Unlocking the Economic Potential of Residential Buildings in Yangon’s Heritage Zone

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Annexure 1: Case Study Buildings
Executive Summary:

The current legal framework of property laws in Myanmar is out-dated and somewhat dysfunctional in its practical operation. The current laws generally lack transparency and efficacy. They are frequently contradictory, unclear and uncertain. Given the general issues of uncertainty of property title prevalent across Myanmar, these laws are particularly vulnerable to being exploited with convenient interpretations to favour those most able to mobilise the necessary financial, legal and political resources to achieve their intended outcomes. This appears to be an issue across Myanmar with regard to general land and property rights both in rural areas and urban centres.

In the context of Yangon and particularly the downtown area where this study was focussed, the current legal framework is not serving to align the financial and legal interests of residents and landlords. Furthermore, there is little to no legal consideration or protection for either the tangible built form residential heritage of the downtown area or the intangible heritage elements including but not limited to diversity of communities, street life and general amenity of the downtown area. The inherent value of residential heritage properties is almost completely overlooked in this context, as is the truly unique feel this gives the downtown area of Yangon.

The current legal framework is inadequate to deal with the modern realities and issues of property ownership in an urban centre. As a result there exists side by side with the formal legal framework a completely informal set of practises which none the less appears to be quasi legal its implementation and recognition. Many of these practises have become so customary that they are almost obligatory, recognised as being pseudo legally enforceable and often cited by people as having a formal legal basis even where none is apparent on further investigation. This lack of legal transparency and general uncertainty needs to be addressed to fully unlock the economic potential of the existing downtown heritage buildings.

Currently, the interests of residents and landlords only seem to align where they are in agreement to demolish an existing heritage building and build a new midlevel condominium development. Where residents would rather retain and perhaps even improve or restore the existing building, the interests of the landlord are incapable of alignment. This is because the landlords commonly perceive new developments as offering the only potential opportunity to realise the value of their asset. In order to remedy this issue there needs to be an exploration of the opportunities for alternative paths to create alignment and harmonisation of these interests whilst protecting, where possible, the residential heritage of the downtown area. The recommendations contained in this report attempt to offer some viable and realistic options to tackle some of these issues.

Project background:

This study was commissioned by Pyoe Pin and the Yangon Heritage Trust (YHT) to undertake the following:

1. *An analysis of the regulatory framework that governs heritage residential buildings;*
2. *Identification of economic and non-economic incentives and arrangements between different groups (i.e. investors, residents, landlords, non-profits, government agencies, etc.) that could promote the conversion and revival of these buildings; and provide*
3. **Recommendations for the potential amendments to the regulatory framework or even creation of new legislation that might be needed, as well as an elaboration of potential conservation scenarios that could be piloted in Yangon’s Central Business District**

The study was conducted by international legal specialist, Peter Waldie, an Australian lawyer with over ten years’ experience in international cultural and heritage law. It was supported with in-country resources including a domestic legal specialist, U Mynit Swe and a social researcher, Ei Mon Win. The frame of research was constructed during an initial visit to Myanmar in October 2015 and concluded in December 2015, either side of the transitional national elections of November 2015.

The study selected a sample group of 8 buildings from within the YHT Proposed Downtown Conservation Area and conducted interviews in the time available with as wide a range of stakeholders as possible. This included both residents and where possible on a few occasions landlords, business owners and street vendors. The study also spoke with government stakeholders including the YCDC planning and engineering departments, along with heritage project practitioners, heritage writers, NGO project partners and sustainable investment operators. Further conversations were held with more peripheral stakeholders for their unique perspectives including several locally based international lawyers with interests in the areas of foreign investment and property expertise. Additionally, several stakeholders in the tourism industry were engaged with including tour operators, both large scale package and small scale independent operators, and hotel owners.

1. **An analysis of the regulatory framework that governs heritage residential buildings:**

An analysis of the legal and regulatory framework that governs residential heritage buildings in Myanmar and more specifically Yangon requires a discussion of both the formal legal system as it exists in drafted laws and a discussion of the many informal practises that have emerged to overcome the inadequacies of the formal legal system. This can be seen in another way as a discussion of the theory and the reality.

This study is confined to a brief analysis of the legal framework that governs heritage residential buildings in only the most general terms. The general confusion and impenetrability of the Myanmar legal system presented a number of challenges to this study in terms of available time, resources and accessibility. A detailed review of the legal and regulatory framework of property laws in Myanmar in all their complexity, nuance and contradiction would require considerably more time and resources than those that were available for the purposes of this study. As a result, this study has confined itself to a discussion of only the most relevant and impactful elements of the legal and regulatory framework that governs residential heritage buildings in Myanmar and in particular the downtown area of Yangon. This discussion of the regulatory framework is therefore constructed to give the necessary legal context to enable an informed discussion of the economic and non-economic incentives in operation between different groups and to inform the recommendations contained in this report.
1.1 Background of the Regularity Framework:

The legal system of Myanmar is a product of the tumultuous history the country has experienced since the colonial conquest. The colonial period was dominated by the English legal system, with a functioning common law legal tradition and supporting legislative frameworks. This was imposed over the pre-existing legal traditions of the pre-colonial kingdom and some of these legal traditions may have continued to co-exist and do so to some extent today. For example the Buddhist and Islamic inheritance systems which appear still to enjoy at least provisional informal legal recognition to this day. In the colonial period a series of property laws were passed, many of which have never been repealed and are arguably still currently in operation. This is despite in many cases subsequent and at times partially or even outright contradictory legislation having been made in the intervening periods.

Following independence in 1948, it appears that the common law legal system and supporting legislative frameworks were largely retained and in many cases built upon with further legislative acts and amendments. However once again, earlier laws were rarely repealed and an increasingly complex framework of laws continued to emerge.

The events of 1962 introduced not only political but legal complexity to an already clouded picture. A different legal philosophy from the previous common law legal tradition appears to have been adopted and replaced many, but not all, elements of the legal framework at this time. The new Nationalist concept of centralised state held land ownership and land rights, implemented a concerted phase nationalisations of previously privately held property. If anything, this resembled more of a civil law legal tradition with centralised authority and judicial accountability to these military authorities. This created a new legal reality with much less recognition (if any) of the previously built case law and precedence of previous court judgements. As such, much of the subtlety, nuance and interpretation of the more ambiguous provisions of the pre-existing legislative framework, which would have existed within the body of case law, were lost and in many respects perhaps even deliberately undermined. A strong and independent judiciary and legal profession are not usually aligned with the objectives of a centralised military government.

The regulatory framework that governs residential heritage buildings in Yangon today is a product of this history and the series of legislative changes that have followed each of these political phases. As a result, the formal legal framework has increasingly become distanced from the reality of practise with regard to residential property ownership and the transfer of rights and interests.

1.2 The Legal framework today:

The historical processes briefly outlined above have all contributed to the current situation of the legal framework in Myanmar today. The current property laws are a pastiche of different acts and regulations, passed in different historical phases and political periods. Reflective of this, they are often contradictory, incompatible or incomplete and partially out of date with the modern realities of the transfer and capitalisation of property rights and interests. Understanding must be construed from the vagaries of the many competing pieces of legislation, many of which were drafted with different political and economic philosophies driving them.
Furthermore, there is no single consolidated Property Act or set of property laws which delineate in one piece of legislation the regulatory framework of the property laws in Myanmar. There is arguably no effective Residential Tenancy Act which details landlords’ and tenants’ rights in their entirety. Though the Urban Rent Control Act 1960 attempts to deal with many of these issues, it is unsupported by other relevant legislation and as it is over 55 years old, struggles with or is silent on a number of key points which are relevant to a modern property market and contemporary issues being faced in Yangon. There is also no commercial equivalent which details the obligations of commercial tenants and governs commercial leases and occupancy.

There is no comprehensive list provided by the government of all of the relevant property laws and many of the laws that do exist are not widely or publically available and are hard to find. This makes for an extremely opaque and uncertain system of property laws which are at times vulnerable to exploitation.

Including but not limited to, the most relevant Property Laws include:

- Transfer of Property Act (1882)
- Land Acquisition Act (1885)
- Lower Burma Town and Villages Act (1899)
- The Burma Laws Act (1898)
- The Code of Civil Procedure (1909)
- The Registration Act (1909)
- The Rangoon Development Trust Act (1921)
- The City of Rangoon Municipal Act (1922)
- The Urban Rent Control Act (1960)
- The Transfer of Immoveable Property Restriction Act (1987)
- The Union of Myanmar Foreign Investment Law (1988)
- The City of Yangon Development Law (1990)
- The Development Committees Law (1993)
- Notifications of YCDC (1997-2002)
- The Yangon Municipal Act 2013
- The Yangon City Act 2013 (revised Sept 2014)
- The proposed Condominium Law (2016)* – *(this has not yet been passed and may not be)

This is not an exhaustive list and is merely indicative of the challenges faced when trying to extrapolate a meaningful and accurate understanding of the current status of Myanmar’s property laws. In many respects, the status of the legal system in Myanmar has generally become so confusing and contradictory that in many respects, the government, judiciary and legal profession are just as uncertain in clearly navigating the laws of the country as the general citizenry. Even more concerning, for average citizens in particular, the legal frameworks have now come to be considered so untrustworthy that most parties will try to resolve issues with practical and commercial solutions using legal options only as a reluctant action of last resort.
1.3 Land and Property in Yangon:

All land in Myanmar is ostensibly owned by the state. Property rights or ‘ownership’ rights in Yangon are on one of the following three grounds: permit, grant or freehold. It must be noted that there are some other rights of land use and ‘ownership’ applicable to rural property.

‘Permit land’ is land to which rights have been granted to an individual for use for a specific purpose. This would most commonly for a particular purpose, for example agriculture, but could be utilised for residential purposes if within the auspices of the permit originally granted. Permit land is tied to an individual, and as it is often prohibitive to achieve a transfer, including for sale or inheritance, and as such it is less sort after and has less perceived commercial value.

‘Grant land’ is land to which rights have been granted, usually for a 30, 60 or 90 year period. Grant land is considered the most desirable land right as it can have the interest to it more readily transferred making it easier to sell and consequently more highly valued. That being said, transferring ownership title to property is never easy in Myanmar and many transfers occur off the official books with formal registration of title transfer never taking place. Nonetheless, grant land is considered the most desirable as it is perceived as being the most flexible of the ownership rights available.

‘Freehold land’ is outright ownership of property and the land on which it stands, most common in a western legal tradition. Anecdotal evidence indicates that freehold land is the least common, though this is more prevalent in the urban centres than in the countryside. However most seem to agree that freehold is in any case quite scarce, even in Yangon. Contrary to a typical western legal tradition, freehold land is not sought after in Myanmar. This is in part because the legal complications of transferring and selling the interest in it make it difficult, costly and onerous to realise its value. As a result, owners often feel they have to subdivide and convert the rights into grant land holdings (at considerable administrative burden and cost) to make this process worthwhile, requiring that they hold a considerable amount of freehold land in the first place to make such an option viable. As such, this is not usually relevant to an urban context as urban freehold properties tend to be quite small making overcomeing these obstacles to transfer interest in them economically unattractive and quite unusual.

1.4 Issues of definitions and terminology:

When discussing property rights and ownership issues in Myanmar there is often confusion and ambiguity regarding agreed or common legal terminology and set definitions. Often conversations regarding property rights and status are further clouded by these issues. Terms are often used interchangeably, or to mean different things in different contexts. The terms, landlord, owner and tenant can have a different context in Myanmar from those normally assumed in a western legal tradition.

A ‘landlord’ is usually a reference to the individual who has the right to use the land in question based on one of the articulated land rights outlined above. In the case of freehold land, the landlord can be considered to be the land owner in the true sense of the word as they enjoy clean unencumbered title. However with grant and permit land the phrase land owner is a little less
accurate. Whilst the grant or permit holder has effective title and within the bounds of the permit (permitted use) or the grant (period of time) has the strongest claim to control and use of the land (short of government intervention), they are in fact simply ‘the land rights holder’ rather the ‘owner’ in the western legal sense of the word. Grant and permit holdings may still be registered ‘land rights’ and are recognised as effective ownership for all intents and purposes, but they are subtly different to freehold rights in that the grant or permit holding may come to end, for example the permit may be revoked for a non-permitted purpose or may come to the end of the permit period. Equally, the grant period may come to an end and not be extended, though this is apparently quite uncommon. It appears that grants are quite regularly extended, sometimes even a considerable period after they have officially lapsed. However it must also be noted, that anecdotally this seems to only to be possible where the relevant ‘administrative fees’ are paid to the appropriate officials. Furthermore, there must be at least a consideration that some uncertainty now exists over this practise, given that the recent political changes in Myanmar and the transition to the newly elected government could mean that in future land grants issued by previous governments may not be automatically extended in quite the same the manner they have previously. However, it must also be conceded that freehold ownership rights have not historically been insulated from challenge, and that the experience of successive government nationalisations may go some way to explaining a natural hesitance to see freehold land rights as any different to grant or permit rights.

These issues simply further demonstrate the general climate of confusion and ambiguity regarding land rights and land rights status in Myanmar. Complexity and opacity in this area is rife and in many cases people are unaware of the precise rights basis on which they or their landlord is exercising claims to ownership rights over land or buildings. A further example of this confusion is that in Burmese, the same word is used to describe both freehold and inherited land. Furthermore, residents are often uncertain of the grounds on which they may be claiming their right to reside in the building, as discussed further in the report.

In the event that freehold, grant or permit land is sub-leased to another party for use, the land ‘owner’ (rights holder) is effectively the landlord. In an urban context, the land rights holder is usually also the owner of the building or buildings on the site, but it is possible through contractual arrangement, for example a lease or similar, that another separate party may be the ‘owner’ of the building assets on a site. In any event, there is still considerable uncertainty as to the exact legal status of buildings or other infrastructure improvements that may have been made on permit or grant land, in the event that the permit or grant period ends and the land is reclaimed by the government (the ultimate owner).

1.5 Practical Operation:

In the urban context of Yangon, these private buildings are almost always mixed use, containing both residences and businesses. Occupants of these building are almost universally referred to as ‘tenants’, but ‘tenants’ can have differing rights of occupancy in a legal sense. Some ‘tenants’ have purchased the premises which they occupy, but once again the operation of this in Myanmar is a little different. As there is no formal legal recognition of the concept of strata title ownership, leasehold rights or condominium rights in existing buildings, ‘tenants’ are not the owners of the physical premises they have purchased, but rather the owners of a right to occupy within the
premises. This is true even where they may have paid a substantial sum at commercial market rates for ‘ownership’ of the premises. This is known as a ‘salami’ purchase. The purpose of this ‘right of occupancy’ may be either business or residential, but the legal rights and practical operation remain the same.

Where the tenant has made a salami purchase, they are often referred to as, and with good reason consider themselves to be, the legal ‘owner’ of the premises. They have a full range of the normal rights of occupancy and ownership, including a conceptual notion of the western legal right of ‘quiet enjoyment of the premises’ and they have the right to sub-lease and rent their premises or resell when they choose. They may in turn rent the premises and charge a market rate rental to the occupying sub-tenant.

However the landlord (building owner) continues to exercise considerable rights over the building and in many respects the tenants who occupy it, including the premises within. The landlord continues to charge a nominal rent for each of the apartments or businesses in the building, though this is usually a nominal amount and sometimes is never even collected. The landlord’s approval or permission is still required for any improvements or renovations to the building. This is especially true for improvements or renovations in the common areas including the exterior, but this can be extended to improvements made to the interior of the premises as well. Theoretically any substantial or major improvements or renovations to a building, including the interior, require the approval of both the landlord and the Yangon City Development Council (YCDC). Minor renovations can be approved at a township municipal officer level, without requiring the extra time and effort of involving YCDC, but even minor works often have an unofficial cost in local authority ‘administrative fees’.

Furthermore, to supplement the meagre income from these nominal rents, the landlord will often withhold their approval of various things pending some financial inducement. So for example, it is a commonly accepted practise that a when a property is sold to a new ‘owner’ under a salami contract, the landlord will withhold signature of the relevant transfer of ownership documentation into the name of the new owner unless they received between 2% and 5% of the sale price. However, anecdotal accounts have indicated that in some situations landlords have demanded much higher amounts, including up to 50% of the sale price in a particularly unreasonable example. Without the landlord’s signature, the transfer cannot be completed or registered. It appears that as a result, often to avoid the costs of dealing with both the landlord and YCDC, properties are commonly sold and simply not registered, further clouding the clarity of property ownership in the downtown area.

It is also not uncommon for landlords to require a payment for their approval of renovations to a premise, both for minor and major works. As a result, particularly for minor works but often for as much as the occupant feels they can get away with, permission is sought from neither the landlord nor the township municipal office or YCDC depending on which is the relevant authority. As a result, landlords can also withhold their approval for improvements in the expectation that residents will be more willing to agree to their proposals to re-develop the building by demolishing it and replacing with a midlevel condominium.
1.6 Issues of property title uncertainty:

There is in Yangon a great deal of uncertainty of title to property. The historical and political events that have shaped modern Myanmar have created so much uncertainty when it comes to a clear picture of property ownership. Even residents of buildings who have in some cases been there for decades and/or generations are uncertain as to whom the true landlord might be.

Public land title records are poor and access is limited. Where it is possible it is both administratively onerous and costly. When records do exist, they are often inaccurate or incomplete, and rarely show a continuous chain of title from the creation of the property to the present day. This is particularly the case in Yangon, where prior to the Second World War much of the property of the downtown area was owned by foreigners. Many foreign landlords fled the country never to return following events such as the Second World War, Burmese Independence, the civil unrest of the 1950’s and the events of 1962. Many left of their own accord. Some had no choice. The Nationalisations of the post 1962 era further clouded ownership issues regarding many of these properties.

This has created a huge issue of absentee landlords where many residents know only that the building owner left the country at some point in the past, sometimes many decades ago never to return. In the intervening period, nationalisations and reallocations may have occurred over some parts or even all of a building. Many properties seized by the government were then ‘given’ to key government figures being military officers or their families. These rights of occupancy were often never defined, and subsequently many of these properties formerly occupied by military officers and their families have been sold, sometimes without legal basis. Many have changed hands several times in the last few years in particular. It also appears anecdotally that many government departments have been selling off formally nationalised assets, in particular in the transitional government period and the lead up to the November 2015 elections.

In other cases, there has emerged more recently the phenomenon of ‘assumed’ or ‘presumed’ landlords. These are individuals who claim legitimacy as the descendent or relative of a previous landlord. In some cases they may legitimately be a descendent of a former landlord, but whether their ancestor’s chain of title remained unbroken and they are the true owner remains to be seen. In other cases, it appears that people may simply be acting the part of an absentee landlord and if accepted by the residents become in effect the landlord, despite any questions of legitimacy. These ‘assumed’ or ‘presumed’ landlords have then undertaken rent collection functions within the building, sometimes even with the tacit approval of the existing residents.

Residents are often eager to pay the rental fees to anyone one willing to collect them. These rental fees to the landlord in this context as building owner are extremely low and usually merely a nominal annual amount. As many residents often lack any official documentation or other paper work which proves their often historical claim to a right to reside in the premises, proof of ongoing payment of rental fees sometimes dating back decades is seen as legitimatising their ‘ownership’. When asked, many residents have little or no other documentation to prove their ‘ownership’, but are equally adamant that they are the owner. In many cases this is simply because documentation has not survived since their families originally purchase the premises. In other cases this may be that the properties have come into their possession via less transparent means, for example, after nationalisations, from the government or military, in a manner which has no legal basis. Sometimes
it may simply be that they are in fact squatters with no legitimate claim to the premises other than having lived there, in some cases for many years, sometimes even decades.

In any case, on occasion the convenient fiction of a ‘newly’ appeared descendant of the original landlord, collecting the rent and legitimatising occupancy works for all parties. For the assumed landlords, this is very economically appealing, as in circumstances where they can gain support of the residents for re-development, the opportunity to unlock and realise the economic potential of the site becomes available, as do significant profits for themselves and the development company.

A series of other factors have also contributed to further clouding issues of property ownership and certainty of title. During the various upheavals that occurred from World War II onwards, many foreign landlords placed their property holding into trusts, religious or otherwise, or simply donated properties to local temples, before leaving Myanmar, often permanently. It appears that this was done, depending on the circumstances, for both for altruistic reasons and practical reasons. Whilst this may have been motivated by religious convictions in many circumstances, it also appears that there was an ultimately accurate perception that this could insulate some properties from the worst excesses of nationalisations by the military government following the events of 1962. As a result, many of these properties have existed in a deliberately constructed situation of title uncertainty which it must be admitted was somewhat successful, protecting many of these properties from government nationalisation. As such, many Buddhist temples and Islamic mosques have significant land holdings. However anecdotaly there have been instances in recent years of descendant landlords or presumed landlords reappearing and once more becoming involved in the interests of these ‘religious’ properties. This has included collecting rents from tenants and advocating re-development of certain sites. These donations and trust arrangements appear to have been largely respected by the courts, but can occasionally become politically volatile. For example the situation regarding the Ghandi Hall building on Merchant St has become a political issue given the last surviving trustee’s intention to redevelop the site. Whilst this right has apparently been recognised by the courts, given its historical importance recent interventions by the Indian Government at the highest levels have advocated the retention and conservation of the building.

Whilst technically speaking, all religious donations were supposed to have been registered with the Ministry of Religion, in many instances it appears that this did not happen. Reports indicate that there are an increasing number of potential cases on this issue. In such cases, the law would stipulate that the donation was ineffective, but in practise this does not appear to always happen. In the Islamic tradition, Waqf donations assign the rights to the property to a particular mosque or a mosque controlled charitable trust. In the Buddhist tradition, the properties were often donated to an individual monk, meaning that when he passed away the property right did not always revert to the temple or affiliation of monks to which he belonged. In these cases, these properties could in fact pass to the monk’s own direct descendants, which was apparently the issue at the centre of a recent dispute in Yangon.

Another contributing factor has been the overwhelming desire of people in Myanmar to avoid government taxes. Tax avoidance appears to be a national pastime, for example there is no effective income tax regime and people only pay government taxes with great reluctance. This makes it very difficult to offer effective tax relief inducements to encourage investment in heritage properties as is done in some other jurisdictions, for example Singapore. As a result, many creative mechanisms for
avoiding tax have been created. One of the foreign lawyers interviewed for this study related the complications involved where families have used Power of Attorney mechanisms to pass property control rights. This is sometimes done through two or three generations avoiding stamp duty and inheritance tax obligations by never perfecting the transfer of title. As a result, perfecting title transfer to then sell the property right or interest has proven incredibly difficult as in some situations the ‘owner’ has since passed away and the descendants have merely a power of attorney right to manage the property. In these situations there is a great deal of difficult in legally clarifying the situation in order to ultimately perfect the title and implement the sale or transfer.

1.7 The Yangon City Development Council (YCDC):

The YCDC is the centralised administrative and bureaucratic authority for Yangon and the successor to the former British colonial city government which was created under the Rangoon Development Trust Act 1921 and the City of Rangoon Municipal Act 1922. The City of Rangoon Municipal Act 1922 in particular still serves as the legal basis for many elements of the YCDC’s activities, responsibilities and enforcement actions. From 1990 onwards this framework has been added to by various Laws, Orders and Notifications, the so called YCDC Regulations or Laws and more recent additions such as the Yangon City Act 2013 which was revised and updated in September 2014. However, many of these laws are very general in nature and do not assist in clarifying much of the legal uncertainty which remains, particularly on major issues such as uncertainty of title and property ownership rights. Furthermore, access to and knowledge of many of these YCDC laws and regulations is generally very poor, as is the consistency and transparency of their application.

The YCDC has a very wide area of responsibility and consequently a wide range of powers. They have interest and influence in most areas of building regulation, building activity and municipal services in the city of Yangon. This includes everything from urban planning and city development, engineering, building controls and approvals, urban amenity and essential services, public spaces, residential buildings, commercial buildings, parking, street access and street vendor issues. Theoretically the YCDC have approval rights over all developments in Yangon. This includes in particular any demolition of existing buildings and building of new buildings. However, as previously mentioned, it also includes any substantial redevelopments of existing buildings including renovations, improvements or conservation activities, even if the works occur entirely within a privately owned apartment.

Pursuant to the YCDC laws and regulations, transfers of property ownership within the city are supposed to be registered with them. However this is not always the case, often due to the time and expense involved. As a result many of YCDC records of ownership are not accurate and often residents will deliberately avoid registering property transfers due to the administratively onerous process and perceived unnecessary costs. As this registration confers no greater rights or interest for the new owner, it is often considered an unnecessary impediment and properties may have changed hands several times since without YCDC having being informed.

YCDC have in place a building code and planning approvals process that includes considerations of heritage property issues and incorporates various height restrictions for new developments. Theoretically these height limits vary in the downtown area from 8 to 12 storeys, depending on the size of the site frontage and the street on which it is located, with generally speaking higher limits on major roads and bigger sites. However there is a great deal of uncertainty regarding precisely how
these are applied and the consistency with which this is done, and it would appear that the more successfully development companies are often able to build above these supposed limitations.

YCDC are also responsible for the identification and treatment of dangerous buildings in Yangon. Many of the heritage buildings of Yangon have had years of little or no active maintenance, leaving the majority in a severely dilapidated state. Some, it must be conceded, have become dangerous as result of this neglect and are no longer fit for habitation despite some residents still living in them. However, many remain surprisingly structurally sound. YCDC is responsible both for the pre-emptive identification of dangerous building and the assessment of buildings upon request. It appears, at least anecdotally, that many requests are made to YCDC to determine a building is dangerous on behalf of a landlord who is hoping for just such a finding. Dangerous buildings are classified by the following 5 categories:

- Not dangerous – minor renovation needed
- A little dangerous - minor renovation needed
- Dangerous – major renovation needed
- Very dangerous – demolition needed (but no time frame specified)
- Seriously dangerous – demolish immediately

At the two most serious categories, a so called dangerous building sign is put up and the tenants are supposed to leave the premises. However this is rarely if ever enforced and some buildings have had such signs up for years.

It is also suspected that the economic incentives to redevelop existing heritage building in the downtown, discussed in more detail later in the report, lead many landlords and developers to seek to have existing buildings classed as dangerous. This can assist in persuading existing residents to agree to re-development, or to have them move somewhere else entirely. It can also help with the developer’s arguments that the building must be torn down for public safety and a new development erected in its place. It appears that in many cases, buildings that are merely in a state of dilapidation are labelled as dangerous as this is more convenient, even when inspection by engineers from groups such as YHT find the building to be inherently structurally sound. The lack of clarity and transparency around dangerous building declaration within downtown Yangon is an issue that needs to be addressed by YCDC in the near future.

Unfortunately, commonly held perceptions of a lack of transparency regarding almost all of YCDC’s approval processes, timelines and ambiguous costs means many of these processes are not respected. Permissions and approvals often appear arbitrary and disproportionate and as such there are many instances in which people avoid YCDC if they possible can. This has created a feeling mutual distrust and whilst YCDC request that the public and developers co-operate with their processes and approval mechanisms, YCDC will need to address its perceived lack of efficacy and transparency in the near future if it is to be successful in implementing its plans for the city. This will be a challenge both for YCDC and the new national government.
2. Identification of economic and non-economic incentives and arrangements between different groups (i.e. investors, residents, landlords, non-profits, government agencies, etc.) that could promote the conversion and revival of these buildings:

A series of currently completing factors and incentives (or lack of them) are currently serving to impede the conservation and promotion of residential heritage building in Yangon. These are both economic and non-economic incentives, and one way of considering the issues is to look at the legal, financial and cultural factors at play.

One of the biggest issues is that culturally, the current mind set in Yangon seems to offer only two options where residential heritage buildings are concerned. The first option is putting up with dilapidated residential heritage buildings that neither residents nor landlords are willing or able to invest in conserving or improving. The second option seems to be tearing them down and replacing them with new midrise condominium developments which are hugely out of character with the rest of Yangon’s downtown built form. Very little consideration seems to be given the possibility of restoring and conserving existing heritage buildings and their inherent value and uniqueness is often over looked. This is sometimes referred to as the third option, by organisations such as YHT. In the drive toward new development, and there has been much in Yangon in recent years, ‘new’ it appears is synonymous with better. It seems that many residents of the city hold genuine aspirations to ultimately reside in new building complexes with all the modern conveniences, including but not limited to elevators, air conditioners and generators for backup power supply in the event of black outs which are not uncommon. For many residents, the heritage buildings where they live are simply the homes they and their families have lived in, often for decades and sometimes for several generations. There is for many a genuine sense of pride and community in the homes they have and the buildings they share with their neighbours. However there is yet to emerge recognition that this is now something quite unique in South East Asia and that Yangon is fortunate to still have these heritage buildings in such abundance and the living active communities within them which make the city and downtown in particular so distinctive.

It also appears that the reality of many of these new midlevel condominium developments may not be quite so glossy. In an unchecked building boom it seems that many developers have built these low cost developments as quickly as possible to meet continuing demand. Building standards and building codes appear to be sporadically enforced and many observational and anecdotal pieces of evidence indicate that many of these new developments are being built to the lowest cost possible. They appear to weather quite quickly in the unforgiving tropical climate and the absence of legal structures which recognise body corporate ownership models leave much of the common property areas overlooked. An anecdotal story relayed to the research team in this study regarded a new condominium building where a second hand lift was installed. After 6 months it ceased operation and due the absence of an enforceable defects liability period regarding this aspect of the construction, the residents were left with a 12 storey building with only stairs when they could not agree to self-funding the replacement costs.

There are suggestions that the proposed new condominium law may fix some of these issues in new buildings but its focus seems to be more strongly weighted towards enabling further foreign
investment in condominium developments rather than enshrining concepts of collective body corporate responsibilities.

There also seems to be a very strong cultural driver in Myanmar that when selling or renting a property the owner is entitled to the maximum they can possibly obtain, rather than a price that the open market will naturally meet when balanced against supply and demand. By illustration of this, many people we spoke with for the purposes of this study mentioned that owners often arbitrarily set rents or sale prices to their expectation levels, and will often not negotiate for a lower price even where their expectations are commercially unreasonable. There appears to be a preference to have properties stand vacant or unsold, sometimes for months or even years rather than lower an anticipated price. This seems to be strong cultural driver and was described by an expatriate with many years of experience in Myanmar as a cultural phenomenon whereby the landlord or seller feels that they are cheating themselves of a future windfall by accepting a lower price in the present. This is apparently not uncommon in rental agreements either, where landlords will try to negotiate for a market rate check mechanism to ensure maximum profits in future, rather than agree to fixed rate for a fixed term with the certainty that this brings both parties. A similar analogy was given in the context of hotel room prices with future tours being booked in sometimes a year or two in advance but pricing not being agreed on the basis that the rates for that time were not yet established and could not be locked to a current amount on the basis that they may substantially increase in the interim. This may be one of a number of factors contributing to the high rates of vacancy in many downtown buildings with owners unwilling to sell, rent or upgrade premises against future expectations of substantial increases in value.

2.1 The common redevelopment model and financial invectives for Building Owner Landlords:

As previously discussed, most landlords actually derive very little income for the buildings assets they own. With the exception of modern condominium developments, rents paid to landlords as building owners are nominal at best for the majority of buildings in the downtown area of Yangon. The few landlords this study was able to interview reiterated this point very strongly and often lamented the exceedingly low rental incomes they are able to derive from the properties they own.

Landlords therefore have little to no economic incentive to reinvest in property improvements or even basic maintenance. Owners of premises who have made salami purchases of the apartments may be incentivised to invest in making improvements in order to deliver more rental income for the tenants they can place in them. This is especially true in Yangon’s current rental market which paradoxically is one of the most expensive in South East Asia. This is especially the case where foreign expatriates can be placed in the apartments and rents for such properties are commensurate with rates in Singapore and Hong Kong. However building owner landlords rarely see any of these substantial incomes unless they own apartments in the building.
As such, building owner landlords often perceive that their only option to realise the commercial value of the property they own is to partner with a development company and re-develop the site. This process is increasingly well documented and some recent work has been done by Cities Development Initiative for Asia (CDIA) in partnership with the YHT which explains this model of redevelopment very well. This will be summarized briefly here. Assuming a relatively common 4 storey existing building with 3 apartments on each floor, the landlord building owner obtains the consent of the 12 existing residents or apartment owners who have their ‘right to reside’ at law to demolish the existing building. The incentive for the residents is the promise of apartments in the new building, offset against the inconvenience of relocating during demolition and new construction. Sometimes there is agreement to cover the rental costs of these residents in alternative accommodations for a period of time whilst the new building is being built. Sometimes however, this can be only for a set period and the residents can be left exposed if building delays do occur. The incentive for the owner landlord is that if they can secure the relevant permissions to replace the existing 4 storey build with a new 12 storey condominium development, the apartments that will not be occupied by the existing 12 residents can be split between the landlord owner and developer to cover costs of the project and derive new income sources. For example, the developer receives a number of the remaining new apartments to sell or rent in order to offset the development costs of the project and allow for their profit margins. In many cases the developer may end up with more of the new apartments than the existing landlord and the landlord is left with what they can negotiate from the developer as their share. However, even assuming even a modest number of only 3 or 4 of the new apartments become the landlord’s, these can be sold for substantial sums in the current market or rented out at commercial rental rates which provide the landlord owner with real income from the asset they own. This model, explained only in basic terms here, is incredibly alluring to landlord owners and presents an opportunity for them convert an existing building asset which generates only nominal income into a meaningful source of income. As such, this is a very strong economic incentive which is driving the demolition of many of the existing residential heritage buildings in Yangon.

Where residents do not agree to the redevelopment the situation can become more acrimonious. Landlords can resort to seeking a Dangerous Building classification to try and support the argument for demolition or can try to align other residents against any holdouts.

Photo of a vacant residential site 19th Street in Latha Township
2.2 Case study buildings:

This study looked at 8 case study sites in the downtown area to help inform this research. The buildings were selected based on their relevance to the terms of reference, location within the YHT proposed downtown conservation area, geographical spread within this area and the willingness of residents and occupants to speak with the research team.

These properties were as follows:

1. A building in lower Bogalay Zay St
2. A building in lower 42nd St
3. 500 Merchant St
4. The Sofaer/Locanat Building on the corner of Pansodan St and Merchant Road
5. The former Bombay Burma Press building in 29th St
6. The building on the corner of Shwebontha Road and Merchant Road
7. The building on the corner of Kon Zay Dan Street and Merchant Road
8. The building on the corner of Latha St and Maha Bandoola Road

A small photograph of each of these case study buildings is included at the end of this report in Annexure 1.

These 8 buildings and the landlords, residents and occupants that agreed to be interviewed for this research revealed a great deal regarding financial, legal and cultural factors which influence the occupancy and potential future of these buildings which is reflected throughout this report.

In most cases the interviews strongly revealed the frustration and uncertainty which stakeholders feel with the current framework of property laws. Neither residents nor landlords feel that they are working to meet current requirements in modern Yangon and almost all had suggestions for changes to the legal system and structures.

One of the biggest frustrations for residents was the lack of systems to enable improvements to properties. In some cases there were strong feelings that this should be the responsibility of the landlord. However, given the low rental payments this is clearly unworkable. The most viable model appears to be collective responsibility, an informal body corporate structure where the residents themselves make contributions towards the necessary works. We encountered a few examples of this in different ways and two buildings specifically were chosen as they were rare examples where residents had come together to make self-funded collective improvements to their buildings.

In case study site number 2, in 42nd St, it was a resident who is not only the owner of the land and the building but also owns 6 of the 12 other apartments in addition to living in the building. He had tried to rally support for mutual contributions to collective improvements, but had little cooperation from the others residents and eventually simply paid for the work himself. However, in response he was less willing to approve the other resident’s proposals for modifications to the property in future, feeling possibly with some justification that they were happy to find funds for themselves but not the collective.
This illustrates one of the concerns that there does in some cases seem to be a strong attitude that residents should not be responsible for common areas and that this should sit with the landlord, or the government, or anyone else but those living in the building.

Conversely, at site number 1, lower Bogalay Zay St, there was a particularly strong minded resident who had sufficient influence to motivate all the other residents with one exception to contribute to collective improvements to the whole property. This was despite the objection of the landlord who had plans to demolish and re-develop the site. This individual obtained quotes, secured the contractor to undertake the works and collected the funds from their fellow tenants. The landlord refused to sign the approval, but the construction company was able to use its connections within YCDC alone to secure approval permits. It is likely that the personal support from the local government ward administrator also assisted in this regard.

Another slightly different example of collective improvement works is the well-documented 500 Merchant St site, number 3 in our case study, which is the subject of a Turquoise Mountain Project with support from the YHT. With the agreement of the tenants, external philanthropic funding has been used to run this as a pilot project and an opportunity to vocationally train contractors in conservation methods and techniques. The tenants are glad to see the works taking place, however have not had to contribute themselves. The landlord objected strongly to the proposal as they had planned to redevelop the site and had started to secure, and from their perspective had in fact obtained, the required tenant approvals. Once again, despite the landlord’s objections and refusal to sign the approval permit, YCDC issued the approvals for improvement and conservation works to commence.

A similar situation unfolded at the site number 6, the Shwebontha Road and Merchant Road building. In this situation the landlord has secured the approval of all the residents to demolish the building. However, the project was delayed, and in the interim a new owner purchased one of the apartments. This new owner refused to agree to have the building demolished and proceeded to invest quite substantially to create a boutique inn in the building which as approved by YCDC. It now appears that the landlord has abandoned their plans to re-develop this particular site.

Site number 7, the building on the corner of the Kon Zay Dan Street and Merchant Road is another example where the ground floor business owners are all keen to renovate not only their own spaces but to make a collective upgrade of the entire building as well. The entire second floor of the 2 storey building is vacant and has been for many years. The occupants are all successful businesses and already have the funding in place, but with the objections of the landlord who is again keen to redevelop the site into midlevel condominiums, they are seeking the support of YHT based on the success and visibility of the 500 Merchant St project.

Case study number 5 was the Bombay Burma Press Building which since 2009 has been classified a dangerous building since a terrible accident in which a falling steel beam killed a woman in the street. The landlord has tried for some time since this to secure the consent of the residents to redevelop the site but without success. The original application was for an 8 storey redevelopment, but YCDC ultimately would permit only 6 storeys. One resident in particular had invested quite significantly in their own flat and again it appears that a single tenant was the primary hold out in consenting to the demolition. The other tenants interviewed all wish to remain in the building and several stated that with the exception of the common area staircase, they felt the build was
structurally sound despite the accident. A contributing factor to this accident may in fact have been the newly build condominium complex on the adjoining site. When the existing building was torn down on that site, the interconnecting steel beams were severed leaving some parts precariously hanging out of the right hand side of the Bombay Burma Press Building.

Case study number 4 was the Sofaer Lokanat Building on the corner of Pansodan St and Merchant Road. The formerly grand trading house building, the site is a well-known landmark to locals and a stunning example of Yangon’s grand style heritage buildings. However, despite its size and scale, this site would have no more substantive heritage protection than any of the other buildings in the case study. The issues of ownership here are even more complex given substantial nationalisations of property within this building occurred since 1962 and various government ministries have effective ownership claims. Further complexity is that a resident within the build claims not only ownership over their apartment but also that several of the government spaces were merely rented under longer term agreements (with reputed documentation in support). We were able to briefly interview one shop owner in the building but they were reluctant to share too much given that their lease is exclusively from one of the government ministries and they are very happy with their prime tenancy in such a sought after location for their successful business. There is a suggestion that this building also has some undocumented residents whose claims to reside there may not be able to be substantiated.

The last of the case study sites was number 8, the building on the corner of Latha St and Maha Bandoola Road which is actually a cluster of two conjoined buildings. One is a Chinese clan house temple which had a wholesale plastic shop renting the lower floor and temple meeting space upstairs and the adjoining shop is a traditional Chinese medicine shop. These properties are both owned by the trustees of the Chinese temple across the other side of Latha St. The trustee committee is currently considering an option to redevelop the site with a midlevel condominium. Despite the buildings history, it appears that YCDC and the ministry of religion have no objections, meaning that if the committee can agree (which is far from clear) the redevelopment will go ahead.

2.3 Conclusions from the Case Study Buildings:

These sites are by no means a representative sample of the whole of the Yangon downtown area. Rather, they are the buildings where this study was able to establish the necessary contacts for interviews, often based on the prior work of YHT or CDIA, building a trust with the residents. By this very nature, they are probably representative of those residents more inclined to speak with heritage organisations and therefore hold a pre-existing concept of or innately value the buildings where they reside.

However there are some valuable insights that can be gained from their experiences and a number of pertinent conclusions can be reached. In most cases, it is the strength of the residents and their personal commitment to make improvements to these properties, collective or otherwise, that achieve successful outcomes in retaining and improving these heritage buildings. Supported and mobilised they are a very powerful force to actively defend the buildings many of them feel very strongly towards.

Most stakeholders in these situations have an extended period of association with an interest in the residential heritage buildings in question. Most residents have lived in or have an association with
these buildings dating back many years and or even decades. They or their family members may have lived there for prolonged periods of time, often growing up in these buildings and inheriting from parents or other relatives their current interest. Often these residents can even trace a family connection to when the building was first built, perhaps through several generations of the family. Landlords often enjoy a similarly extended period of interest in the building, in many cases having owned the building for many years. Once again, these are often family interests, with current landlords being descendants (or claiming to be) of the original building owner from when the building was first constructed. As such, issues between residents and landlords and the resulting tensions are often entrenched over many years and even decades.

In these situations, the confused nature of the current legal framework of property laws provides little clarity for residents and landlords. In fact, it is often an impediment to their desired outcomes, especially in situations where the intentions of the stakeholders are already conflicting. The current legal framework of property laws does not provide an avenue of clear redress and satisfactory resolution. In many ways the existing frameworks are constructed in such a way that they are directly responsible for the tensions and conflicts between landlords and residents with unrealistic expectations on both sides of the equation that leave all parties ultimately frustrated and unsatisfied. Added to this are issues of title uncertainty, as influenced by various historical processes.

Furthermore, YCDC’s bureaucratic processes and lack of clarity regarding the legal situation and approvals processes means they cannot offer a means of efficient, effective or satisfactory resolution either. As such and often through a lack of other options, the status quo is left unresolved for years. In a few cases, where YCDC had made a decision one way or the other, it has appeared to at least one of the stakeholders to be unilateral and had the effect of further alienating and frustrating either the landlord or the residents. To quote one stakeholder “YCDC destroys its rules itself”. This does not help to engender a sense of trust or satisfaction with YCDC from either residents or landlords. Due to this lack of transparency and apparent inconsistency in the application of rules and regulations, stakeholders often look to work around existing processes and avoid YCDC as much as possible.

In the cases where the study found examples collective improvements to existing residential heritage properties, the common element was always a single strong minded resident who was capable of successfully influencing and motivating the other residents to support project. Yet, even when such a strong personality emerges to galvanise residents into supporting collective improvements to an existing residential heritage building, logistical challenges can present significant obstacles. Common hurdles that consistently face groups of residents trying to undertaken such collective improvements include the following issues:

- Leadership and focus of the residents to maintain commitment when faced with obstacles, such as the time the project may take to come to fruition and the effort it may consume in the interim
- Agreement as to the works that need to be undertaken and the order of priority in which they should be funded (for example upper floor residents often prioritise roofing and stair works, lower floor residents plumbing issues, rising damp and rubbish in back alleys)
• The collective commitment to funding and agreement regarding the proportions in which it should be split, including issues regarding potential collection and management of the funds (does one resident collect cash on behalf of all, are separate bank accounts set up and if so who is trusted to be responsible?);
• Potential landlord approval issues (do the residents get along with the landlord, does the landlord wish to redevelop the site?);
• YCDC approval issues (how to secure this and cost/time of doing so?);
• Procurement of a competent contractor for conservation works and quality of the workmanship;
• The lack of external support organisations which help residents navigate these issues and the legal and procedural processes which may arise as a result of the project.

2.4 Mobilisation towards conservation outcomes:

In most of the case study buildings, the biggest issue impacting potential successful collective improvement projects is a lack of a clear sense of collective responsibility for improvement projects and the knowledge of how to tackle the inevitable logistical, procedure and legal obstacles that will arise. Lack of funds or financial concerns rarely appear to be the major impediment to resident willingness to invest in improvements on their own properties. In many cases, residents have already invested significantly in making improvements to their own apartments.

In these cases, title uncertainty also did not appear to be a major factor impacting on or restricting decisions to renovate and improve the internal spaces of individual apartments. Most residents interviewed were very assured of their rights to ownership and title to the property, even where limited evidence and documentation to substantiate these claims is available. It must be noted that this may be a product of natural hesitancy to discuss with outsiders the potential shortcoming of their own title claims to relevant properties, however some were more open in expressing doubts over the legitimacy of the rights of other tenants to reside in the buildings in question.

Rather, issues of a lack of culture of communal responsibility for common property areas appear to be the largest single stumbling block for meaningful collective improvement projects of common property areas. In this context some of the familiar issues and rationales such as tenant/resident relationships with landlords, lack of clarity of building ownership and confusion over title certainty are raised as a justification for the reluctance of tenants to fund these projects. In larger scale projects, for example roof replacement and more extensive works, it must be acknowledged that financial concerns do start to play a larger role as does the issue of title uncertainty. This is perhaps as there is a natural reluctance to invest substantially in communal improvements where one’s right to reside in the premises may be questioned or disputed at a later juncture.

In the situation where residents may seek external funding sources to undertake such projects, there are currently limited sources of capital funding. The banking system in Myanmar lacks consumer trust and sophistication, most banks still being state owned. Banking remains a highly regulated sector and there are currently no foreign banks in the market driving competition and innovation. As such, the Myanmar banking sector remains highly uncompetitive and the entire country is
predominantly a cash economy. This makes accessing financial assistance beyond loans from family members outside the normal thought processes and availability for most Yangon residents.

So in cases where residents do require financial assistance there are severely limited options. The recent CDIA ‘Heritage Works: New Ideas for Old Buildings’ study explores potential options as to how this might be sourced. Options have included potential Micro Finance Lending Schemes, there already being many such successful programs in other parts of South East Asia. However, in order for these to succeed there would need to be deregulation of current banking legislation to allow such programs to operate in Myanmar. Furthermore and perhaps more difficult to accomplish, would be the required cultural change to shift residents’ mindsets to embrace institutional lending and the longevity of repayment obligations which would flow from such programs. The implications of consequences in situations of default would also need to be carefully considered. Overcoming a well-entrenched mistrust of state banking institutions and breaking the current over reliance on a cash economy would take a considerable amount of time and effort.

However it appears that many residents are primarily seeking the support of an active and informed lobby group that can help them navigate the legal and procedural uncertainties of the legal framework and assist them in liaising in particular with YCDC. This is an invaluable role which YHT can increasingly fulfil in future if adequately resourced to do so. YHT is uniquely placed to bridge the divide between landlords and residents in addition to the critical advocacy role it has played to date. Consensus needs to be built between landlords and residents so as to make more meaningful working relationships where both parties can be satisfied with the outcomes. YHT could play a more active role in this space but needs to be seen as approachable by landlords and more empathetic to their perspectives. Convincing landlords that there is ‘another’ way is one of YHT’s biggest challenges and this cannot be achieved if landlords’ perspectives are not considered. Convincing landlords of the value of the assets they possess and working with them to develop alternative ways to realise the value of these assets is an important undertaking. Examples could include providing advice and support for a pilot program that would work with an existing landlord or landlords to add extra density to a heritage building, for example reutilising abandoned space in an existing structure or alternatively adding additional floors above a building in way that still respects its heritage. In this regard, YHT needs to be conscious of its interactions with landlords, building owners and other potential commercial developers. Ensuring that there continues to be open dialogue and an ongoing conversation, regarding the inherent value of the existing residential heritage buildings in Yangon and the intangible heritage aspects of the communities dwelling within them, is an important role for YHT to undertake. Advocating the success of heritage projects for all parties, including the commercial aspects, needs to be an important element of any successful strategy.

2.5 Other Stakeholders:

Our interviews with the tourism sector were also quite revealing. Whilst there was a strong feeling that Yangon’s heritage does have tourism value, there was also concern that Yangon is at risk of being skipped by major tourist parties due to the logistical challenges of getting into the city. One in particular mentioned that even Shwedagon Pagoda is now being overlooked by some groups due to the time consuming efforts of traveling in Yangon. As such some groups are now simply flying in to Yangon and going straight up-country. As a result, some of the recommendations contained below are informed by the comments and concerns of these stakeholders.
3. Recommendations for the potential amendments to the regulatory framework or even creation of new legislation that might be needed, as well as an elaboration of potential conservation scenarios that could be piloted in Yangon’s Central Business District:

As per the terms of reference for this study, it is very true to say that “Yangon is the commercial centre of a country in an extraordinary phase of transition and flux.” However this statement can also be extended to the entirety of Myanmar and the new government when it takes power in early 2016 is going to be confronted with an entire country in an extraordinary state of transition and flux and heavy with expectation that the National League for Democracy will be able to deliver on the promise of that expectation.

The new government is going to be faced with a series of immediate challenges and finite resources to tackle a wide variety of issues, including but not limited to education reform, health care, economic development and liberalisation and developing a culture of rule of law and good governance. Where heritage concerns and the legal frameworks that affect them sit in this competing hierarchy of priorities remains to be seen.

However, the economic incentives of addressing the issues of uncertainty of property title in downtown Yangon and the meaningful economic and sustainable investment that will inevitably follow should help serve to make this a clear priority for the new government. Title uncertainty as previously discussed, is undoubtedly stifling significant economic redevelopment and growth of investment in downtown Yangon. Despite being the commercial centre of Myanmar, examples of substantive investment in existing heritage buildings to unlock their economic potential remain few and far between. Several restaurant and bar businesses have recently opened new premises in repurposed heritage buildings including Sharkys and Rangoon Tea House in the same building on Pansodan St. Gekko Bar in the Sofaer/Lokanat Building and by the same group, the Union Bar and Grill on the Strand in the Red Cross Building are further examples. However, these projects remain exceptions and the uncertainty over property titles and ownership issues do not help facilitate such investments.

These projects require a substantial capital investment and the somewhat speculative nature of the ventures and high degrees of legal uncertainty mean that only a select few investors are courageous enough and possess a sufficiently healthy risk appetite to be willing to undertake them. Additionally, these refurbishment projects encounter an onerous approvals process and administrative costs burden to obtain the necessary YCDC permissions and any additional cost which may be required in securing the building owner landlord’s approval. Such projects may also run counter to the landlords own aspirations and economic incentives demolish and redevelop the build as discussed previously in this report.

However, in order to unlock the full economic potential of the downtown area whilst protecting the existing built form heritage, effective local government management systems and a robust and supportive legal framework needs to be introduced to encourage this type of significant capital investment and encourage residents to invest into their existing properties.
3.1 Recommendations:

This section of the report contains a number of recommendation, some relatively easy to implement, some the author fully acknowledges, extremely difficult, time consuming and potentially costly.

3.2 A meaningful and effective Heritage Conservation Area:

The first recommendation of this report is the swift introduction of a meaningful and effective Heritage Conservation Area within the downtown of Yangon. With the current legal protection for residential heritage buildings proving largely ineffective, an effectively enforced heritage conservation area will serve to significantly protect the residential heritage buildings located within it. The size of the area to be protected is beyond the scope of this project and would entail a detailed review and consideration of the practical, economic and political impacts. However, the YHT proposed conservation area (depicted below) appears to have been well considered and would be an excellent starting point for introducing this in an effective way.

Critically however, any Heritage Conservation Area must be effectively enforced and must have meaningful height restrictions which are actively maintained. Height restriction in the 4-6 storey range would be consistent with the character of the existing built form of the downtown area.

Importantly, introduction of this will remove the current primary motivation for landlords to knock down existing buildings rather than restore them. It effectively counters the current driving economic model as discussed above by making it impossible for such developments to take place.
within the heritage area. This would also diminish the current rampant speculation on the condominium development market and the economically unsustainable boom cycle, which is exhibiting all the classic signs of a short term property bubble. Rather, enforced height restrictions and an effective Heritage Conservation area in which new developments are not permitted unless they meet strict guidelines will encourage development of the current vacant areas within existing heritage buildings or sympathetic additions to existing low rise buildings within the height restrictions. In conjunction with some of the other recommendations proposed below, this would go a considerable way toward protecting much of the unique existing residential heritage buildings in downtown Yangon.

Another consideration for the Heritage Conservation Area would be strong advertising rules and restrictions to govern the prevalence of dominating signage and advertising which impacts much of the downtown area. Inappropriate signage and advertising has in many cases completely obscured entire building facades and it is an issue which should be tackled to preserve the visual aesthetic and general amenity of the downtown area. Enforced rules and regulations regarding the size of billboards and corporate advertising within the Heritage Conservation Area should be enacted to prevent the proliferation of this type of inappropriate advertising and ensure existing examples are removed. Some companies have adopted a slightly different strategy and the so-called Lenovo buildings are an example of this. These building have had some conservation work in recent years in the form of external painting, but this has been done in the corporate colours and the Lenovo company logo has been liberally applied to the facade of the building as depicted below.

A photo of one of the so-called ‘Lenovo’ buildings on Maha Bandoola Road.
3.3 Impacts of the introduction of a Heritage Conservation Area:

Whilst it is true that the introduction of a Heritage Conservation Area and effective height controls would result in less mid-level housing availability in the downtown area, there are several relevant factors which would mitigate against the perceived negative impacts. The arguments supporting the perception of a housing shortage in downtown Yangon are arguably open to interpretation. As previously discussed, there are already significant examples of considerable vacancies in existing properties within the downtown area. Many properties stand vacant for months and years for a variety of reasons. Historical events and the ensuing uncertainty of property title has resulted in many properties in the downtown area which are vacant due to, amongst other reasons, ambiguous ownership, absentee landlords or simple abandonment. There remain a large number of properties within the current downtown area which are unoccupied and in many cases have been for years and even decades. In other situations, the lack of occupancy is due to unrealistic pricing and landlords, who through personal circumstances are not economically compelled to fill their properties.

Current master planning for greater Yangon has looked at tackling growth issues and housing availability through developments in the surrounding areas, including across the river in areas such as Dala. The introduction of a Heritage Conservation Area within downtown is unlikely to have long term and significant impacts on housing availability within greater Yangon if other measures to reinvigorate the existing buildings are undertaken. In the author’s opinion, this would be the case even given the current significant population growth forecasts over the next several decades. In short, the downtown area will never be sufficient to meet the housing availability needs of the ever expanding city of Yangon, and larger scale solutions will need to be considered as a part of the master planning process to absorb the forecast population growth.

3.4 Expand the coverage of the Conservation Law 2015 and YCDC capacity:

The newly created Heritage Law 2015 protects buildings announced by the Ministry of Culture as being listed for protection. Those that fall within Yangon will be YCDC’s obligation to protect by ensuring that are not threatened by new developments. As such YCDC will play a vital role the protection of these heritage buildings. YCDC has been working more closely with the YHT recently in seeking advice and input regarding proposals for new developments and taking under serious consideration the heritage advice of the YHT. However, YHT and YCDC could work to create a more comprehensive list of heritage buildings within Yangon that need protection.

Furthermore, YCDC should seek to develop and build a heritage capacity of its own including theoretical and practical skills in both heritage protection and heritage management. This should include if possible the development of a fully operational YCDC Heritage Department. Such a department would be responsible not only for compliance and enforcement but also for advice and could operate as a vital resource concentrating heritage knowledge and best practise in a readily accessible resource for stakeholders undertaking conservation and improvement projects on residential heritage buildings. This could include, for example, a list of YCDC approved heritage architect advisors and building contractors recommended to work on heritage projects. It would of course be vital that any such accreditation program be transparent and not open to abuse. YCDC’s current capacity and resourcing issues would need to be considered as part of any implemented plans in this regard.
Furthermore, YCDC generally has to address some core issues with regard to transparency and efficiency of its processes. Its reputation with stakeholders needs serious remediation. Introducing effective, efficient and consistent processes for planning approval and other interactions is vitally important for the future. Online systems could be introduced to manage some of the highly onerous bureaucratic processes currently in existence. The truly fantastic example of the Immigration Departments e-visa approval system is proof that such systems can be adopted in Myanmar. Finally, a fully functioning Land Titles Office with accurate and accessible title records is fundamentally necessary to address issues of property title uncertainty and ensure records remain current. This is discussed in more detail below in the recommendation to address the issue of property title uncertainty.

3.5 Legal Framework improvements:

Whilst drafting new laws is an expensive and incredibly time consuming process, it is clear that the current property laws and legal framework are no longer working to manage modern realities of property ownership in Myanmar. There is a desperate need for a new and revised set of property laws that can bring clarity to owners, residents and occupants and free much of locked economic potential currently constrained by legal uncertainty. This would be an enormous undertaking and would need to consider not only the urban context but the rural one as well, where land ownership issues are just as complex.

The report would recommend the following legal framework improvements:

- Develop a new overarching Property Law for all of Myanmar
- Update and revise the Urban Rent Control Act to be clear on all aspects of Residential Tenancies
- Reconsider and redraft the proposed Condominium Law
- Develop a Commercial Tenancies Act

A comprehensive Property Law at the Union level could put in place many of the elements that are required including a harmonised and accessible national land titles registration office. Clarity over what represents clear property ownership and how this is documented and proved by property owners would be another critical element. This would in future facilitate the transfer of ownership of property through free market sales and enable meaningful investment in property improvements and utilisation by owners who have legally defendable rights. This would make registration of property ownership worthwhile, of value and sought after by property owners. Currently there is at times little incentive to register new ownership of properties and a benefit in not doing so of avoiding stamp duty taxes. This depletes government revenue and further clouds the issue of clear property ownership, particularly in the urban contexts. By giving property registration a value to owners, the government also ensures a more transparent process and a potentially significant revenue stream in stamp duty tax on sales, much of which is currently not paid.

An important consideration in the introduction of any new harmonised national Property Act would be to ensure that the rights of current occupants are considered and respected. It is vital that these issues are balanced to ensure that current legitimate occupants are not exploited and do not have their rights invalidated unfairly. The introduction to the property laws framework of workable
concepts of property abandonment and adverse possession may also assist in ensuring occupants' rights are fairly respected in any considerations.

In the urban context, this new property law should introduce and formalise the legal mechanism for individual ownership of title to apartments in both existing and new multilevel developments. In Australia, this concept is known as strata title ownership and this has been adopted in several other countries since the 1960's. Strata title ownership can apply equally to low rise apartment complexes and to mid to high rise developments. In the United States of America and some other western countries the concept is referred to as 'condominium ownership'. The confusion with this wording is that the difference between an apartment complex and a condominium is purely legal. It is a model of ownership, not a description of a type of development. In either case, the intention of the concept is the same, that is to grant individual ownership of and title to the physical apartment, unit or condominium, whilst holding the land and other common areas, including for example entrances, hallways, stairs, elevators and utilities systems (heating, cooling etc.) in a commonly held joint representational ownership model, a body corporate. The body corporate then draws a management fee from all owners throughout the year to make collective improvements to common assets.

Whilst the newly proposed Condominium Law has some elements of these concepts included, it has some concerning limitations and has not been well received in its draft form by either city planners or the legal profession. It appears that the proposed Condominium Law is heavily weighted towards developers' interests and contains provision permitting foreign investment and ownership in mid-level condominium developments. The author would suggest that the Condominium Law has been rushed to meet a specific and limited purpose and that it needs to be reconsidered in its current form and addressed as part of a more holistic revision of the entire property law framework. Any new condominium or strata title law should include provisions for existing apartment properties to be converted by the owners into strata title holdings with functioning body corporate entities which can address common property issues in existing buildings.

A further critical element of any legal framework improvements would be a revision and update of the Urban Rent Control Act 1960. As previously discussed, it its current form, this act is very supportive of tenants' rights, but is creating a situation in which the landlord cannot derive any meaningful income through rents and is only interested in re-development opportunities. The common areas of properties are largely ignored and dilapidation continues until the building can become uninhabitable. Enabling Landlords to increase rents slightly in order to make a worthwhile income would be one way to ensure that they remain invested in the property. From our interviews with landlords, fairly slight rental fee increases were their request and there seems to be acknowledgement that the rental fee increase could not be dramatic as this would not be fair to existing residents.

Another option would be to in effect enable the landlord to take on the active property management functions in that they collect a slightly increased nominal rent as a management fee in exchanges for managing body corporate contributions from the residents to collective improvements of common areas. For some companies, full time body corporate management is a lucrative business in developed renter markets.
Alternatively, enabling the necessary legal changes to permit existing residents to come together and buy out the landlord thereby converting the property to a strata title ownership and functioning body corporate model would be another option.

Finally, it would be important to also clarify the situation with commercial tenancies and a specific commercial tenancies act would assist in drawing the distinction between residential tenancies and further clarify the legal position for business renting in the downtown area.

3.6 Clarity of title project:

As previously discussed, clarity of title is a massive issue in Myanmar which is stifling much of the economic potential of existing heritage buildings. Whilst it would be a large, time consuming and expensive project, the issues of title uncertainty need to be addressed, particularly in downtown Yangon.

This could only be done by creating a dedicated office either within YCDC or reporting to a separate level of Government, depending on the relevant political considerations. Starting with a discreet area within the Heritage Conservation Area, the office would need to work building by building and street by street to identify the land types, building owner landlord and residents entitlement to reside. In some cases they may be competing legitimate claims and the office would need a dedicated fast track courts system to hear cases of disputed ownership and determine outcomes. As absentee landlords continue to be an issue, a moratorium period would need to be introduced, for example 6 months, requesting at all claimants present their claims to ownership within the set period. The system would need to recognise that in many cases the proof of ownership may be circumstantial as many residents in particular lack the documentation to validate their claims, despite long periods of occupation. The system would be indented not to displace existing residents, but to confirm ownership claims and to issue valid titles of ownership wherever possible and update with accurate information the land registry records and ownership records. In some cases this may be validating occupancy that was for many years informal.

The government would need to be willing to forgive retrospective tax and in particular stamp duty claims, but would be able to be clear that all newly registered ownership documents will be centrally held and they now constitute validity of ownership rights. In this situation, validity of registration would once again hold meaningful value, and government could be clear that all future sales of properties issued new documents post 2016 must be registered or they will be automatically invalidated. In this way, they ensure compliance with registration processes (which also need to be streamlined) and that all applicable stamp duty taxes are paid on such sales. Making property sales easier will increase the volume of sales and this will increase government sales tax revenue in due course. The program could be funded partially by the sale at public auction of unclaimed properties where there are no residents and owners cannot be found following the appropriate searches and moratorium period.

Depending on the legal changes proceedings such a program, it would also be possible to tie title and validity of occupancy certification to the establishment of a body corporate entity for each property to be funded by residents and to be responsible for the upkeep of common property areas.
In this manner, the project could move street by street and block by block to validate title, ownership and residency status throughout the downtown area and eventually beyond. As mentioned above, it is also critical that such records are accurate and accessible, including publicly, through an effective Land Title Office.

It has also been suggested that some potential claimants are awaiting formal hand over to the new government before lodging historical title rectification and/or compensation claims with regard to formerly nationalised properties. The issue therefore of uncertainty of property title is highly likely to increasingly demand the new government’s attention, whether they choose to devote additional resources to it or not. Furthermore, as the current court system does not appear to be equipped to cope with the potential volume and complexity of these matters, a separate and devoted property title fast track court system may prove inevitable to resolving these title matters.

3.7 Permit controlled foreign investment:

As previously discussed, the restrictions on foreign ownership are preventing significant investment from external capital sources within the downtown area, with the exception of new condominium developments. However, there are many foreign expatriate residents in Yangon who would be ready, able and willing to invest in residential heritage properties as their primary place of residence but are current restricted to buy in new buildings or renting.

With a slight relaxation of the foreign investment rules for the downtown Heritage Conservation Area, expatriate foreigners could be permitted to purchase existing apartments as long as they are a resident in Yangon and the property is or will be after necessary and timely renovations, their primary place of residence. This could be enforced by the government to prevent speculation by stipulating that the foreign owner is required to hold the property for minimum period (i.e. 2 years) or else a higher stamp duty fee is charged to the foreigner if sold within this period.

Liberalisation of the rental option for foreign businesses in existing heritage properties could also release more capital investment into projects such as restaurants and guest houses like Rangoon Tea House, Gekko Bar and the Willow Inn, which all made significant improvement to the properties as part of the business investment. As it stands, foreigners are unable to enter into a rental agreement for more than 1 year. The lack of longer term lease security is a disincentive to further capital investments from foreign expatriates to meaningfully invest in rental premises for either business or residential purposes.

A further option could be to offer foreign companies tax incentives to make heritage conservation investments within the downtown Heritage Conservation Area. Foreign companies are generally considered to pay their taxes as and when they are due. Foreign companies in existing mixed use heritage buildings may be willing to take on communal works in common areas, for example re-roofing buildings or making other amenity improvements to stairwells or electricals and lighting, on the basis of being able to obtain a tax offset against the value of the work. This study encountered at least one situation in which a foreign company had made drainage, downpipe and guttering improvements to a mixed use building at its own expense and in doing so had built considerable rapport with the other building residents. To prevent abuse of any such system such tax credits could be subject to pre-approval and use of accredited conservation works contractors. Under such a proposal, foreign business which are apparently quite consistent at paying their taxes are
incentivised to invest back into the buildings they occupy and the other residents share the benefits of the collective improvements.

3.8 Some Basic Urban Amenity Improvements:

There are some very basic programs that can be introduced to improve urban amenity in Yangon. Footpath congestion has become a major issue in recent years, particularly following the implementation of perpendicular parking on the main roads at the expense of footpath space. This has effectively crowded the existing pedestrian traffic and street vendors into increasingly restricted spaces. In several places the tree lined streets that Yangon was once famous for have been severely impacted and further congestion is caused by existing shops expanding out onto footpaths and the presence of many back up fuel generators for new buildings.

It would be very easy to create a small pedestrianised zone in one or two streets, for example centred on the lower part of Bogalay Zay St. This area could show case the Yangon life style and heritage in one small area, with pedestrian friendly spaces and an actively encouraged street scape of tea shops and street artists, vendors and the like. With a little planning the area could be very successful and would be a highlight for locals and tourists alike wanting to explore a living streetscape environment without traffic congestion.

On a larger scale, reinstating some of previously generous footpaths on one or two of the key streets in Yangon would reintroduce the space for pedestrians and street vendors to create a more harmonious environment and make it easier and safe for people to walk in the streets of the city. Whilst it would be lovely to think that this could be done to reinstate all the formerly generous footpaths, this seems unlikely but it could be done on one or two key streets, for example Pansodan Street.

Yangon is also increasingly suffering from traffic congestion as anyone who has ever tried to travel in Yangon will attest, particularly during peak hour. Whilst the city struggles with increased traffic flow and lack of parking, the decision to dramatically reduce the footpaths and provide extra parking does not seem to have alleviated the traffic congestion. At the higher end of the costs and difficulty in implementation scale, one suggestion made in passing to the research team was that much of the traffic traveling to downtown is going there for repeated visits to various government offices located here. More efficient government systems which require less bureaucracy and repeat visits or a gradual migration to online systems may eventually reduce some of this traffic. However the suggestion was made that relocating these government offices out of the downtown area may also reduce unnecessary traffic flow and help alleviate the overcrowding of the central city area.

Another suggestion made to the research team was a the creation of tourist friendly hawker’s night food market and craft market beside Sule Park, on the side part of Sule Pagoda road in the evenings.
3.9 Rubbish collection and cleaning of alleyways:

Another major issue is the rubbish accumulation in alleyways between buildings in the downtown area. It appears that this is not so much an issue of the absence of rubbish collections services, but a cultural acceptance by some residents that this is acceptable. Interestingly, it appears that in townships outside of major cities, the local community authorities are more proactive in bringing social pressure to bear on those who litter in their communities. Yet in the downtown area of Yangon it seems to have become acceptable or at least condoned behaviour. An education and clean-up campaign coupled with fines levied to residents of buildings to cover costs of cleaning new rubbish accumulations could be one workable strategy to address this issue.

3.10 Recommendations Conclusion

Whilst the recommendations outlined above would take considerable time, effort and expense to fully implement, they would help to ensure that much of the extraordinary residential heritage of Yangon can be preserved whilst being economically utilised. Yangon is a city at the crossroads, and without the appropriate legal protection and clarification of current ownership issues, much of its incredible heritage, both residential and other will be forever lost, as will the unique intangible qualities that make this one of the most extraordinary cities in South East Asia.
Annexure 1: Case Study Buildings:

<table>
<thead>
<tr>
<th>Number</th>
<th>Building</th>
<th>Photo</th>
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<tbody>
<tr>
<td>1</td>
<td>A building in lower Bogalay Zay St</td>
<td><img src="image1.png" alt="Image" /></td>
</tr>
<tr>
<td>2</td>
<td>A building in lower 42nd St</td>
<td><img src="image2.png" alt="Image" /></td>
</tr>
<tr>
<td>3</td>
<td>500 Merchant St</td>
<td><img src="image3.png" alt="Image" /></td>
</tr>
<tr>
<td>4</td>
<td>The Sofaer/Locana t Building on the corner of Pansodan St and Merchant Road</td>
<td><img src="image4.png" alt="Image" /></td>
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<tr>
<td></td>
<td>The former Bombay Burma Press building in 29th St</td>
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<td>5</td>
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<tr>
<td>6</td>
<td>The building on the corner of Shwebontha Road and Merchant Road</td>
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<tr>
<td>7</td>
<td>The building on the corner of Kon Zay Dan Street and Merchant Road</td>
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<tr>
<td>8</td>
<td>The building on the corner of Latha St and Maha Bandoola Road</td>
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