by the Central Government in 2000. These principles are the result of international collaboration based on the Venice Charter (1964) and the Australia ICOMOS (International Council on Monuments and Sites) Burra Charter (1999). The “China Principles” thus represent international best practice and have particular relevance to conservation in Hong Kong.

2. Potential Solutions

2.1 Institutional arrangements - *A heritage trust – combining policy and community involvement*

Due to the multi-disciplinary nature of heritage conservation, a strong institutional framework is crucial to its success. This should include two elements, namely appropriate legislation and a suitably structured and empowered implementing agency.

Currently, different conservation objectives are the responsibility of different government departments and agencies with no single entity able to coordinate or control the process or its outcome. A comprehensive solution would best be achieved through the creation of one single entity with a clear mandate for all aspects of heritage conservation.

It is recognized that any in-depth policy overhaul will take time. However, this does not mean that other associated initiatives should also be delayed. An independent, properly resourced not-for-profit heritage Foundation or trust which would take responsibility for the protection, conservation, maintenance, operation and management of Hong Kong’s natural (land and water based) and built heritage should form the basis of any new policy approach and should be established, recognised and empowered without further delay.

The UK and USA National Trusts can be used as examples to illustrate the functions of such an organisation as both have been very successful in conserving the national heritage of their respective countries. There are also other references in so far as the actual structure is concerned – Community Trust, Kadoorie Farm Trust, etc. The trust should be well-resourced to enable it to purchase land and buildings of high heritage value and ensure that they are operated and managed in a sustainable manner. In particular, it is considered that only a centralised body with public accountability and with dedicated professional expertise would be

in a position to secure the conservation and value of Hong Kong's scattered and varied heritage resources in an integrated and holistic manner.

While the concept of conservation trusts is not new to Hong Kong, their focus to date has been on nature conservation and environmental protection, which covers natural, rather than built, heritage. The Environment and Conservation Fund Ordinance (Cap 450) which came into force in 1994, established a trust fund with the objective of funding educational, research and other projects and activities in relation to environmental and conservation matters. The Trustee of the Environment and Conservation Fund (ECF) is the Secretary for Environment, Transport and Works and although low profile, the Fund has achieved a reasonable degree of success.

Financial Arrangements

How can the necessary funding be raised for such an entity?

Since government itself has a responsibility towards conservation in its widest sense, a substantial contribution could also be justified, perhaps as a one-off grant rather than recurrent expenditure. Hopefully support could be secured from resource-rich bodies such as the Jockey Club and parties who previously expressed interest in funding the conservation of the Central Police Station complex may also be willing to contribute. Another important source would be private sector contributions – corporate as well as individual - by means of donations, bequests, annual pledges, etc.

In terms of other possible sources of funding for ongoing heritage activities, one suggestion has been the setting aside of a percentage of land premium revenues. However, this would be a direct subsidy from Government and as such may not be acceptable. A more innovative proposal is that vouchers could be issued by Government to the value of any diminution in value suffered by the owner due to a conservation order being placed on his building i.e. effectively the value of any latent development potential which could no longer be realised due to the classification of the property. This voucher could then either be used to purchase or part-purchase another property to that value i.e. the vouchers could be traded and would have a recognised financial value. Alternatively, legislation could be introduced under which transfer of an owner's development rights in a "listed" property could be made to another less significant site of the owner's choice.

A "heritage" lottery has been suggested, perhaps once a month or so, so that contributions are made on a voluntary basis but with the burden spread widely across the community at large. Experience elsewhere in the world, including the UK Lottery has been very positive. It has also been suggested that a percentage of the Government revenues raised through horse racing and soccer betting could be allocated to a heritage trust fund and this is another approach that could be further explored.

The most straightforward solution would be to introduce a conservation

tax. It has the advantage of being community borne and linking directly with the objective – conservation - thus reminding the public that conservation means enhancing our heritage by not destroying our past. However, in a low tax jurisdiction such as Hong Kong this is perhaps an extreme option only to be considered once others have been exhausted.

Whichever route is adopted, it is considered that an entity which is recognised and respected by the community at large is required to manage and disseminate such funds.

Institutional Structure

Since the objective of the proposed Foundation or trust would be, in the broadest sense, to safeguard the community's assets, the best institutional structure would be to establish it as an independent corporate body. It should be managed by a public-private board or Council with both the public and private sectors contributing to both its start-up funding and the cost of its ongoing operations.

As a body accountable to the public, the Foundation should be an effective vehicle for raising funds to cover both its recurrent expenses and its conservation initiatives and for employing, either directly or as consultants, professionals in the areas of conservation (in all its forms), to take responsibility for the operation and management of heritage resources, so ensuring that the natural, cultural and other heritage assets within its care are managed in a professional, efficient and sustainable manner.

The following sets out the basic structural parameters which are considered appropriate for the proposed trust organisation:

- An independent, non-governmental, not for profit charitable entity which would embody the trust organisation's purposes, objectives, responsibilities, powers, structure, etc. It is considered that the legal structure most suited to the purpose would be a Hong Kong registered company limited by guarantee, with a strong and respected Council/board, which would provide a corporate governing structure and a clear procedural hierarchy through its Memorandum and Articles of Association
- The trust should be empowered so as to enable it to undertake the following:
 - To acquire, conserve and/or preserve, maintain, manage, operate and promote heritage assets in Hong Kong which it considers should be conserved, preserved or managed for the benefit of the community at large together with the funding thereof
 - To launch, maintain and promote related activities, including research, educational and/or similar activities, including efforts to raise the public awareness of Hong Kong's natural, cultural and built heritage

- To cooperate and work with Government and suitably qualified organizations in carrying out its objectives
- To receive funds of any and all property both movable and immovable and to carry out such acts and activities as are necessary or desirable to obtain income by way of donations, bequests or any other form of gain in order to finance its charitable objectives
- To utilize any surplus of income over expenditure transferred from one year to the next for the further general development of the needs of the trust.

The powers of the trust should include:

- Power to buy, lease, hold, mortgage or otherwise deal in foreshore/land/buildings
- Power to borrow or otherwise raise money, accept donations, bequests, grants, etc. (whether as cash or property) and to act as trustee for such monies or property vested in the trust and to invest and use such funds/property to further its objects and objectives
- Power to make and enter into contracts or other arrangements for the carrying out of works, performance of services or the supply of goods or materials

The trust could be operated on the following lines:

- Open to membership by corporate entities and interested individuals who would pay an annual subscriptions or make other financial commitments to the trust on an ongoing basis ("Subscription Members")
- Governed by a Council or Board, which would appoint a Secretary, Accountant, Auditor and oversee employment of staff and act as trustees of the trust's funds
- Trustees to act in best interests of the organisation, with no personal benefit, so that employees or tenants could not be Council/Board members
- Council to be comprised of a mix of appointed members (by relevant and associated organizations, including senior Government officials) and elected members (from the trust organisation's membership)
- Council members to serve three years and a third to be rotated annually, although available for re-appointment and re-election and to be retired if they do not attend meetings for say 12 months
- Council to take key role in directing policy, fulfilling objectives and directing trust affairs

- Council to be empowered to delegate certain powers to an Executive Committee (comprising officers/representatives of the Council but also including Chairmen of Specialist Committees) which together with full time professional staff would run the organisation on a day to day basis
- No Council and Committee Members would be liable for any loss of the trust organisation arising by reason of any improper investment made in good faith and within the trust's written investment guidelines, or for any mistake or omission made in good faith by him or any other Council or Committee member or for any other matter other than gross negligence or willful fraud or wrongdoing or omission on the part of the member who is sought to be made liable.

Formal powers of the Council to include:

- Establishment of the general policy of the trust organisation including:
 - The principles upon which heritage assets should be acquired or leased
 - The principles governing access to heritage assets by the public
 - The standard of the amenities to be provided at heritage assets
 - The standards of restoration, modernization and upkeep of assets
 - Proposal of amendments to the Memorandum and Articles of Association and/or policies of the organisation but such may not cause the trust to cease to be a charity at law, be repugnant to the objects of the organisation and to be subject to endorsement by Subscription Members of the trust
 - Action to be taken should the trust fail in any way
- Appointment of members of the Executive Committee, establishment of Committee procedures, including quorum, notices, form of meetings, upkeep of minute books, reports to Council, etc.
- Establishment of Bank Accounts
- Remuneration of any office holders (excluding Directors)
- Delegation of powers to Specialist Committees together with relevant procedures
- Appointment of Chairmen of Specialist Committees
- Periodic review of the bodies entitled to appoint members to the Council
- Approval of the annual budget

- Approval of fund raising campaigns
- Approval of the annual accounts
- The form and content of the Annual Report
- Arrangements for General Meetings
- Examination and review of the reports of the Executive Committee
- Membership Subscriptions
- Use of any land or property for public purposes
- Establish Specialist Committees (e.g. Properties Committee, Natural Heritage Committee, Shoreline Committee, Cultural/Built Heritage Committee, Finance Committee, etc.)

Interface with Existing Institutions and Organisations

In order for such an organisation to be successful, it would need to secure the buy-in, support and active participation of the many and varied conservation bodies and organisations, both public and private, already working in Hong Kong.

Perhaps key to this in so far as the built environment is concerned would be the relationship with the Home Affairs Bureau, the Antiquities and Monuments Office (A&M Office) and the Antiquities Advisory Board (AAB), currently responsible for the declaration and grading of heritage buildings in Hong Kong. Government has acknowledged shortcomings in the Antiquities and Monuments Ordinance and the establishment of the trust should be undertaken in tandem with a review of the Antiquities & Monuments Ordinance and should ensure a close working relationship is established between the AAB, the A&M Office and the trust.

A recent proposal by the Hong Kong Institute of Planners (HKIP) suggests that the A&M Office should be placed under the Housing, Planning and Lands Bureau in order to achieve comprehensive heritage conservation and this would appear to be a sensible option given the inter-relationship between conservation, planning and land administration. HHK certainly endorses the view that a review of the current Government structure as it relates to heritage conservation is required so as to ensure that a more integrated and holistic approach is taken in future to the issues and challenges involved.

Although not a “regulator” as such, an effective Heritage Foundation or Trust could act as the guardian of Hong Kong’s scarce historic, natural and cultural heritage. Through the various stakeholders represented on the organisation’s Council/Board, Hong Kong’s conservation interests would be safeguarded in a professional manner. It could, for example, provide the necessary guidance over problems such as when private sector initiative would be helpful, or when intervention by the public sector is appropriate. The trust could also extend its interest beyond the urban

and built environments to include Hong Kong's rural heritage, key countryside, the seashore and even the harbour.

By its very nature, the trust must be professional in its approach, but it should also be credible and fully community-based in its mission and therefore it must be independent of Government while also working closely with it.

It should be engaged with the public on a day-to-day basis, thus helping develop an informed participatory process with the community. In other words, a professional and expert approach in defining and maintaining heritage should be balanced by a community approach to reflect the public view of what constitutes important collective memory, and what deserves protection. A higher level of public appreciation and acceptance would in turn strengthen political will and the mobilization of public resources for heritage conservation.

2.2 Policy considerations

Administrative tools and some existing policies are in place in favour of heritage conservation. What is now needed is a change of mindset and attitude in their application and implementation, a clear understanding of what it is hoped to achieve and a demonstration of commitment, not simply words.

The Culture and Heritage Commission was established in May 2000 to advise Government on the policies as well as funding of culture and arts, including heritage. An inter-departmental committee chaired by the Secretary for Home Affairs was set up to review heritage policy and seek improvements to the policy and legislative framework for heritage preservation – however, a holistic framework in relation to heritage conservation has not yet resulted. Nevertheless a great deal of research and discussion has already taken place and therefore further long drawn out consultation should not be necessary.

It appears to be generally accepted that the AMO requires complete re-writing and that a much more inclusive and flexible approach to what is "heritage" and in what ways it can be protected and conserved is also necessary. However, in spite of all the work done to date, such a review will no doubt take time.

Given this situation and with the seemingly new attitude within the Administration following recent increased pressure from the community, a lot more could be achieved even within the present system. Under the present policy and administrative framework, heritage conservation could be further enhanced in a number of ways:

- Allocation of more resources to the A&M Office, the AAB and other relevant departments in connection with natural heritage so as to speed up the grading and declaration of monuments and protected areas;
- Introduction of administrative guidelines to make it necessary for prior notice to be given to the AMO of any development proposal or building

alteration to all pre-1939 buildings or to other relevant bodies/departments when development proposals are received which threaten valuable natural assets;

- A clear and proactive mechanism for identifying and protecting buildings of architectural or cultural interest or significance but which are relatively modern in terms of age e.g. Wanchai Market, 45 Stubbs Road;
- Requirement that the Government Property Agency must consult the AAB in respect of the use of buildings over an agreed age under its control;
- Development of a statement of significance to guide after-use of all heritage sites and to avoid “dead” as against “living” environments;
- Identification and documentation of the history of all existing heritage/cultural sites (whether natural or built) in Hong Kong, and an inventory of all potential sites/areas based on interest factors appropriate to Hong Kong’s culture, heritage and history.

Whatever mechanism is adopted for heritage preservation, some public resources will have to be used – or their value will have to be forgone – such as funds for resumption, expenses for maintenance, government land used for land swap, land premiums, etc. As identified previously in this paper, this means, given the scale of the problem, new sources of funding have to be identified.

Additional possible administrative approaches to bring about heritage conservation in addition to the establishment of a Heritage Foundation:

There are also a variety of existing tools which can ensure better heritage protection - planning control, government resumption, public-private partnerships, and transfer of development rights.

a) Planning control: new zoning mechanisms

The use of planning tools such as the creation of new zonings and the tightening of the Hong Kong Planning Standards and Guidelines could be effective ways to achieve heritage conservation. The result would be to impose more stringent conditions on potential developments on or near heritage sites. Therefore five new planning tools to enhance heritage conservation might be introduced:

- (i) A new conservation zoning, “area of significant historical value”, could be introduced into the planning system. This could be applied to individual buildings, building lots or whole areas. It could provide more extensive coverage than present declared monuments or archaeological sites which are specific to buildings or confined locations.

- (ii) A second type of zoning, “area of significant cultural value”, could be introduced to designate a site or area with a local way of life which is recognized and valued by the community, whether in the urban or rural areas. Examples would be Tai O in Lantau and Shanghai Street in Yaumatei.

It has been suggested that these proposed zonings could also be achieved via an alternative new zoning option – “heritage conservation zone” – so as to enable more integrated planning and conservation within areas/neighbourhoods in which there are clusters of heritage buildings.

- (iii) The precautionary principle could be incorporated into the planning guidelines, particularly in relation to the treatment of specific classes of historical structures, such as pre-1939 buildings. Just as fishponds are protected by planning control so that permission has to be sought for all pond filling, all pre-1939 buildings could be deemed to have conservation value and while demolition would not be completely ruled out, they should all be subject to applications under Section 16 of the Town Planning Ordinance, whereby consultation with the AMO is made mandatory before any action is taken.
- (iv) A further precautionary principle could be built into the planning guidelines in respect of undeveloped countryside, coastal areas, natural waterways and shorelines so that there would be a presumption against their alteration or development in any way unless approved by the Town Planning Board. Many such areas are at risk and should be protected at least until it can be shown that such a presumption is not justified.

(b) Government resumption or buy out

The resumption of heritage sites by Government is generally considered in Hong Kong to be an extreme option which should only be used in exceptional circumstances. However, as an option, it should not be ruled out altogether. Times have changed and whereas there may have been public objection to such action ten years ago, there could well be support today in extreme situations and there is precedent in that it was adopted in the case of the Morrison Building in Tuen Mun. It would be necessary for Government to accept that in particular circumstances resumption to ensure preservation or conservation qualifies as being for a public purpose and there would be the need to establish precise procedures as to the future management and operational responsibility for any such resumed properties. However, it is suggested that the subsequent restoration, re-use and management of any such site or property should then become the responsibility of the proposed heritage trust organisation (see above) under an appropriate “public-private partnership” arrangement.

(c) Public-private partnership

“Public-private partnership” denotes an approach rather than a mechanism and there are many ways in which such partnerships could be structured. They could take the form of Government making heritage

sites or buildings available to qualified private sector organizations either on a long lease for a peppercorn (nominal) rent or at nil or nominal premium in exchange for their conservation, maintenance and management to a pre-agreed brief and subject to the necessary demonstration of the viability of the proposal.

In order to avoid abuse and to achieve maximum conservation, in adopting a public-private partnership approach it should be made very clear at the outset that the objective is conservation, not maximization of returns, and the partnership is merely a means to achieve that objective.

(d) Non in situ exchange - transfer of development rights

Problems often arise when conservation of valuable, privately held, historical resources conflicts with established development rights, such as in areas within a residential or village zoning. For these cases, conservation could be achieved through transferring the development rights elsewhere so that no development actually takes place in the area to be conserved. Such a concept is generally accepted amongst conservationists and planners (and has been used successfully in Macau) as a practical tool to effect heritage preservation.

Four options are suggested for consideration as a means of effecting the transfer of development rights, subject to the general premise that each solution would need to be tailored to the particular circumstances of the case:

- i. A land-swap option: the exchange of the conservation site/area for government land of equal value elsewhere, for example, re-siting traditional villages. If Government agrees to a land swap for a site with a heritage building on it, the building should immediately pass to the proposed Heritage Foundation which would then be responsible for its restoration, operation, management and maintenance. If the owner of the building/site benefits financially from such a land swap, there should be a "heritage levy" payable on the new site of say 5% of the land value and this would go directly to the Foundation. The swap could be implemented by "surrender and regrant" with appropriate special conditions being written into the new Government Lease.
- ii. The upgrade of the development potential of other sites/areas within the portfolio of a conservation site owner in consideration of a commitment to pay for the conservation of that specific heritage site/building. This could be in the form of extra plot ratio, or up-zoning of areas upon which development would not otherwise have been permitted. Again, if the owner benefits from this upgrade a heritage levy would be payable for the benefit of the proposed Foundation which would take over the operation, maintenance and management of the building or site. This principle could also be adopted to ensure the upkeep of heritage buildings under the ownership/control of the Government or the proposed Foundation.
- iii. Allowing the transfer of unused development rights from a declared site to another development. Permitting such a transfer means there

is no gain or loss in declaring buildings under the AMO. Such a mechanism was used in the case of the conservation of the London Mission Building, the conservation of which was written into the Government Lease conditions.

- iv. Monetisation: The development rights attached to any particular site/area are monetised in such a way as to be freely exchangeable. This approach is similar in concept to the Letter B mechanism introduced in the 1960's by which agricultural land resumed by Government had an exchange value of 5:2 (5sm of agricultural land to 2sm of building land). The Letter B could then be sold to developers and allowed them to increase plot ratios on specially designated sites endorsed by Government. This system could be used to exchange development rights (even, possibly, potential development rights) attached to the site of a declared building or which has special ecological or other value which is in private ownership so as to compensate the owner and ensure the conservation of the heritage asset concerned.

In all cases, a "see-through" approach similar to the audit-trail concept used by tax authorities in assessment against tax avoidance, is worth exploring when determining the "reasonable cost" for acquiring or compensating for the purposes of conservation.

Finally, the Conservancy Association has proposed that a new Heritage Impact Assessment Bill be introduced. This would take heritage impact assessment away from its currently highly compromised form in the Environmental Impact Assessment Ordinance, thus giving it a proper place in the development process. This proposal seems sensible and, given the experience gained in respect of the EIA Ordinance, an HIA Ordinance should be relatively easy to enact.

2.3 **"Heritage Alert" Website**

The "Star Ferry" incident drew attention to the fact that it is often difficult, even for those with a keen interest in heritage matters, to know what planning proposals or applications might impact adversely on sites, buildings or districts with heritage value. It is true that notices are published, in the media, on the actual sites or buildings concerned and on relevant websites but very few people have the time or resources to monitor these on a comprehensive or daily basis. Government does not always issue press releases or media announcements about such matters – and gazettal or a quiet internet posting are not the same thing.

This being the case, there is a need to provide a facility for the sharing of information between groups and individuals who have knowledge of, and can access information about, plans, proposals, applications and policies which could impact on heritage assets in the territory. It is suggested that an interactive website is likely to represent the best solution in that information can be posted and stored, queries can be posed, a broad range of people would have access, including the general public, and comments, thoughts and solutions can be put forward.

In addition the website could invite the public to suggest sites, districts, buildings, cultural events, etc. which they consider worthy of conservation and views could be canvassed from other visitors as to whether and what action should be taken to ensure their protection. This could be a valuable resource to both Government and the various heritage groups as to exactly what is considered in Hong Kong to be of value from a heritage perspective, what should be included in future definitions of the “heritage” to be protected and conserved and where sensitivities are likely to be faced when new developments are under consideration.

This proposed “Heritage Alert” website is considered to be complementary and in addition to the Hot Spots List recently established by Heritage Watch which focuses on specific sites which could be under threat.

2.4 Public Access to Heritage Assets

It is generally thought that heritage assets – both built and natural – belong to the community whose history created the heritage value which they embody. If this is the case, then the community, where possible, should have easy and frequent access to such assets – they should not be put to uses which bar the public without good cause. However, the current system whereby the Administration often seeks bids from private sector, commercial entities to take up the responsibility of renovating, operating and managing major heritage sites and buildings means that full public access is sometimes difficult to accommodate as it is not always compatible with the need for the operator to make a return on the funds invested.

There is also the issue of the level of renovation and subsequent management which Government departments feel it is necessary to insist upon in order to meet public access requirements. Additional staircases, toilets, fire safety installations, security provision – not only do these requirements all add to the cost of renovation and management on the off chance that members of the public may wish to view the property but some have the added consequence of compromising the very heritage value that the operator is charged with conserving. Clearly in the case of an important building or group of buildings such as, for instance, the Central Police Station complex, it is essential that the public have access to as many parts of the property as possible, and that large numbers of visitors should be expected so that adequate public facilities are not an unreasonable requirement. However, in the case of smaller premises it may well be enough to offer access by appointment to small, interested groups who understand and accept that no special facilities are available and this type of flexibility needs to be built into the thinking of the Buildings Authority and other relevant Government departments.

2.5 Overriding public need

One further proposal is that declared and listed sites, whether heritage buildings, archaeological sites, sites of special ecological or scientific interest or those of outstanding natural beauty such as areas of countryside or shoreline should not be demolished or developed in any way (except where essential repairs, maintenance or safety works are

concerned) unless it can be shown that there is an overriding public need – such need to be defined in the same way as for reclamation works within the harbour. This would prevent unnecessary loss of heritage assets simply because their demolition or development presented an “easy” option in the implementation of infrastructure projects or revenue generating development proposals.

3.0 Recommendations

This Paper attempts to set out the current position in Hong Kong in so far as heritage conservation is concerned. It is not a position of which we can be proud in that in spite of the strength of our economy and our claim to be a world city, our record in the field of heritage conservation is extremely weak – and well behind many of our poorer Asian neighbours let alone real world cities such as London, New York and Paris.

The Government has to date, at least, preferred to focus on the revenue generation aspects of land and buildings and has ignored the lifestyle and civil society impacts that such a focus inevitably brings. Historically, perhaps, this could be understood and many in the community supported economic over social development but since 1997 such an attitude is less forgivable in that the appreciation and conservation of heritage has been shown to help build a stable, rooted society in which the past, present and future can meet. The true “value” of our heritage cannot be calculated simply by comparison with the costs of its conservation – something the Government still does on an almost daily basis.

Hong Kong needs a clear and unequivocal commitment by Government to heritage conservation, a strong and comprehensive heritage policy drawn up with full public participation, broad ranging and categorical supporting legislation and institutional arrangements which will ensure that the policy and the law are enforced and an independent and credible, not for profit organisation which can take responsibility for the operation, management and maintenance of our heritage assets for the benefit of present and future generations.

This requires a genuine public/private partnership approach – not a government-run Foundation or trust but one which fully involves the public as well as government and professionals in the field of heritage conservation, not Government decisions, without reference to public opinions and sensitivities, on what shall or shall not be conserved or what has or has not heritage value. However, such an approach also puts an onus on the private sector to play its part not only by participating in the formulation of policy or legislation but also by contributing to the financial costs involved in ensuring that our heritage assets are passed on to succeeding generations in an acceptable and appropriate state of use and repair.

The establishment of a Foundation on the lines proposed in this paper is considered by Heritage Hong Kong to be the optimum way in which to secure the future of Hong Kong’s heritage and we invite both Government and others with an interest in heritage conservation to consider our proposals, contribute their comments and views and help to refine the

model, if necessary, so that it is entirely suited to the needs and requirements of both the community and the Administration.

In its recent paper, the HKIP supported the establishment of an independent trust fund to rejuvenate heritage buildings, the introduction of a compensation mechanism (either in cash or tax breaks) and exchange of heritage sites for nearby land to encourage private property owners to protect heritage – all proposals put forward in this Position Paper – and we ask other organisations with an interest in, and concern for, the protection and conservation of Hong Kong's remaining heritage assets also to express their views. Whilst further consultation on heritage conservation was described as “unfortunate” by the HKIP in that there has already been three years of consultation that has resulted in very little progress, if any, being made in the formulation of a comprehensive heritage policy or reform of the AMO, the more support that can be secured for some if not all of the ideas that HHK has put forward, the more weight they will have and hopefully the more they will be taken seriously by the relevant Government officials. The time for consultation is over - we now need to act if we are save our rapidly disappearing heritage.

Please forward comments and suggestions to:

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