

An Old-New Dilemma: A Commentary on Heritage Preservation Laws in Singapore¹

I. Introduction

1. In Singapore, three statutes provide general protection to tangible heritage: the Preservation of Monuments Act (“**PMA**”)² provides for the protection of historical sites and buildings through the National Heritage Board (“**NHB**”); the National Heritage Board Act³ (“**NHBA**”) regulates archaeological investigations and the National Museum of Singapore and its collections; and the Planning Act⁴ (“**PA**”) incorporates heritage considerations into the land planning process. Heritage, in this context, includes sites, buildings, structures and artefacts.
2. Due to recent events (which will be discussed below), some have argued that the heritage preservation laws in Singapore are inadequate.⁵ Others have called for a more comprehensive legal regime for heritage preservation.⁶ This article will argue that the present state of law with regards to tangible heritage protection is indeed unsatisfactory as the law provides only limited coverage. Two areas of inadequacy will be highlighted: firstly, the NHBA’s inability to compel compulsory consideration of heritage impact in the land planning and development process and, secondly, the shortcomings in the gazetting of national monuments under the PMA. These two gaps in the existing legal framework for heritage preservation must be promptly addressed if Singapore is to better protect its tangible heritage.
3. The analysis is divided into three parts: Part II will provide an overview of the statutory laws in Singapore that guide the preservation of tangible heritage; Part III will elaborate on the two areas of inadequacy; and, lastly, Part IV will briefly explore recommendations for improvement.

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² Preservation of Monuments Act (Cap 239, 2011 Rev Ed) (“**PMA**”).

³ National Heritage Board Act (Cap 196A, 1994 Rev Ed) (“**NHBA**”).

⁴ Planning Act (Cap 232, 1998 Rev Ed) (“**PA**”).

⁵ Jack Tsen-Ta Lee, “A Presence of the Past: The Legal Protection of Singapore’s Archaeological Heritage” (2013) 20 International Journal of Cultural Property 257; Jack Tsen-Ta Lee, “We Built This City: Public Participation in Land Use Decisions in Singapore” (2015) 10(2) Asian Journal of Comparative Law 213. See also Melody Zaccheus, “Patching Heritage Cracks” *The Straits Times* (26 September 2014).

⁶ *Ibid.* See also Melody Zaccheus, “What Future for Our Past?”, *The Straits Times* (21 June 2014).

II. Overview of Existing Heritage Preservation Laws

A. *National Heritage Board Act*

4. The NHB was established pursuant to the NHBA.⁷ Its primary functions are, *inter alia*, to “explore and present the heritage and nationhood of the people of Singapore”,⁸ “promote public awareness, appreciation and understanding of the arts, culture and heritage”,⁹ and “advise the Government in respect of matters relating to the national heritage of Singapore”.¹⁰
5. Provisions within the NHBA pertaining to tangible heritage preservation cover only archaeological investigations¹¹ and the management of National Museum of Singapore.¹² There are no provisions expressly conferring power on the NHB to inquire into or intervene in land development decisions that may be detrimental to the heritage value of a historical site or building. Furthermore, although s 49 states that the NHB may, “with the approval of the Minister, make regulations for any matter which may be prescribed under [the NHBA] and generally for the better carrying out of the objects and purposes of [the NHBA]”,¹³ no subsidiary legislation relating to tangible heritage protection has been promulgated.

B. *Preservation of Monuments Act*

6. The NHB is also responsible for the administration and enforcement of the PMA.¹⁴ The main purpose of the PMA is to provide for the preservation and protection of national monuments.¹⁵ Thus, the PMA empowers the NHB “to identify monuments that are of such historic, cultural, traditional, archaeological, architectural, artistic or symbolic

⁷ NHBA, *supra* n 3, s 3.

⁸ NHBA, *supra* n 3, s 6(a).

⁹ NHBA, *supra* n 3, s 6(b).

¹⁰ NHBA, *supra* n 3, s 6(g).

¹¹ NHBA, *supra* n 3, s 46.

¹² NHBA, *supra* n 3, Part 3.

¹³ NHBA, *supra* n 3, s 49.

¹⁴ PMA, *supra* n 2, s 3.

¹⁵ PMA, *supra* n 2.

significance and national importance” and make recommendations to the minister-in-charge for their preservation.¹⁶ The gazetting process begins with the NHB researching and recommending monuments which are worthy of preservation, followed by the Minister’s making of the preservation order. Upon such gazetting, the NHB will determine and implement the standards, guidelines and methods for their preservation.¹⁷ A monument owner is expected to maintain the national monument in accordance with the prescribed guidelines,¹⁸ failing which the owner will be penalised under s 13(7).¹⁹ Under s 15(1), national monuments are also protected from unauthorised alteration and even destruction by any person.

C. *Planning Act*

7. Unlike the NHBA and the PMA, the PA does not directly provide for heritage preservation. The central focus of the PA is the planning and development of Singapore’s urban landscape.²⁰ Nonetheless, the PA remains relevant to a discussion on heritage preservation because s 9 prescribes that the Minister for National Development may designate in the master plan “any area ... of special architectural, historic, traditional or aesthetic interest” as a conservation area, which may comprise a whole area, a group of buildings, or a single building.²¹ In addition, the Urban Redevelopment Authority (“URA”) may issue guidelines for the conservation of buildings or land within a conservation area and for the protection of their setting.²²
8. However, the application of the conservation-related provisions in the PA is limited to the scope of the master plan which guides the development of Singapore’s built-up environment.²³ The PA stipulates that applications for land development permission must be determined in conformity with the master plan and any relevant certified interpretation plan.²⁴ When assessing the applications, although the Minister may

¹⁶ PMA, *supra* n 2, ss 4(a) and 11.

¹⁷ PMA, *supra* n 2, s 4(c).

¹⁸ PMA, *supra* n 2, s 13(1).

¹⁹ PMA, *supra* n 2, s 13(7).

²⁰ PA, *supra* n 4.

²¹ PA, *supra* n 4, s 9.

²² PA, *supra* n 4, s 11(1).

²³ PA, *supra* n 4, s 6. The first master plan was prepared by the Singapore Improvement Trust, and approved by Governor in Council on 5 August 1958.

²⁴ PA, *supra* n 4, s 14(1).

depart from the plans in limited circumstances—such as when a conservation or preservation study is being carried out on the relevant site²⁵—the PA neither requires applicants to assess the impact of their proposed work on the environment or heritage²⁶ nor specifies any procedure for third parties, including government agencies, to object to the granting of permission. In fact, this absence of a procedure for raising objection is largely unique to Singapore.²⁷

9. Furthermore, the PA uses the term “conservation” instead of “preservation”, which is used in the PMA and the NHBA. During the Second Reading of the Preservation of Monuments Bill, then Acting Minister for Information, Communications and the Arts also drew a similar distinction when he said that the new penalty clauses in the PMA generally “draw reference from and, where applicable, are pegged above that of the [PA] which governs conserved buildings.”²⁸ This is because “[n]ational monuments are deemed buildings with greater heritage and architectural value, and hence illegal works on them or destruction should not be treated any less seriously than conserved buildings.”²⁹ As such, the distinction between “conservation” and “preservation” likely indicates a difference in the respective statutes’ treatment of tangible heritage, with “preservation” commanding a higher degree of protection for the national monuments.

III. Analysis: Gaps in the Legal Framework for Tangible Heritage Preservation

A. *The NHBA’s lack of force vis-à-vis the PA*

10. Several controversial events in recent years have triggered questions about the strength of the NHBA in promoting heritage preservation vis-à-vis the PA. The Bukit Brown controversy is a notable example. In 2011, the Singapore government announced its intention to build a road across two adjoining historic Chinese cemeteries, namely Bukit

²⁵ PA, *supra* n 4, s 14(2)(b).

²⁶ Lee, *supra* n 5, at 257–258 and 273.

²⁷ PMA, *supra* n 2; Melody Zaccheus, “Conserved Buildings: Consult Public Before Slicing and Dicing”, *The Straits Times* (8 September 2016) <<http://www.straitstimes.com/opinion/conserved-buildings-consult-public-before-slicing-and-dicing>> (last accessed 1 September 2017).

²⁸ *Singapore Parliamentary Debates, Official Report* (13 April 2009) vol 85 at col 3648 (RAdm [NS] Lui Tuck Yew, Acting Minister for Information, Communications and the Arts).

²⁹ *Ibid.*

Brown Cemetery and Seh Ong Cemetery.³⁰ While expected to alleviate traffic congestion in the area,³¹ the new road will have a detrimental impact on the heritage and environmental integrity of the cemeteries.³² The two cemeteries form part of what is believed to be the largest Chinese cemetery outside China³³ and their heritage value is arguably irreplaceable. Following the announcement, the Singapore Heritage Society and members of other civil society communities objected to the proposal to amend the master plan, under the PA, to include the road.³⁴ The response from the Ministry of National Development (“MND”) acknowledged but did not address the civic groups’ concerns and merely stated that “the conservation of Singapore’s heritage is factored in our land use plans ... [b]ut there will be occasions when trade-offs will need to be made in our land use decisions”.³⁵ The NHB, which is the agency in the government overseeing heritage preservation, was not one of the parties signing off the 2011 media release.³⁶

11. The Bukit Brown controversy has not only highlighted the gaps in the NHBA and the PA but, more importantly, the urgency of examining them. Neither the NHBA nor the PA requires the URA or the MND to consult the NHB on potential heritage impact when development applications are considered.³⁷ The NHBA may have vested power in the NHB to safeguard Singapore’s diverse heritage but it appears that such power is confined to just “exploring”, “presenting” and “promoting” heritage appreciation.³⁸

³⁰ Land Transport Authority, URA, and National Parks Board, “Construction of New Dual Four-Lane Road to Relieve Congestion Along PIE & Lornie Road and Serve Future Developments” (12 September 2011) <<https://www.lta.gov.sg/apps/news/page.aspx?c=2&id=rj2i4o1u3d7018466v86y82epxjj32mwbvnhu6rpwt8lplkgo6>> (last accessed 1 September 2017).

³¹ Land Transport Authority, *supra* n 30.

³² Terence Chong, “Bukit Brown as Contested Space” in Position Paper on Bukit Brown at 20–24, Singapore Heritage Society (January 2012) <http://www.singaporeheritage.org/wp-content/uploads/2011/11/SHS_BB_Position_Paper.pdf> (last accessed 1 September 2017).

³³ *Ibid.*

³⁴ Singapore Heritage Society, “Letter to MND on Draft Master Plan 2013” (18 December 2013) <<https://www.facebook.com/notes/singapore-heritage-society/singapore-heritage-societys-letter-to-mnd-on-draft-master-plan-2013-18-dec-2013/611710158876624>> (last accessed 1 September 2017); archived at <<http://perma.cc/RPL8-U3Z2>>; Ian Chong, “How You Can Give Feedback on Bukit Brown in the Draft Master Plan 2013”, *All Things Bukit Brown* (3 December 2013) <<http://bukitbrown.com/main/?p=8420>> (accessed 12 June 2017); archived at <<http://web.archive.org/web/20140111151432/http://bukitbrown.com/main/?p=8420>>; All Things Bukit Brown, “Your Feedback to MND” (12 December 2013) <<http://bukitbrown.com/main/?p=8459>> (last accessed 1 September 2017).

³⁵ SOS Bukit Brown, “Gazetting the Land Use Master Plan 2014”, SOS Bukit Brown Facebook Page (July 2014) <<https://www.facebook.com/notes/sos-bukit-brown/gazetting-the-land-use-master-plan-2014did-mnd-and-ura-just-ignore-the-law/664480653634266>> (last accessed 1 September 2017).

³⁶ Terence Chong, *supra* n 31.

³⁷ Lee, *supra* n 5, at 274.

³⁸ NHBA, *supra* nn 11–13.

Curiously, the NHB—the national agency overseeing heritage preservation efforts in Singapore—is not empowered by the law to vet proposed land development plans that may potentially affect the heritage integrity of a site. Thus, it is arguable that the NHBA faces constraints in encouraging heritage preservation since it lacks the legal force to balance land development with heritage preservation.

12. These same concerns for heritage preservation are present with regards to the PA. Section 9 of the PA only goes as far as to state that the Minister *may* designate conservation areas. Essentially, planning authorities ultimately have the power to act without regard for the opposing interests whenever they deem necessary.

B. *Shortcomings in the National Monument Gazette Process*

13. The Bukit Brown controversy also drew attention to the lack of clarity in the gazetting process and called into question the adequacy of the PMA. According to s 4(a) of the PMA, the NHB is required to identify monuments of “such historic, cultural, traditional, archaeological, architectural, artistic or symbolic significance and national importance as to be worthy of preservation” and recommends the Minister to preserve such monuments.³⁹ Given the broad terms used to describe a monument, it is possible that Bukit Brown Cemetery would fall within the definitions of “monument” as well as “historic significance”. Furthermore, the word “shall” imposes a duty incumbent on the NHB to ensure that monuments satisfying the criteria are recommended to the Minister for preservation.
14. Although many have called for the gazette of the Bukit Brown Cemetery as a national monument to protect it from being developed pursuant to the PA,⁴⁰ the Bukit Brown Cemetery is not gazetted and does not seem to be considered for gazette. The broad terms used in s 4(a) may have functioned as a double-edged sword. Since the provision is ambiguous as to what it means to have “historic, cultural, traditional, archaeological, architectural, artistic or symbolic significance”, the NHB only needs to justify its decision by indicating that a monument does *not* have any of the significance required

³⁹ PMA, *supra* n 2, s 4(a).

⁴⁰ Lee, *supra* n 5, at 18–19; PMA, *supra* n 2, s 15.

by s 4(a). Although this lack of justification does not impact the legal certainty of the PMA, the process by which the NHB determines the heritage significance of a monument is largely unclear.

15. Another shortcoming of the PMA pertains to a monument owner's refusal of a preservation order. An owner who does not wish to take on the additional responsibility of maintaining the national monument according to the prescribed preservation guidelines may choose to submit his objection to the gazette under s 11(7)(b) of the PMA⁴¹ and the NHB is to consider every objection under s 11(7)(c).⁴² In addition, s 12 of the PMA states:⁴³

“Where a preservation order is made in respect of any structure that appears to [NHB] to be occupied as a dwelling-house and that structure has not been vested in [NHB] or the Government, as the case may be, then, if the structure is not acquired under the Land Acquisition Act⁴⁴ within the period of one year from the date of the preservation order, the preservation order shall cease to have effect in relation to that structure.”

16. Therefore, if the structure under consideration for gazette is a dwelling house, besides s 11(7), an unwilling owner has s 12 as an additional avenue to prevent the gazette. This is unless the structure is subject to compulsory land acquisition within one year of the preservation order. However, when the structure ceases to be a dwelling house, the owner may find it substantially more difficult to prevent a gazette by relying solely on s 11(7). Section 11(7)(b) merely provides that an owner and his neighbour-occupiers may submit their objections to the making, amendment or revocation of the preservation order;⁴⁵ in turn, the NHB needs only to consider but not accept every objection pursuant to s 11(7)(c).⁴⁶ Since the NHB may reject objections, s 11(7)(b) is essentially made otiose.

⁴¹ PMA, *supra* n 2, s 11(7)(b).

⁴² PMA, *supra* n 2, s 11(7)(c).

⁴³ PMA, *supra* n 2, s 12.

⁴⁴ Land Acquisition Act (Cap 152, 1985 Rev Ed).

⁴⁵ PMA, *supra* n 41.

⁴⁶ PMA, *supra* n 42.

17. However, the Latin maxim *lex nil frustra facit* (“the law does nothing in vain”) would support the contrarian argument that an objection, and therefore s 11(7)(b), cannot be as easily disregarded. If the Parliament had intended to give the NHB and the Minister full discretion in deciding the monuments to be preserved, it would have excluded or repealed s 11(7)(b). The duty to maintain a national monument is a serious and costly responsibility; any infraction would attract severe penalties, which can amount up to a \$100,000 fine and/or a maximum jail term of 12 months for individuals, or \$200,000 for corporations.⁴⁷ As such, it would be unfair to a monument owner if the law does not provide any avenue for him to avoid the imposition of such a heavy burden. At the time of writing, it appears that s 11(7)(b) has never been invoked before and it remains to be seen how the courts would apply the provision.
18. Although it may be in the interest of society to gazette monuments, even if it is against the preference of the owner, it may not be a reasonable and realistic rule. In order to avoid incurring liabilities, a reluctant owner might restore and protect the national monument according to the minimum prescribed standards—such as preserving specific architectural features—but do nothing more to ensure that its heritage integrity is kept completely intact. Consequently, this approach might not be beneficial to long-term heritage preservation.
19. The deterrent effect of the PMA’s penalty framework may also be subject to scrutiny. As mentioned earlier, the three statutes are likely to approach heritage preservation differently as they have used distinct terms, *i.e.*, “conservation” and “preservation”, to refer to the protection that they are respectively affording to tangible heritage. The maximum penalty that the PA may impose is now a fine of \$500,000⁴⁸ when a person demolishes (part of) a building in a conservation area without a conservation permission.⁴⁹ In contrast, the highest fine prescribed in the PMA is a smaller sum of \$200,000 for a similar offence;⁵⁰ arguably, the deterrent and punitive effect of the PMA penalties has therefore become weaker, affecting its strength in protecting the national monuments.

⁴⁷ PMA, *supra* n 2, ss 15(4) and 20(2).

⁴⁸ The penalties in the PA were revised recently and came into effect on 15 May 2017.

⁴⁹ PA, *supra* n 4, s 12(4A)(a).

⁵⁰ PMA, *supra* n 47.

IV. Brief Recommendations

20. To improve the strength of the NHBA in promoting overall heritage preservation, it has been suggested that there should be laws stipulating that every application for land development must be submitted with a heritage impact assessment report, and the developer would bear the responsibility of undertaking the assessment.⁵¹ However, with respect, such a suggestion may be impractical. This is because archaeologists in Singapore are few in number and disproportionate to the list of pending development projects at any given time.⁵² Most developers would likely have to resort to engaging archaeologists from overseas, which will be costly and might delay development projects.
21. Fortunately, since 2015, the NHB has been carrying out two heritage surveys: one for tangible heritage and the other for intangible heritage.⁵³ From the databases created out of the surveys, developers and government agencies can obtain information on the heritage value and degree of conservation needed for each notable site and building. Consequently, the better approach might be for the NHBA and the PA to stipulate stronger inter-agency coordination and collaboration. For instance, the URA or the developer could be required, as a regulation, to consult the NHB on land development applications and to cross-check against the NHB's survey findings before ascertaining the need for archaeological assessment. In addition, the information from the surveys could be used to update the definition of "monument" and "conservation area" in the PMA and the PA respectively.

⁵¹ Lee, *supra* n 4, at 264.

⁵² The Nalanda Sriwijaya Centre at the Institute of Southeast Asian Studies-Yusof Ishak Institute is a modestly staffed team of six, 10 visiting fellows and 6 affiliates: see Nalanda Sriwijaya Centre website <<https://www.iseas.edu.sg/about-us/researchers/nalanda-sriwijaya-centre-list/research-officers-associates>> (accessed 1 September 2017). In contrast, the Building and Construction Authority processed more than 6,800 building plans in the financial year of 2015: see Building and Construction Authority Annual Report 2015/16 <https://www.bca.gov.sg/AboutUs/others/annual_report_16.pdf> (last accessed 1 September 2017). The MND committed S\$1.36billion of development expenditure in financial year 2015: see Ministry of National Development's Budget for Financial Year 2015 <http://www.singaporebudget.gov.sg/data/budget_2016/download/45%20MND%202016.pdf> (last accessed 1 September 2017). It is deduced from the aforementioned figures that the number development projects in Singapore is highly disproportionate to the number of archaeologists based in Singapore.

⁵³ National Heritage Board website, "NHB Launches Survey on Intangible Heritage", *National Heritage Board* (9 July 2016) <<https://www.nhb.gov.sg/~media/nhb/files/media/releases/new%20releases/media%20release%20-%20nhb%20launched%20survey%20on%20intangible%20cultural%20heritage.pdf>> (accessed 1 September 2017).

22. On the process of gazetting national monuments, it is submitted that the PMA's inherent ambiguities and shortcomings call for legislature attention. The PMA should provide clearer interpretations of the monument evaluation criteria, lay down rules for a more transparent assessment process, and revise the penalty quanta. Specifically, the law should require better justification of a decision to *not* gazette a site or building where there is strong evidence of its heritage significance, since the gazetting of a national monument is a matter of national interest and leaves an indelible mark on Singapore's physical landscape. It is not unprecedented to require greater transparency and clarity. A similar requirement can be found in s 4(a) of the Planning (Master Plan) Rules, which states that the competent authority shall publish publicly a notice of its submission of a proposal for an amendment to the Master Plan for a specific period of time, "within which objections to and representations concerning the proposed amendment may be made".⁵⁴
23. Regarding the effectiveness of s 11(7)(b), it is my view that the heritage preservation laws in Singapore should allow an owner to refuse a preservation order. Instead of imposing the duty of monument maintenance on an unwilling owner, the law could provide for other forms of safeguard. For example, in the event that an owner objects to the preservation order, both the owner and the NHB must publish the reasons of, and for or against the objection; the PMA could additionally assign the responsibility of maintenance to a government agency or a third party while subjecting the owner to certain conditions.

V. Conclusion

24. This article has sought to highlight a few areas in the existing legal regime for heritage preservation in Singapore that could benefit from greater attention from Parliament. As Singapore's urban landscape develops, the tension created by the competing interests of various stakeholders will only increase. It is high time that our heritage preservation laws be refined for the necessary protection of our heritage legacy.

⁵⁴ Planning (Master Plan) Rules (Cap 232, s 10, 2000 Rev Ed) s 4(a).