View Corridors, Access, and Belonging in the Contested City: Vancouver's Protected View Cones, the Urban Commons, Protest, and Decisionmaking for Sustainable Urban Development and the Management of a City's Public Assets

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Majestic views of mountains, sky, and sea are essential components of the visual and experiential identity of Vancouver, Canada. The experience of these vistas supplements other urban realities, such as suffocating living expenses and inequality. This Article explores a recent example of urban contestation over Vancouver's view corridors as a shared public resource and public asset. As this Article explores, exclusion from access to public assets that provide meaning to daily life—such as the mountain views in question—damage an urban citizen's sense of identity and belonging in a city through a hierarchical experience of access and possession. Through the example of contestation over the management and preservation of Vancouver's view corridors, and the digitally networked connective action

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and protest that resulted, this Article also engages the notion of the urban commons as a lens through which these urban contestations can be framed and situates the relevance of these questions of access of urban citizens to public views within the context of UN-Habitat's New Urban Agenda and UNESCO'S "Recommendation on the Historic Urban Landscape."

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I.   Introduction

"Mountains are the most important aspect of the public view [in Vancouver], and this will be impacted by the tower!"[1]

"Skylines convey information about a city's values, which subsequently reveal information about a city's vision, the watering down of public amenities in trade, the irreplaceability and public asset of view corridors, and its safeguarding for future generations."[2]

"Public views are treasured public amenities that serve the community and should be protected for everyone to enjoy perpetually."[3]

"In Vancouver we are blessed with an abundance of natural beauty that helps create our distinct urban setting envied by the world. Without question, the serene landscape and uninterrupted public views of the North Shore Mountains enhance quality of life, making Vancouver an exceptional city to call home."[4]

As the above quotes allude to, if you ask Vancouverites why they live in the city, what attracted them to the city, or what keeps them there, they often speak of the sky, mountain, and ocean vistas along with proximity to these natural attributes. A 2018 decision made by Vancouver City Council

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[1] Vancouver City Hall, Public Hearing, *Rezoning: 777 Pacific Boulevard–Sub-area 10C (1 Robson Street)* (July 10, 2018) [hereinafter July 10, 2018 Public Hearing].

[2] *Id.*

[3] Justin Jay, *Opinion: Vancouver's Public Views Must be Protected*, VANCOUVER SUN, Feb. 21, 2018.

[4] *Id.*

contemplated what might be considered an allowable incursion—or, as Mayor Gregor Robertson framed it at the time, a "reasonable trade-off"—into a view cone where the potential benefit of additional housing was seen to outweigh the public's unobstructed access to a legally protected view. Many citizens viewed the incursions into a protected view corridor as a precedent-setting move that could eventually lead to further incursions into the public's view cone access. They questioned how the city was governing and managing this intangible resource to which city inhabitants laid claim to as a common public good that should be free from private monopolization.

People value cities, like Vancouver, for the tangible and intangible unique, iconic, or historic elements that define a particular city. The pluralistic meaning and value that individuals derive from a city can overlap but also conflict as the spaces of a city become increasingly contested with rapid urbanization.[5] This plurality of often divergent interests in what is valuable to preserve exists along with differing views on how the space and assets of a city should be best used and who should benefit from the use of these spaces and amenities.[6] In this context, different levels of access to the common amenities and spaces of a city may be encroached upon as public officials navigate lucrative bids for the use and development of collective city space.[7] Within the collective city space, the urban landscape of a city contributes to its distinct character as well as to

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[5] *See also* Sheila R. Foster & Christian Iaione, *The City as Commons*, 34 YALE. L. & POL'Y REV. 281, 282, 288 (2016); G.A. Res. 71/256, New Urban Agenda, (Dec. 23, 2016) [hereinafter New Urban Agenda]; Sophia Labadi & William Logan, APPROACHES TO URBAN HERITAGE, DEVELOPMENT AND SUSTAINABILITY 1 (Sophia Labadi & William Logan eds. 2016).

[6] Foster & Iaione, *supra* note 5, at 282, 288; Labadi & Logan, *supra* note 5, at 2.

[7] Foster & Iaione, *supra* note 5, at 283-84; *see also* Mark Purcell, *Excavating Lefebvre: The Right to the City and its Urban Politics of the Inhabitant*, 58 GEOJOURNAL 99, 100 (2002) [hereinafter Purcell, *Excavating*].

the experience of its residents—their relationship with urban space and their sense of belonging and identity within the city.[8] The visual experience of life within a city's urban landscape can consist of iconic, identifiable, and treasured public views that define a city— whether the view in question consists of the interaction between the built historic and natural environment, whether the view of the former is independent of the latter, or vice versa, or whether there is an additional intangible dimension layered on to the view in question through attached "social and cultural practices and values, economic processes," and so on.[9]

Local matters, such as contestations over view corridors and the future shape of valuable urban landscapes, richly illustrate the need to rethink how a common shared resource in a city is addressed within urban decisionmaking policies and processes in order to more equitably account for their intangible cultural components alongside the tangible and the use of and access to these assets. A central question that arises is one of scope. Where does the right to a public asset such as a view corridor, and a landscape more generally, begin and end? How can or should these kinds of intangible collective cultural resources be balanced in relation to housing needs and a human right to housing? Conceptualizing intangible assets as part of the "urban commons" lends perspective. Here, it is helpful to situate the urban commons within the "right to the city" notion that informs much of the basic premises of UNESCO'S Recommendation on the Historic Urban Landscape (HUL) approach to negotiating and managing the urban landscape, as well as the vision for sustainable urban development and equitable diversity in urban design and

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[8] *See, e.g.,* UNESCO, Recommendation on the Historic Urban Landscape ¶¶ 3, 11, 15 (Nov. 10, 2011) [hereinafter HUL].
[9] *Id.* ¶ 9.

decisionmaking processes that appears within UN-Habitat's New Urban Agenda.[10]

Through a discussion drawing on the urban commons, based on ethnographic fieldwork and participant observation, this Article examines the negotiation and management of urban intangible cultural resources in the context of rapid urbanization and urban (re)development. While tangible public assets such as land and greenspace often come to mind when considering (re)development pressures, this Article focuses on intangible public assets and resources; specifically, the public access to a specific view or view cone/corridor and how local governments manage the preservation of vistas and protected view cones. This Article also focuses on the on the role of the public and the stakeholder balancing that is required in city decisions and policies on urban (re)development that alter or shape the unique, valued, or iconic views in a city's landscape.

Drawing on international frameworks for shaping sustainable, equitable, and culturally diverse urban development strategies, such as the New Urban Agenda and the HUL Recommendation, Part II considers why preserving access to a shared public resource like a view may be worthwhile.[11] Part III introduces the Vancouver case

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[10] New Urban Agenda, *supra* note 5; HUL, *supra* note 8; *see also* Int'l Council on Monuments and Sites (ICOMOS), The Florence Declaration on Heritage and Landscapes as Human Values: Declaration of the Principles and Recommendations on the Value of Cultural Heritage and Landscapes for Promoting Peace and Democratic Societies (Nov. 14, 2014), https://www.icomos.org/images/DOCUMENTS /Secretariat/2015/GA_2014_results/GA2014_Symposium_FlorenceDeclaration_ EN_final_20150318.pdf [hereinafter The Florence Declaration]; Mark Purcell, *Citizenship and the Right to the Global City: Reimagining the Capitalist World Order*, 27 INT'L J. URB. & REGIONAL STUDIES 564, 576-79 (2003) [hereinafter Purcell, *Citizenship*].

[11] New Urban Agenda, *supra* note 5; HUL, *supra* note 8; *see also* The Florence Declaration, *supra* note 10.

study. The Article subsequently, in Part IV, explores why the removal (and threats of removal) of public access to these assets can strike a nerve and result in a particularly vocal outcry from a city's inhabitants, such as that which took place during a Vancouver view corridor controversy. I frame the discussion through the lens of protest by urban citizens channelled through social media platforms in Part V before concluding by discussing the gap in public engagement revealed by the resistance to the view cone intrusions where alternative urban governance models, such as urban collaborative governance, may offer a better structure for managing contestations over city spaces, urban resources, and the intangible (and tangible) cultural assets of a city.

II.   International Guidelines for Shaping Sustainable City Development

A.   UNECSO's *"Recommendation on the Historic Urban Landscape"*

UNESCO's HUL Recommendation provides a guiding framework for understanding the role landscapes play in the urban context and their role in defining a city's identity as well as an urban citizen's experience of a city.[12] As the HUL approach notes, the wider context of the urban landscape and urban cultural heritage includes the deep and intertwined layers of a city's urban life, culture, and the environment, including its "topography, geomorphology, hydrology and natural features, its built environment, both historic and contemporary, its infrastructures above and below ground, its open spaces and gardens, its land use patterns and spatial

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[12] HUL, *supra* note 8.

organization, perceptions and visual relationships, as well as all other elements of the urban structure."[13]

In development since 2005 as a response to challenges and growing friction within urban heritage management, conservation, and (re)development processes, UNESCO adopted the HUL Recommendation on November 10, 2011.[14] Its recommendations emphasize the localization and effective implementation of its principles and norms for Member States.[15] Rather than replacing existing preservation frameworks, the HUL Recommendation is an additional voluntary tool or guiding starting point for Member States to implement intergenerationally mindful and socially just preservation policies that acknowledge the role and importance of stakeholder diversity—with a notable emphasis on intangible heritage and landscapes alongside tangible built heritage that also makes up the urban landscape of a city—within the broader context of sustainable international urban development goals.[16]

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[13] *Id.* ¶ 9.

[14] Kristal Buckley et al., *Using the Historic Urban Landscape to Re-Imagine Ballarat: The Local Context, in* URBAN HERITAGE, DEVELOPMENT AND SUSTAINABILITY: INTERNATIONAL FRAMEWORKS, NATIONAL AND LOCAL GOVERNANCE 93, 93-94 (Sophia Labadi & William Logan eds. 2016); UNESCO, The Vienna Memorandum on "World Heritage and Contemporary Architecture–Managing the Historic Urban Landscape", 15 GA, Paris, 23 September 2005, WHC-05/15GA/INF.7, http://whc.unesco.org/en/documents/5965.

[15] *See, e.g.*, HUL, *supra* note 8, ¶ 22; THE HUL GUIDEBOOK: MANAGING HERITAGE IN DYNAMIC AND CONSTANTLY CHANGING URBAN ENVIRONMENTS 9 (2016) [hereinafter HUL GUIDEBOOK].

[16] *See, e.g.*, HUL, *supra* note 8, ¶¶ 5, 9, 11, & 12; *see also* UN-Habitat, International Guidelines on Urban and Territorial Planning, Principles 6(b) & 8(l) (2015) [hereinafter UN-Habitat, International Guidelines]; Australia ICOMOS, The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance (2013) [hereinafter The Burra Charter]; David Throsby, *Cultural Capital and Sustainability Concepts in the Economics of Cultural Heritage*, *in* ASSESSING THE VALUES OF CULTURAL HERITAGE: RESEARCH REPORT 101 (Marta de la Torre ed. 2002) (presenting a balancing of intergenerational and intragenerational stakeholder concerns).

The HUL Recommendation stresses the importance of balancing various stakeholder interests within the city space alongside a holistic, interdisciplinary, and inclusive approach to managing the tangible and intangible, environmental, and cultural assets of a city.[17] This need for balancing includes a weighing of the past, existing, and future concerns in these assets, which can be very different among the stakeholders found within a city,[18] and which must also be filtered through an effective engagement and balancing of the various roles of local, regional, national/federal as well as international governance structures.[19] As the HUL Recommendation notes, while the different interests of the various stakeholders and governance actors within a city may at times seem to conflict, with careful examination, consultation, and stakeholder engagement, there is frequently a complementarity that can be established within heritage, economic, environmental, and sociocultural views.[20] This balancing of interests and perspectives is central in developing and maintaining sustainable approaches to urban development that equitably acknowledge a diversity of intergenerational, cultural, economic, and environmental interests at the local municipal level.[21]

The HUL approach to sustainable urban development and leveraging a city's assets and exchange-value potential, while maintaining key elements of its use-value for the plurality of

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[17] *See, e.g.*, UNESCO, New Life for Historic Cities: A Historic Urban Landscape Approach Explained, 5,9, 11-12 (2013) [hereinafter UNESCO, New Life for Historic Cities]; HUL, *supra* note 8, ¶ 11.

[18] *See* Labadi & Logan, *supra* note 5, at 1-2; Buckley et al., *supra* note 14, at 93-94; The Burra Charter, *supra* note 16.

[19] *See, e.g.*, UNESCO, New Life for Historic Cities, *supra* note 17, at 9; HUL, *supra* note 8, ¶¶ 11, 13, 22, 23, 25.

[20] *See, e.g.*, UNESCO, New Life for Historic Cities, *supra* note 17, at 9.

[21] *See also* UN-Habitat, International Guidelines, *supra* note 16, Principle 6(b), 8(l). For further discussion of intergenerational justice, *see* The Burra Charter, *supra* note 16; Throsby, *supra* note 16.

stakeholders within a city, can be distilled to seven locally modifiable "action" tools:

1. Undertake a full assessment of the city's natural, cultural and human resources;
2. Use participatory planning and stakeholder consultations to decide on conservation aims and actions;[22]
3. Assess the vulnerability of urban heritage to socio-economic pressures and impacts of climate change;
4. Integrate urban heritage values and their vulnerability status into a wider framework of city development;
5. Prioritize policies and actions for conservation and development, including good stewardship;
6. Establish the appropriate (public-private) partnerships and local management frameworks; and
7. Develop mechanisms for the coordination of the various activities between different actors.[23]

The flexibility of this toolkit over time is further viewed as essential to the actionability of the HUL approach and its realistic localization and implementation within a city's specific context and needs.[24]

Loosely divisible into four interdependent categories, the elements of this toolkit are: (1) community engagement tools, (2) knowledge and planning tools, (3) regulatory systems, and (4) financial tools.[25] Again, there is an emphasis on the diversity and

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[22] *See also* the UN-Habitat, International Guidelines, *supra* note 16, at 3 ("At a neighbourhood level … [p]articipatory planning and budgeting involving communities in managing urban commons, such as public spaces and services, could contribute to improved spatial integration and connectivity, human security and resilience, local democracy and social accountability.")

[23] UNESCO, New Life for Historic Cities, *supra* note 17, at 16; HUL GUIDEBOOK, *supra* note 15, at 11, 13; *see also* HUL, *supra* note 8, ¶¶ 12, 24.

[24] HUL GUIDEBOOK, *supra* note 15, at 14-15.

[25] *Id.; see also* HUL, *supra* note 8, ¶¶ 22-24.

potential divergence in stakeholder interests that should be identified and learned about in applying these four tools to work towards consensus-aware goals, planning, development, and regulation that account for safeguarding key tangible and intangible public urban assets and values.[26] The HUL approach is intended to reflect the evolving nature of preserving the urban landscape. It also provides policymakers a framework for addressing new challenges and opportunities more effectively and in manner that retains the characteristics and values connected to a community's history, heritage, and collective memory, and built and natural environment.[27]

B.   UN-Habitat's New Urban Agenda

Conceptualizing the balancing required in negotiating divergent stakeholder interests within the tangible and intangible spaces of a city is a pertinent issue within the New Urban Agenda, adopted following the United Nations Conference on Housing and Sustainable Development ("Habitat III") in 2016.[28] Drawing on portions of the HUL Recommendation, the New Urban Agenda picks up on and underlines the need for more responsive, context-sensitive legislation and policies within cities through improved inclusivity in urban decisionmaking processes and governance to achieve greater equality and justice for the broad spectrum of a city's diverse citizenry. Addressing persistent inequalities in cities like Vancouver (and investigating ways of shifting existing legal frameworks to do so) comprises a central aspect of the New Urban Agenda, including the importance it places on the right to the city

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[26] *See, e.g.,* HUL GUIDEBOOK, *supra* note 15, ¶¶ 14-15; *see also id.* ¶¶ 6, 11, 22-25.
[27] *Id.* ¶ 15.
[28] New Urban Agenda, *supra* note 5.

for urban citizens. As point 124 notes, "culture" — broadly defined — should be prioritized by local governments when developing "urban plans and strategies [for] the adoption of planning instruments, including master plans, zoning guidelines, building codes, coastal management policies and strategic development policies that safeguard a diverse range of tangible and intangible cultural heritage and landscapes, and will protect them from potential disruptive impacts of urban development."[29]

III.   View Cones in Vancouver

On July 24, 2018, Vancouver City Council approved a rezoning application for a tower development by the Crown corporation, BC Pavilion Corporation (PavCo) that would obstruct public views of Vancouver's North Shore mountains or — in other words — would intrude into one of Vancouver's protected view corridors (or view cones). Right before the vote occurred, the City Council passed a motion requiring the proposed development to be comprised entirely of secured market rental units to address the ongoing housing crisis in Vancouver.[30] While the requirement for 100% secured market rental units helped assuage the concern of some councillors regarding the incursion into protected view cones, there was nonetheless vocal acknowledgement during the decisionmaking and voting process that market rental units should not be confused with affordable or accessible housing units. Despite the justification for the incursion into the view corridors, there was

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[29] *Id.* # 124; *see also* UN-Habitat, International Guidelines, *supra* note 16, Principles 6(b), 8(l).

[30] *Rezoning: 777 Pacific Boulevard–Sub-area 10C (1 Robson Street)*, Vancouver City Council (July 24, 2018) [hereinafter *Rezoning: 777 Pacific Boulevard*] (amendment proposed by Councillor Raymond Louie).

significant public protest to this decision and opposition to the treatment—or, what many viewed as a sale—of this public asset.

As the local municipal election was approaching in Vancouver, the question of view corridors and the stances of various candidates became a topic of significant public interest. The advocacy group Save Our Skyline YVR (using the social media hashtag #SaveOurSkylineYVR),[31] which had taken up the view corridor controversy with the goal of preserving public access to Vancouver's iconic views and protected view cones, crafted and administered a survey that was sent to the mayoral and council candidates to amplify the issue for candidates in the upcoming October 2018 municipal election, as well as to raise voter awareness of the view corridor incursion.

There was concern that this decision would set a precedent, or lead to, as City Councillor Adriane Carr (who voted against the motion) described it, "death by a thousand cuts."[32] Nonetheless, as some pointed out over the course of the social debate, this was not the first time an incursion had been allowed into one of Vancouver's view cones.[33] Nor was this the first time controversy had arisen regarding the public engagement processes leading up to approved

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[31] For further discussion of Twitter hashtags as a mechanism for coordinating and directing messages relating to a particular issue, topic, or theme, *see* W. LANCE BENNETT & ALEXANDRA SEGERBERG, THE LOGIC OF CONNECTIVE ACTION: DIGITAL MEDIA AND THE PERSONALIZATION OF CONTENTIOUS POLITICS, 90-91, 95ff (2013).

[32] *Rezoning: 777 Pacific Boulevard*, *supra* note 30 (statement on motion); *see also* Patrick Johnston, *Vancouver Approves Tower That Will Block Part of City's Protected View of Mountains—As Long as it's All-Rental*, VANCOUVER SUN, July 25, 2018.

[33] *See, e.g.*, Amy Smart, *'Drawing a Line': Vancouver Weighs Protection of Scenic Views Against Relief From Housing Crisis*, NAT'L POST, Aug. 2, 2018; Kevin Quinlan (@KQ_VanCity), TWITTER (July 25, 2018, 12:55 PM), http://twitter.com/KQ_VanCity/status/1022208614436667392/photo/1> ("I asked our planning staff for the full list of projects that have gone into the view cones since the 1989 policy. Here's the list - there have been 10 #vanpoli"); *see also*, *infra* note 85.

incursions into existing view corridors facing Vancouver's North Shore Mountains.[34] An added contextual layer to the PavCo decision was the role of an earlier public consultation leading up to the development and prior approval of the Northeast False Creek Plan by Vancouver City Council.[35] The Northeast False Creek Plan contains separate height and density rules for the area.[36]

A.   Site and View Description

Vancouver is located in British Columbia, Canada's westernmost province, and on unceded Coast Salish territory—the traditional territories of the Musqueam, Squamish, and Tsleil-Waututh First Nations. While other important and protected view corridors exist in Canada, only Vancouver and Montreal have view corridors protecting mountain vistas. Despite significant barriers to available and affordable housing, an ongoing drug use crisis, and opioid overdose epidemic, Vancouver is consistently near the top of worldwide city livability rankings.[37] It is one of Canada's most

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[34] *See, e.g.*, Gerry Bellett, *Mount Pleasant Residents Sue City to Protect Mountain Views*, VANCOUVER SUN, Mar. 5, 2014; *Lawsuits Against the City,* CITYHALLWATCH (Apr. 8, 2015), https://cityhallwatch.wordpress.com/special-topics/lawsuits-against-city/; *View Corridor Controversy*, WEST END NEIGHBOURS, https://westendneighbours.wordpress.com/archives/2499-2/ (last visited March 10, 2020); digitalmonkblog, *View Protection Weakened in West End Plan 550' Tower Zones Proposed*, CITYHALLWATCH (Nov. 20, 2013), https://cityhallwatch.wordpress.com/2013/11/20/views-under-seige/; City of Vancouver, West End Community Plan (approved by Vancouver City Council Nov. 20, 2013; amended Nov. 15, 2017) [hereinafter West End Community Plan]; *see also* Director of Planning, City of Vancouver, *Implementation of 'Vancouver Views' and Opportunities for Higher Buildings in the Downtown*, Policy Report on Urban Structure RTS No. 08566 (Nov. 29, 2010) [hereinafter 2010 *Vancouver Views*].
[35] City of Vancouver, Northeast False Creek Plan (2018).
[36] *Id.*
[37] *See, e.g.*, Economist Intelligence Unit, *The Global Liveability Index 2019*, ECONOMIST, https://www.eiu.com/public/topical_report.aspx?campaignid=liveability2019 (last visited Mar. 10, 2020).

significant ports in terms of tonnage, size, and traffic, and it is also a center for film production, art, and technological development among strengths in numerous other industries.[38] Vancouver draws many tourists, largely on account of its natural and geographical assets that are found not only within the city but also surround it. The looming North Shore Mountains frame Vancouver's cityscape and reflect on the waters of the Burrard Inlet, while the waters of the Straight of Georgia envelope Vancouver's other side. The resulting breathtaking views appear along view corridors at many locations around the city, and figure prominently in descriptions of the city.

B.   The View Cones

View corridors, or view cones, are intended to protect a view that is unique, priceless, irreplaceable, and defines the character of a city. The Vancouver City Council established view corridor protection in 1989 with the *View Protection Guidelines*. In principle, these guidelines protect views of the North Shore mountains, the Downtown Skyline, and the ocean surrounding the city.[39] The views from downtown of the famous two "Lions Peaks" of the North Shore mountains were particularly central in early decisions surrounding what would be included in the proposed view cones.[40] The unique views that were ultimately captured within Vancouver's current view cones can be understood not only as a shared public resource, but also as assets attracting residents, tourists, private investment,

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[38] *See, e.g., Business, Industry & Trade*, BRITISH COLUMBIA, https://www2.gov.bc.ca/gov/content/data/ statistics/business-industry-trade (last visited March 10, 2020).

[39] City of Vancouver, View Protection Guidelines, (adopted by City Council Dec. 12, 1989 amended Feb. 1, 2011), http://guidelines.vancouver.ca. *See also* 2010 *Vancouver Views, supra* note 34.

[40] *See, e.g.*, Smart, *supra* note 33.

and so on. As the City of Vancouver's section of its website dedicated to urban planning declares:

> We protect Vancouver's spectacular ocean and mountain views while promoting density in the downtown area. The mountains behind our city skyline signify our connection to nature and align with our sustainability goals. However, the downtown peninsula has limited land available for development because of its geographic boundaries. To reduce urban sprawl, we consider higher buildings that don't impact the protected view corridors.[41]

This introduction to Vancouver's protected views goes on to note: "In consultations with the community, we have identified several locations from which both residents and visitors can appreciate the uninterrupted views of the North Shore mountains, the Downtown skyline, and the surrounding water."[42] As of 2020, these views are generally divided into those within the False Creek area (broken down into eleven locations), and those outside of the False Creek area (broken down into six locations) (see Appendix Table 1). This "outlying area" nonetheless remains within the urban core of Vancouver. The July 24, 2018 vote by Vancouver City Council to approve the BC Pavilion Corporation's rezoning application for its PavCo tower development that will creep into Vancouver's view cones will specifically affect the view cones in the Cambie Street and Cambie Bridge area (see Appendix Table 2).

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[41] *Protecting Vancouver's Views*, CITY OF VANCOUVER, https://vancouver.ca/home-property-development/protecting-vancouvers-views.aspx (last visited March 10, 2020).
[42] *Id.*

The protection of view corridors is intended as a balancing mechanism between sustaining public assets and acknowledging the limited land available for development within the geographic boundaries of Vancouver's downtown peninsula—alongside the need for increased density and reduction of urban sprawl, in the context of Vancouver's housing crisis. In addition to balancing the value of protecting the vistas that define the urban landscape with the urgent need for housing, view cone protection itself is also a balance between different opinions on how and why specific view corridors should be preserved. For example, as the project director for the Northeast False Creek Plan suggested to Vancouver City Council in advocating for additional height allowance for the plan and the grouping of the view corridor obstructing towers, the incursion of grouping towers "creates a celebratory moment in the skyline," and "a magic moment in the skyline" that "sing in terms of urban design."[43] In less flowery terms, the City's Chief Planner Gil Kelley noted that the view cone incursion would bunch the extra height in the least intrusive area of the Northeast False Creek area, and do so while creating "a more interesting skyline from that view, frankly, than a straight-line haircut would do."[44]

Certainly buildings can become iconic within an urban landscape, and can become part of a city's identity but, as counterviews expressed, perhaps this was better suited to sites without the vistas and geographical landscape in question in this case. The Chief Planner, however, further noted that the increased height would also result in the density required to account for the

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[43] Kevin McNahey, *Statement to Vancouver City Council* (Feb. 13, 2018); *see also* Mike Howell, *Why the City's Chief Planner is OK with You Losing a View of the North Shore Mountains*, VANCOUVER COURIER (Feb. 19, 2018), https://www.vancourier.com/opinion/why-the-city-s-chief-planner-is-ok-with-you-losing-a-view-of-north-shore-mountains-1.23178274.

[44] *Statement to Vancouver City Council* (Feb. 13, 2018); *see also* Howell, *supra* note 43.

cost within the Northeast False Creek Plan for the "infrastructure and amenities, parks and affordable housing that are being delivered as part of the plan."[45]

C.   Other Protected Views in Canada

1.   Montreal's Mount Royal

In Montreal, Canada's other city that protects urban views of mountains, the views towards Mount Royal are protected view corridors. Mount Royal is a small mountain with three peaks (Colline de la Croix, Colline d'Outremont—newly renamed Tiohtià:ke Otsira'kéhne—and Westmount Summit) that were formed due to volcanic activity and are located just to the west of downtown Montreal. At 232.5 meters above sea level and 175.5 meters above the St. Lawrence River, the summit of Mount Royal (Colline de la Croix) overlooks the city and, along with the 31.4 metre illuminated (usually white) cross that sits perched on top, is a Montreal landmark and iconic image. The park that surrounds Mount Royal—Mount Royal Park—is also one of the city's largest green spaces and serves as a central urban gathering space for recreation.

At present, Montreal protects twenty-three distinct views from Mount Royal to the St. Lawrence and eighty-seven distinct views of Mount Royal from different locations within the city.[46] Montreal first adopted view protection guidelines in the early 1990s, shortly after

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[45] *Statement to Vancouver City Council* (Feb. 13, 2018); *see also* Howell, *supra* note 43.
[46] Sarah Bingham, The Cult of the View: Comparing and Evaluating the Effectiveness of View Corridor Protection in Montreal and Vancouver i-ii (June 25, 2012) (unpublished Masters Report, Queens University Ontario), https://qspace.library.queensu.ca/handle/1974/7290.

Vancouver.[47] At that time, twelve distinct views of Mount Royal from different points within the Ville-Marie District were protected within the Master Development Plan for the Ville-Marie District.[48] View protection of (and from) Mount Royal was further addressed in the 1992 Mount Royal Enhancement Plan and the 1992 Montreal Master Plan.[49] Eventually the 2004 Montreal Master Plan followed, which addressed Mount Royal's contribution to the unique urban landscape and Mount Royal view corridor protection.[50]

In developing the Master Plan, the City issued a "Call for Ideas: 'Do you have a plan?'" to gather the ideas, wishes, and concerns of Montreal's various boroughs, stakeholders, elected officials, and citizens.[51] Public consultations as well as the results of the 2002 Montreal Summit, organized by then-Mayor Gérald Tremblay, supplemented the Call for Ideas.[52] Ensuring that the principles of sustainable development would play a key role in future city developments served as a central consideration shaping the Master Plan, alongside a need to develop a plan that represented a balance between a vision for the city as a whole while also acknowledging the distinct elements of Montreal's boroughs.[53] The Call for Ideas

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[47] Montreal, City Planning, Master Development Plan for the Ville-Marie District (Oct. 1990); *see also* Bingham, *supra* note 46, at i.

[48] *See also* Bingham, *supra* note 46, at i.

[49] Montreal, Master Plan (1992); City of Montreal, Mount Royal Enhancement Plan (1992); Montreal, Master Plan (2004) [hereinafter "2004 Montreal Master Plan"]; *see also* City of Montreal, Mount Royal Protection and Enhancement Plan, 12 (Apr. 2009) [hereinafter "Mount Royal Protection and Enhancement Plan"].

[50] 2004 Montreal Master Plan, *supra* note 49, ch. 2ff, 4.20, 5.1.

[51] Montreal, Montreal Adopts its Vision of the Future with the Master Plan (2004), http://ville.montreal.qc.ca/pls/portal/docs/page/plan_urbanisme_en/media/documents/041200_summary_plan_en.pdf [hereinafter 2004 Master Plan Summary] (summarizing the Master Plan); 2004 Master Plan, *supra* note 49, at 1-2.

[52] 2004 Master Plan Summary, *supra* note 51; 2004 Montreal Master Plan, *supra* note 49, at 1 & 2.

[53] 2004 Master Plan Summary, *supra* note 51; 2004 Montreal Master Plan, *supra* note 49, at 1 & 2.

revealed central public concerns—one of which was the identification of Mount Royal as one of Montreal's most important feature and a desire to protect the views of Mount Royal from different parts of the city.[54]

Based on the European Landscape Convention (also known as the Florence Convention),[55] the 2009 Mount Royal Protection and Enhancement Plan then followed up on and reaffirmed the protection accorded to the Mount Royal view cones.[56] As the 2009 Plan notes, "[t]he concept of landscape encompasses aspects much wider than the simple question of visual quality; it touches on many different values (relating to symbolism, identity, nature and heritage) that people assign to a given territory."[57]

2. Other Canadian Sites

A few other examples of views of the urban landscape that are protected in Canadian cities—but which do not involve mountains— include Halifax's protected view corridors *from* Citadel Hill towards the Halifax Harbour, Ottawa's protected views of Parliament Hill, and Toronto's numerous protected "views from the public realm to prominent sites," including those of both the natural and built environment.[58]

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[54] 2004 Master Plan Summary, *supra* note 51; 2004 Montreal Master Plan, *supra* note 49, at 1 & 2.

[55] Council of Europe, European Landscape Convention, European Treaty Series No 176, Florence (Oct. 20, 2000) (wherein landscape is defined as: "an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors").

[56] Mount Royal Protection and Enhancement Plan, *supra* note 49; *see also* the By-law amending the Complementary Document to the Master Plan (adopted Jan. 2008); Bingham, *supra* note 46, at ii.

[57] Mount Royal Protection and Enhancement Plan, *supra* note 49, at 10.

[58] Toronto, Tall Building Design Guidelines, 1.5-1.6 (May 2013). The view corridor protection provided for in Halifax contrasts those of Vancouver (and especially

IV.   The City as Commons and Intangible Cultural Property: Hierarchical Relations of Possession and Belonging

Countless urban policy debates, citizen movements, and urban development decisions center on the use of city space.[59] Generally, where private property connotes ownership by an individual or a defined number of individuals, and public property connotes ownership by the state, common property is that which is owned by a community, or more specifically, things to which all (eligible) members can lay claim.[60] These ownership relationships shape an individual's ability to access and use the property or space in question. Within the visual dimension of property and space, disagreements among property owners frequently arise over incursions into views due to effects on the value or experience of the

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Montreal) because the protected views originate and emanate from the elevated land in the Downtown Halifax area.

[59] Foster & Iaione, *supra* note 5, at 334.

[60] *See generally* Sarah E. Hamill, *Private Rights to Public Property: The Evolution of Common Property in Canada*, 58 MCGILL L.J. 365, 370-79 (2012); *see also* Larissa Katz, *Exclusion and Exclusivity in Property Law*, 58 U. TORONTO L.J. 275 (2008); Thomas W. Merrill, *Property and the Right to Exclude*, 77 NEB. L. REV. 730, 733 (1988). Of course, the notion of "eligible" or "qualified" members of a group or community presents another layer of potential exclusion that I do not delve into here but certainly merits acknowledging. *See also* Foster & Iaione, *supra* note 5. Common property should be distinguished from private urban property that is held in common by a collection of rights-holders, such as within a condominium, *see, e.g.*, Foster & Iaione, *supra* note 5, at 292-93; *see generally*, Douglas C. Harris, *Condominium and the City: The Rise of Property in Vancouver*, 36 LAW & SOC. INQUIRY 694 (2011), and where non-owners can still be excluded from the space and/or resource, and which may instead be viewed in reality as an enclosure of the commons or, more specifically, an enclosure of the urban commons, *see, e.g.*, Foster & Iaione, supra note 5, n. 48 (drawing on EVAN MCKENZIE, PRIVATOPIA: HOMEOWNER ASSOCIATIONS AND THE RISE OF PRIVATE RESIDENTIAL GOVERNMENTS (2011)).

property.[61] View corridors in a city are an example of one of these visual dimensions, and a collective urban intangible cultural resource that can become the subject of such a disagreement. While views are key individual assets to private property owners, publicly accessible view corridors are a common urban resource to which the "right" to a particular shared view can shape part of one's "right of the city."[62] Yet, conflicts relating to intangible common shared urban resources like view corridors are frequently overlooked within urban decisionmaking processes that affect the equitable use of and access to these particular resources.

Some of the complexities in beginning to better account for the intangible dimensions of property are highlighted by Vancouver City Council's decision to allow the incursions into view cones. Delineating the right to a public asset such as a view corridor presents a challenge in terms of scope, and cities must balance intangible elements with other needs like housing. Conceptualizing a city's public assets within the notion of the urban commons provides additional perspective, as does situating the urban commons within the notion of a "right to the city" that informs much of the HUL approach regarding the urban landscape, as well as the NUA's approach towards sustainable urban development and focus on equitable diversity within processes of urban design and decisionmaking.

As Sheila Foster and Christian Iaione explain, beyond the notion of a right to the city or a particular space or amenity in a city, viewing urban spaces and resources as an urban commons "assert[s] the existence of a common stake or common interest in resources shared

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[61] *See, e.g.*, Tara J. Foster, *Securing a Right to View: Broadening the Scope of Negative Easements*, 6 PACE ENVT'L. L. REV. 269 (1988); LEE ANNE FENNELL, THE UNBOUNDED HOME: PROPERTY VALUES BEYOND PROPERTY LINES (2009).

[62] *See* Purcell, *Citizenship*, *supra* note 10, at 576-79.

with other urban inhabitants as a way of resisting the privatization and/or commodification of those resources."[63] This interest was particularly relevant for those concerned about Vancouver City Council's decision to permit an incursion into the city's protected view corridors. While the common law has not and does not generally protect access to a particular view,[64] as Foster and Iaione explain, the "language of the commons" can be usefully "invoked to lay claim to, and protect against the threat of 'enclosure' by economic elites, a host of urban resources and goods which might otherwise be more widely shared by a broader class of city inhabitants."[65] Understanding the commons as a normative claim to accessing a resource and its community social value, rather than understanding it as a description of a resource, lays the basis for a claim like the public outcry opposing the view cone incursion in Vancouver: "to open up (or to re-open) access to a good—i.e., to recognize the community's right to access and to use a resource which might otherwise be under exclusive private or public control."[66] Here, the language of the commons speaks not only to situations such as view corridor preservation, but it reflects the New Urban Agenda's framework for sustainable urban development, notably point 124,[67] and the HUL Recommendation regarding the balancing of diverse stakeholder interests in city space, including a holistic,

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[63] Foster & Iaione, *supra* note 5, at 284 (citations omitted).

[64] Foster, *supra* note 61 (providing an in-depth and helpful overview of easements, covenants, restrictions, and exceptions as well as the application of local ordinances, zoning laws, and nuisance law in relation to the protection of a property owner's views or a "right to a view"). .

[65] Foster & Iaione, *supra* note 5, at 284 (citations omitted).

[66] Foster & Iaione, *supra* note 5, at 288; Purcell, *Citizenship*, *supra* note 10, at 576-79; Nicholas Blomley, *Flowers in the Bathtub: Boundary Crossings at the Public–Private Divide*, 36 GEOFORUM 281 (2005); SARAH KEENAN, SUBVERSIVE PROPERTY: LAW AND THE PRODUCTION OF SPACES OF BELONGING 77 (2015).

[67] New Urban Agenda, *supra* note 5, # 124.

interdisciplinary, and inclusive approach to managing a city's tangible and intangible, environmental, and cultural assets.[68]

Conceptualizing a city's resources as a common good to which inhabitants can lay claim problematizes the privatization and monopolization of these resources that may take place within urban governance, regulatory and resource management decisions.[69] A turn towards intangible resources like view corridors is needed for the inclusivity envisioned in standard-setting documents like the New Urban Agenda and the HUL Recommendation of a *buen vivir* in the city.[70] Viewing city spaces and the urban resources through a "commons" framework shifts the focus to the local, sublocal, and neighborhood in terms of decisionmaking, public engagement, resistance, and cooperation for the sake of broader inclusivity and more locally influenced and context-aware shaping of the use of these common resources and changing urban landscapes.[71]

Property law is central to the management, allocation, and use of spaces in the city. It affects all urban citizens regardless of their property ownership status. Beyond its protection of land and wealth accumulation, property law can play a progressive role by preserving access to common goods and shared resources.[72] As Sarah Keenan writes, applying the lens of property can be "more useful than thinking in terms of identity or citizenship in the sense

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[68] *See, e.g.,* UNESCO, New Life for Historic Cities, *supra* note 17, at 5, 9, 11; HUL, *supra* note 8, at 6, 11, 22-25; HUL Guidebook, *supra* note 15, at 14-15.

[69] Foster & Iaione, *supra* note 5, at 284-85. For additional recent literature on the urban commons, *see generally* URBAN COMMONS: RETHINKING THE CITY (Christian Borch & Martin Kornberger eds. 2015).

[70] On the application of *buen vivir* to urban development and city life, *see* SARA GWENDOLYN ROSS, LAW AND INTANGIBLE CULTURAL HERITAGE IN THE CITY, ch. 1 (2019).

[71] *See, e.g.*, Foster & Iaione, *supra* note 5, at 284.

[72] *Id.* at 286; *see* Elinor Ostrom et al., *Covenants With and Without a Sword: Self-Governance Is Possible*, 86 AM. POL. SCI. REV. 404 (1992).

that it moves the focus of analysis away from the subject and presents a fuller picture, one that encompasses the physical as well as the conceptual and social aspects of belonging."[73] Considering the view cone protests in Vancouver through a subversive property lens sheds light on why changes to the urban landscape can strike such a nerve.

Rather than conceptualizing property as it is traditionally understood, for example, as a bundle of rights or an extension of personhood, it can instead be understood as a relationship of belonging.[74] As anthropologist Brian Noble explains, practices or systems that place emphasis on cultural property "as a commodity capable of individual ownership and alienation for the purposes of resource use and alienation" might instead understand cultural property through the lens of "owning as belonging," which emphasizes relationships among people as well as with what they identify as cultural property.[75] Or, as I suggest, public assets like the protected Vancouver view corridors can be understood as intangible cultural property with which urban citizens can establish a relationship of belonging.[76] An individual's engagement with the visual characteristics of everyday experience and the meaningfulness and identification generated by their visual

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[73] KEENAN, *supra* note 66, at 9.

[74] *Id.* at 71, 76-77; *see also id.*, at 67-68, 76, 92-93; Davina Cooper, *Opening up Ownership: Community Belonging, Belongings, and the Productive Life of Property*, 32 LAW & SOC. INQUIRY 625, 629-32 (2007); RUTH MEINZEN-DICK & RAJENDRA PRADHAN, INT'L FOOD POL. RES. INST., LEGAL PLURALISM AND DYNAMIC PROPERTY RIGHTS' COLLECTIVE ACTION AND PROPERTY RIGHTS 22 (2002), https://www.ifpri.org/publication/legal-pluralism-and-dynamic-property-rights.

[75] Brian Noble, *Owning as Belonging/Owning as Property: The Crisis of Power and Respect in First Nations Heritage Transactions Within Canada*, *in* FIRST NATIONS CULTURAL HERITAGE AND LAW: CASE STUDIES, VOICES, AND PERSPECTIVES 465, 465 (Catherine E. Bell & Val Napoleon eds., 2008).

[76] *See also* Purcell, *Excavating*, *supra* note 7, at 102.

experience produces a connection to a particular space or city.[77] Excluding citizens from a public common urban resource damages or intrudes upon the sense of place and the role of place (as a particular point within space where social memory is produced) in everyday life through established characteristics of the city space. This process then damages the sense of belonging in a city and the sense of equitable access to space and voice within a city.[78] A sense of powerlessness attaches to this loss, especially where access to public assets and the experience of the assets—such as the championed vistas within Vancouver—have contributed to decisions to remain in or move to a city, or choices about what to pay to access these assets regularly.

Belonging is understood relationally in terms of how comfortably an individual fits or is welcome within a place—either materially or conceptually—and is thus linked to propriety and intimately connected to property, which results in a "hierarchical relationship of possession."[79] Social regulation and the shaping of spaces in a city lead to hierarchical relationships of possession to shared public resources and assets of a city, which contributes to spatially contingent hierarchical senses of belonging within a city.[80]

V.   Recipes for Protest

Social media deployment in the view cone controversy facilitated a vocal reaction and protest over the question of who owns what within the space of a city, the urban commons, and the City's decisionmaking pertaining to an intangible piece of the everyday

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[77] *See also id.*

[78] *See also* KEENAN, *supra* note 66, at 40-42.

[79] *Id*. at 60; *see also id*. at 68, 71; Emily Grabham, *'Flagging' the Skin: Corporeal Nationalism and the Properties of Belonging*, 15 BODY & SOC'Y 63, 67 (2009).

[80] KEENAN, *supra* note 66, at 65.

experience of the city.[81] Many who contested the view cone incursion expressed that they did not feel that the City was taking their concerns or perspectives into account.[82] Even though citizens protested previous view cone incursions, this particular incursion received amplified attention from the media, in public hearings, and through local social media buzz.[83] While City Council approved the incursions despite a 2010 reaffirmation for the "rigorous application of Cambie Street and Cambie Bridge view corridors,"[84] the incursion into the Cambie view cones was not the first time that City Council allowed a development to intrude into one of Vancouver's view cones (see Appendix Table 3). Interestingly though, this time the public outcry was significantly more vocal and widespread.[85]

In 2011, the *Vancouver Courier* (a free local community newspaper) selected "social media" as the "Newsmaker of the Year" in recognition of how social media platforms were shaping public dialogue surrounding pivotal political decisions taking place at City Hall.[86] While social media now exerts significant influence within

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[81] *See also* BENNETT & SEGERBERG, *supra* note 31, at 8-9.

[82] *See*, *e.g.,* July 10, 2018 Public Hearing, *supra* note 1.

[83] Bellett, *supra* note 34; *Lawsuits Against the City*, *supra* note 34; *View Corridor Controversy*, *supra* note 34; digitalmonkblog, *supra* note 39; West End Community Plan, *supra* note 34; 2010 *Vancouver Views*, *supra* note 34.

[84] *Id.*, *Resolution E.*

[85] Interest in the vocal outcry surrounding this incursion arose frequently when I discussed this research project at academic conferences. As of July 25th, 2018, over 160 letters in opposition to the view corridor incursion had been filed but only nine in support. Joanne Lee-Young, *Voices Increasing Against PavCo Tower Piercing Downtown 'View Cones'*, VANCOUVER SUN, July 25, 2018. Representing twenty-seven community and resident's associations (which encompasses most of the City of Vancouver), the Coalition of Vancouver Neighbourhoods filed one of these letters in opposition (*id.*; *see also* THE COALITION OF VANCOUVER NEIGHBOURHOODS, http://coalitionva.org).

[86] Mike Klassen, *Social Media is Straining Democracy at Vancouver City Hall*, VANCOUVER COURIER, July 2, 2019. This Article does not attempt to engage deeply on the matter of social media and political change or activism. *See* JOHN POSTILL,

politics generally, its effects locally can be amplified—notably in terms of enabling people to vocally contribute without physically attending or speaking at public hearings. Urban citizens can weigh in remotely without having to contact a local representative directly, making it easier for local citizens and groups to mobilize support for an opinion that previously would have required significant effort in, for example, physically engaging other urban citizens and community members in petition signing, meetings, flyering, and so on. Social media use can amplify pre-existing frustrations via accessible platforms such that viewpoints are heard more clearly.

As Lance Bennett and Alexandra Segerberg summarize in relation to what they describe as "the rise of more highly individualized publics," even where a similar problem or issue is shared by a large group, the personal circumstances or perspectives of individuals may not permit them to join, wish to join, or be able to concretely connect with a traditional protest movement, formal political organization, or a "restrictive" group identity.[87] Digital media can mitigate these personal circumstances or perspectives and result in the kind of fluid public mobilization and organization that took place during this Vancouver view cone controversy.[88] For example, as one public hearing attendee exclaimed about the logistics of attending the fora made available for the public to express their views regarding the Cambie Street and Cambie Bridge incursions, "if we came to every public hearing we wouldn't have a life!"[89]

THE RISE OF NERD POLITICS: DIGITAL ACTIVIST AND POLITICAL CHANGE (2018) for an excellent example of scholarship—and digital ethnography—on this subject.

[87] BENNETT & SEGERBERG, *supra* note 31, at 1, 5, 23-25, 27, 35-36, 52, & 126-27.

[88] *Id.*; *see also* POSTILL, *supra* note86 , at 169 & 175.

[89] July 10, 2018 Public Hearing, *supra* note 1.

While public hearings and City Council meetings can be live-streamed, live-tweeted, and so on, simultaneous backchanneling can also take place online (as well as before or after) via a simple slogan, flexible term, personalized context, or localized phrase "anchored in lifestyles and shared with social networks" that carries symbolic inclusiveness. An example of this is the Twitter hashtag used during the view cone incursion controversy: #SaveOurSkylineYVR.[90] It is not necessarily the case that prior Vancouver view cone incursions were less controversial, but only that social media enables a greater outcry that can occur more quickly and swiftly find interactive support through digitally networked or connective action.[91] The outcry, however, also reveals a gap in public engagement. Existing methods for engaging Vancouver's citizenry had not connected through equitable and inclusive fora—especially where, public hearings often stretch hours and even days past their predicted time allotment.

VI.   Conclusion

In addition to inadequate consultation and engagement that resulted in citizen protest, an overarching worrisome aspect of Vancouver's *View Protection Guidelines* is that their effectiveness can be lessened by the development of other policies, such as the Northeast False Creek Plan that overlap in their spatial jurisdiction but not in their primary objective. While on paper the Guidelines appear to provide meaningful engagement and consider views as a commons resource, policies like the Northeast False Creek Plan can

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[90] BENNETT & SEGERBERG, *supra* note 31, at 2, 5-6, 37, 126-27.

[91] *See also generally id*. and *see especially id*., at 2, 5. Bennett & Segerberg distinguish *collective* action with the *connective* action that they identify as underlying digitally networked action where digital media takes on the role of organizing agent. *Id.* at 10, 27-28, & 31-36.

effectively overrule/trump the Guidelines. These disjunctive policies and objectives contribute to the sense that these kinds of guidelines, despite their development, importance, and application, are simply tokenistic. This concern was evident in the public backlash regarding the Cambie Street and Cambie Bridge view cone incursions that arose due to the PavCo tower development proposal.[92]

Ineffective engagement and entrenched hierarchical relationships demonstrate the need to move towards making decisions about the urban environment through an urban commons framework.[93] Models for governance regimes, such as urban collaborative governance, may offer a better structure for managing contestations over city spaces, urban resources, and the intangible (and tangible) cultural assets of a city. This kind of shift is necessary where local people—to whom the cultural heritage spaces and landscapes of a city are an important element of their "living environment" as well as "a manifestation of their identity"—are nonetheless "frequently left out of discussions about the future of their places."[94] As UN-Habitat's *International Guidelines on Urban and Territorial Planning* note, "[a]t a neighbourhood level … [p]articipatory planning and budgeting involving communities in managing urban commons, such as public spaces and services, could contribute to improved spatial integration and connectivity, human security and resilience, local democracy and social accountability."[95]

Urban collaborative governance re-envisions the city functioning as an "enabler and facilitator" for collaboration with an engaged public such that decisionmaking surrounding the management of

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[92] *See also* Bingham, *supra* note 43, at iv.

[93] Foster & Iaione, *supra* note 5, at 335-38, 349.

[94] Labadi & Logan, *supra* note 5, at 2; Foster & Iaione, *supra* note 5, at 335-37.

[95] UN-Habitat, International Guidelines, *supra* note 16, at 3.

the urban commons is shifted away from the center and from traditional civic arenas.[96] Alongside City Council meetings, public hearings, and structured public consultations, urban collaborative governance further incorporates the engaged public in decisions pertaining to access to the urban commons. Such public involvement may better address flawed policies, such as Vancouver's *View Protection Guidelines* that, despite community views on their importance and purpose, do not ultimately do the work they were developed to accomplish and can become meaningless once development pressures arise, despite public support for preservation.

Conceptualizing the shared public assets of a city, the urban landscape, and the intangible cultural resources illustrated by Vancouver's iconic mountain, sea, and sky views through an urban commons framework centers claims to these assets as a common good. Where the public loses access to an iconic and valued common public asset vocal protests arise. This occurred in Vancouver after City Council's vote to allow the proposed PavCo tower development to intrude into legally protected local view cones. The vocal outcry that took place simultaneously in Vancouver surrounding this decision, magnified through social media platforms, not only highlights ongoing gaps in meaningful engagement with those affected by urban governance (re)development decisions, but also leads to questions about tokenistic policies that are ineffective in carrying out their purpose.

Finally, the controversy surrounding the Cambie Street and Cambie Bridge view cone incursions sits uncomfortably with sustainable development practices that reflect the New Urban

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[96] Foster & Iaione, *supra* note 5, at 335; *see also* Purcell, *Excavating*, *supra* note 7, at 101-102.

Agenda and HUL Recommendation's emphasis on culture, cultural heritage, and cultural landscapes as important considerations for protection from the "potential disruptive impacts of urban development."[97] As this Article also considers, decreased or removed access to these publicly accessible assets and intangible urban cultural resources (despite existing policies created to preserve them) triggers a hierarchy of possession that affects the sense of belonging, inclusion, and identity in a city for urban citizens, and can contribute to a sense of powerlessness when there is a sense of imbalance in accounting for private versus public interests.

The HUL Recommendation and the New Urban Agenda emphasize the need for more equitable management of overlapping stakeholder interests in the contested city to achieve sustainable (re)development strategies that acknowledge the deep and intertwined layers of a city, its history, its natural features, and built environment. Working towards addressing this need requires a questioning and renegotiation of existing city policies in order to better balance the use-value and exchange-value of intangible shared public assets like the urban landscape that can be an ongoing source of urban friction. The question of how to better weigh divergent considerations in managing a city's shared public assets and tangible and intangible cultural landscapes—when these elements are understood through an urban commons framework—is reflected in urban governance that works towards increased citizen collaboration in decisionmaking processes. As the HUL Recommendation suggests, a collaborative and participatory reshaping of urban governance models that diffuses the centrality of urban decision-making carries with it the potential of localizing the

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[97] New Urban Agenda, *supra* note 5, #124; *see also* UN-Habitat, International Guidelines, *supra* note 16, Principle 6(b), 8(l); Purcell, *Excavating*, *supra* note 7, at 102.

New Urban Agenda's goals for a broader spectrum of urban citizen engagement and the HUL Recommendation's action tools for, most notably, community engagement. This reshaping, it is suggested, would also lay a framework for novel challenges and a balancing of the diverse and complex local concerns that ultimately contribute to an urban citizen's daily experience of their city and their "right" to their city.[98] Certainly the reality of an engaged public does not necessarily entail that all will participate, but greater attention to effectively utilizing platforms and mediums for more accessible engagement, as well as a focus on amplifying opportunities for engagement with marginal and sublocal citizen groups, creates a framework within which this is possible.

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[98] *See, e.g.*, City of Vancouver, *Host Your Own Engagement (HYOE) Session*, which provided cultural grants during the public engagement process leading up to the Final Draft of *CULTURE | SHIFT – BLANKETING THE CITY IN ARTS AND CULTURE VANCOUVER CULTURE PLAN 2019-2019, 85 (2019), CITY OF VANCOUVER*. Providing an infrastructure and funding for these kinds of sessions carries potential for the kind of citizen engagement envisioned by the HUL Recommendations and the New Urban Agenda. These grants were intended "to support meaningful and culturally appropriate engagement with underrepresented communities." *Id.* The City allocated grants to, for example, "organizations with mandates related to underrepresented groups" to "design and host their own engagement sessions." *Id.*; *see also* Purcell, *Excavating*, *supra* note 7, at 102; Purcell, *Citizenship*, *supra* note 10, at 576-79.

Appendix:

TABLE 1[99]

False Creek area		Outlying areas	
Alder Terrace	View cone A: Mount Seymour including Second Peak, Pump Peak, and Brockton Point.	**Queen Elizabeth Park**	View cone 3.1: Vancouver's downtown skyline from the highest point in the city
	View cone B1: The Lions peaks		View cone 3.2.1, 3.2.2, and 3.2.3: The "iconic dome shape" formed by Vancouver' downtown high-rises and the view of the mountain ranges above (from Mount Strachan to Mount Burwell).
	View cone B2: This corridor is described as Camel and Crow Mountain and notes that the roof of Hotel Vancouver has been identified as part of this particular view as it "adds context". Hotel Vancouver view "highlights". Hotel Vancouver is a municipally protected heritage building included within Vancouver's Heritage Register.[100]		View cone 3.2.4a: The waters of the Burrard Inlet.
Laurel Landbridge	View cone C1: The Lions peaks and Brunswick Mountain	**Cambie Street**	See Table 2.

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[99] *Id.*

[100] Hotel Vancouver is classified as A(M) (primary significance, municipal protection): Vancouver Heritage Register, 18 (version last amended Apr. 2018), CITY OF VANCOUVER, http://guidelines.vancouver.ca>.

	View cones C2.1 and C2.2: Crow Mountain, Camel, and Beauty Peak (partially hidden by trees when regular park maintenance is not taking place).	**Granville Street**	View cones 20.1 and 20.2: Capilano Mountain, the Enchantment, Wizard, and Magic peaks, and the East Lion.
Heather Bay	View cone D: The Lions peaks and Brunswick Mountain (partially hidden by sailboat masks, which are deemed to "add context" to the view).	**Commercial Drive**	View cone 21: Northshore mountains ranging from Beauty Peak to Mount Fromme. This view cone is described as additionally providing context to the experience of traveling north along Commercial Drive through the historic commercial district.
Cambie Bridge	See Table 2.	**Main Street**	View cone 22: Beauty Peak, Crown Mountain, Dam Mountain, Grouse Mountain, Mount Fromme, Cathedral Mountain, Mount Burwell, Coliseum Mountain, and Lynn Peaks
Choklit Park	View cone F1.1: Dam Mountain, Grouse Mountain, and the "distinctive" roof line of Grace Tower (a high-rise condo).	**Trout Lake**	View cone 27.1: The vista spanning from the Lions peaks to Capilano Mountain.
	View cones F1.2 and F1.3: Mount Fromme		View cone 27.2: The vista spanning from Crown Mountain, Dam Mountain, Grouse Mountain, and Mount Fromme to Mount Seymour.
Olympic Village	View cones G1.1 and G1.2: North Shore Mountains		

Shipyard Pier			
Olympic Plaza	View cone H: Grouse Mountain, Mount Fromme, Cathedral Mountain, Mount Burwell, and Lynn Peaks—as well as the "distinctive overhang" of Vancouver's Creekside Community Recreation Center, which is described as providing a frame and creating context for the view.		
Creekside Park	View cones J1.1 and J1.2: The Lions peaks, Grouse Mountain, Brunswick Mountain, Enchantment, Wizard and Magic peaks, Capilano Mountain, Crown Mountain, and Dam Mountain (partially hidden but remedied with regular park maintenance and, potentially, future park redesign). The view from Creekside Park includes spires that are described as providing a frame and context to the view.		
Granville Island	View cone 10: Hollyburn and Mount Strachan. The Art Deco style Burrard Bridge is included for its "western bounding edge and plimsoll line."		
Granville Bridge	View cone 12.1.1: Dam and Grouse Mountain		

	View cone 12.1.2: Beauty Peak, Crow Mountain, and Dam Mountain		
	View cone 12.1.3: Crown Mountain as well as the roof of the Ellington Building (a high-rise condo).		
	View cone 12.2: Mount Seymour, Mount Elsay, and Rector Peak		

TABLE 2[101]

View Number	View Name	View Point Location	View Subject
9.1	Cambie Street	Cambie Street between 10th and 11th Avenue	North Shore Mountains
9.2.1	Cambie Street	Cambie Street at 12th Avenue	North Shore Mountains
9.2.2	Cambie Bridge	Cambie Street at 12th Avenue	North Shore Mountains
E1	Cambie Bridge	Cambie Bridge mid-point, just North of 6th Avenue on ramp	Crown/Grouse
E2.1	Cambie Bridge	Cambie Bridge at the stairs above the South shore of False Creek	Mount Seymour
E2.2	Cambie Bridge	Cambie Bridge mid-point, just North of 6th Avenue on ramp	Mount Seymour

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[101] *See also* View Protection Guidelines, *supra* note 39.

TABLE 3

Projects Intruding into Vancouver View Cones Since 1989[102]		
Project	**Height (meters)**	**Date of Construction**
One Wall Centre	149.8m	2001
Marinaside Crescent – Quaywest 1	103m	2002
Shaw Tower	149m	2004
Living Shangri-La	196.6m	2008
Fairmont Pacific Rim	139.6m	2010
MNP Tower	143.3 m	2015
Telus Garden	136 m	2016
Vancouver Turn	187.8 m	2016
Vancouver House	151.5m	2019
One Burrard Place	167.6 m	Under construction, scheduled for completion in 2020.

[102] Smart, *supra* note 33; Quinlan, *supra* note 33.