

立法會
Legislative Council

LC Paper No. CB(2)1312/07-08
(These minutes have been
seen by the Administration)

Ref : CB2/SS/1/07

Subcommittee on Antiquities and Monuments
(Withdrawal of Declaration of Proposed Monument)
(No. 128 Pok Fu Lam Road) Notice

Minutes of the first meeting
held on Friday, 29 February 2008, at 8:30 am
in Conference Room B of the Legislative Council Building

Members present : Hon Audrey EU Yuet-mee, SC, JP (Chairman)
Hon CHOY So-yuk, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Alan LEONG Kah-kit, SC
Prof Hon Patrick LAU Sau-shing, SBS, JP

Member absent : Hon LEE Wing-tat

Public Officers attending : Agenda item II
Development Bureau
Miss Janet WONG, JP
Deputy Secretary (Works) 1
Mr Alan AU
Assistant Secretary (Policy & Development)
Leisure and Cultural Services Department
Dr Louis NG
Assistant Director (Heritage & Museums)

Department of Justice

Miss Angie LI
Government Counsel

Clerk in attendance : Miss Odelia LEUNG
Chief Council Secretary (2)6

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mr Stanley MA
Senior Council Secretary (2)6

Miss Carmen HO
Legislative Assistant (2)6

Action

I. Election of Chairman

Professor Patrick LAU declared interest as a member of the Antiquities Advisory Board (AAB).

2. Mr Abraham SHEK, the Member who had the highest precedence in the Council among those who were present at the meeting, presided over the election of the Chairman of the Subcommittee.

3. Ms Audrey EU was nominated by Mr Abraham SHEK and the nomination was seconded by Professor Patrick LAU. Ms Audrey EU accepted the nomination. There being no other nominations, Ms Audrey EU was elected as the Chairman of the Subcommittee.

4. The Subcommittee deliberated (Index of proceedings attached at **Annex**).

II. Meeting with the Administration

[L.N. 59 of 2007, L.N. 21 of 2008, LegCo Briefs File ref: HAB/CS/CR 4/1/83 and DEVB/CS/CR 4/1/83, LC Paper Nos. LS63/06-07 and LS44/07-08]

5. The Chairman, Miss CHOY So-yuk and Mr Alan LEONG noted with grave concern the significant difference in the assessment of the contribution and social influence of the original owner of the buildings within Rural Building Lot

Action

No. 324, No. 128 Pok Fu Lam Road, Hong Kong (the Building), as detailed in the two relevant Legislative Council Briefs. Members sought explanations for not declaring the Building as a monument.

6. Deputy Secretary (Works) 1 explained that the purpose of declaring the Building as a proposed monument on 20 April 2007 was to protect it from demolition as there was an immediate demolition threat. The declaration of the Building as a proposed monument had allowed time for the Antiquities Authority to consider in a comprehensive manner the heritage value of the Building. Even without making the Notice to withdraw the declaration (L.N. 21 of 2008), the Notice to declare the Building as a proposed monument (L.N. 59 of 2007) would expire after 19 April 2008.

7. Assistant Director (Heritage & Museums) explained to members the reasons for not declaring the Building as a monument. He highlighted that before the declaration of the Building as a proposed monument, the Antiquities and Monuments Office (AMO) had not been able to gain access to the Building nor establish a direct dialogue with its owner. Because of this, AMO's previous assessment of the architectural value of the Building was based on its external appearance as viewed from a distance, and of its general heritage value on the information available to AMO at the time. With the consent of the Building's owner, AMO had successfully gained access to the Building in the past few months to carry out comprehensive assessment of its heritage value, arrange for members of AAB to visit the site and the Building, and obtain new information through on-site inspections. Based on its comprehensive assessment, AMO was of the view that while the Building possessed some heritage value, it was not up to the required high threshold that justified its declaration as a monument. AAB unanimously supported the withdrawal of the declaration. It accorded the Building a Grade III status under its administrative grading system.

8. Assistant Director (Heritage & Museums) stressed that AMO had all along assessed the heritage value of buildings in a professional, impartial and objective manner. In the case of King Yin Lei which was a rare Chinese Renaissance style architecture, a Mainland expert was appointed to carry out a study on the restoration works. He reiterated that the staff of AMO had the required expertise to assess the heritage value of the Building.

9. Members were concerned about the options available legally to preserve the Building. Assistant Legal Adviser 4 advised that although the Subcommittee might move a motion to repeal L.N. 21 under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), its repeal could not revive the legal effect of L.N. 59 of 2007. Based on his understanding of sections 2A and 2B of the Antiquities and Monuments Ordinance (Cap. 53) (the Ordinance) and subject to the Administration's confirmation, the Authority (defined now under section 2 of the Ordinance to mean the Secretary for Development) could only declare a building within private land to be a proposed monument once. Subject to

Action

section 4 of the Ordinance, the Authority might, after consultation with the Antiquities Advisory Board and with the approval of the Chief Executive, by notice in the Gazette, declare a building which the Authority considered to be of public interest on specified grounds to be a monument under section 3 of the Ordinance.

[*Post-meeting note* : The Administration's view on the legal effect of L.N. 21 and the options available legally to preserve the Building was in the Administration's response [LC Paper No. CB(2)1311/07-08(01)].]

Follow-up

10. Members were not convinced by the Administration's explanations. They requested the Administration to provide written response to the following -

- (a) What options were available legally to preserve the Building?
- (b) Why an independent expert had not been appointed to assess the heritage value of the Building? As AMO had undertaken the assessment by itself, what kind of expertise was required for such assessment and why AMO was considered capable of undertaking the task?
- (c) Which members of AAB had visited the Building and when was the visit conducted? What was the information provided to them to facilitate their understanding and assessment of the heritage value of the Building and when was it provided? Whether any discussions had been held with these members after the visit; and, if so, the details of the discussions.
- (d) Whether the Grade III status accorded to the Building by AAB could be reviewed?
- (e) In addition to the on-site inspections of the Building, what other actions had been taken by the Administration between the period after the declaration of the Building as a proposed monument on 20 April 2007 and before the withdrawal of the declaration on 1 February 2008? Whether the Administration had held any discussions with the owner of the Building, and, if so, what were the outcomes?
- (f) Whether any loopholes in the existing policy on heritage preservation had been revealed concerning the declaration of the Building as a proposed monument and the subsequent withdrawal of the declaration? If the answer was "yes", what were they? If the answer was "no", why?

Action

- (g) Information on the rezoning application filed by the owner of the Building to the Town Planning Board.

11. Members agreed that to allow time for the scrutiny of L.N. 21, its scrutiny period be extended from 12 March to 9 April 2008. The Chairman would give notice to move a motion to that effect at the Council meeting on 12 March 2008.

12. Members also agreed that the Subcommittee would only consider issues relating to L.N. 21, and any policy matters concerning heritage conservation should be referred to the Panel on Home Affairs for consideration.

III. Any other business

Date of next meeting

13. Members agreed to hold the next meeting at 8:30 am on 12 March 2008. Members also agreed to invite the Hong Kong Institute of Architects and Mr William Meacham, former Chairman of the Hong Kong Archaeological Society, to attend the meeting to give views on L.N. 21.

14. There being no other business, the meeting ended at 9:45 am.

Council Business Division 2
Legislative Council Secretariat
11 March 2008

**Proceedings of the first meeting of
Subcommittee on Antiquities and Monuments
(Withdrawal of Declaration of Proposed Monument)
(No. 128 Pok Fu Lam Road) Notice
on Friday, 29 February 2008, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subjects	Action required
000000 - 000545	Mr Abraham SHEK Ms Audrey EU Prof Patrick LAU	Election of Chairman	
000546 - 000845	Chairman Admin	Briefing by the Administration on L.N. 59 of 2007 and L.N. 21 of 2008 respectively concerning the declaration and withdrawal of the declaration of the buildings within Rural Building Lot No. 324, No. 128 Pok Fu Lam Road, Hong Kong together with all structures erected on such land (the Building) as a proposed monument.	
000846 - 001506	Chairman Clerk ALA4	<p>The Clerk's briefing on the scrutiny period for L.N. 21 and the power of the Legislative Council (LegCo) to amend an item of subsidiary legislation before the expiry of the scrutiny period..</p> <p>ALA4's advice that L.N. 59 should be effective for 12 months until 19 April 2008 if not for the making of L.N. 21. As L.N. 21 was effective immediately after it was published in the Gazette on 1 February 2008, its repeal would not revive the legal effect of L.N. 59 until 19 April 2008. Subject to the Administration's confirmation, the Authority (defined now under section 2 of the Ordinance to mean the Secretary for Development) could only declare a building within private land to be a proposed monument once. Subject to section 4 of the Ordinance, the Authority might, after consultation with the Antiquities Advisory Board and with the approval of the Chief Executive, by notice in the Gazette, declare a building which the Authority considered to be of public interest on specified grounds to be a monument under section 3 of the Ordinance.</p>	
001507 - 002509	Chairman Admin	<p>Chairman's concern about the significant differences in the assessment of the contribution and social influence of the owner of the Building and its heritage value as detailed in the two relevant LegCo Briefs.</p> <p>AD(H&M)'s elaboration on the differences of declaring a building as a proposed monument and a</p>	

Time marker	Speaker	Subjects	Action required
		monument under sections 2A and 3 of the Ordinance respectively and the procedures involved. His explanation on the reasons for the Antiquities Authority not declaring the Building as a proposed monument, having regard to the comprehensive assessment made by the Antiquities and Monuments Office (AMO) and the views of the Antiquities Advisory Board (AAB).	
002510 - 004412	Miss CHOY So-yuk Chairman Admin	Miss CHOY's echo of the Chairman's concern. Her view that an independent expert should be appointed to assess the heritage value of the Building, as in the case of King Yin Lei. AD(H&M)'s explanation on the differences between King Yin Lei and the Building and for the different assessment of the contribution of the Building's owner and its heritage value as contained in the two LegCo Briefs.	
004413 - 005058	Prof Patrick LAU Chairman Admin ALA4	Prof LAU's declaration of interest as a member of AAB. His enquiry about the redevelopment potential of the Building. DS(W)1's and AS(P&D)'s provision of information on the site area, plot ratio, development restrictions and the rezoning application filed by the owner of the Building to the Town Planning Board which would be considered by Metro Planning Committee on 28 March 2008.	
005059 - 005223	Miss CHOY So-yuk Chairman	Miss CHOY's remark that the King Yin Lei case should be a precedent for dealing with assessment of heritage value of a building.	
005224 - 005609	Mr Alan LEONG Chairman	Mr LEONG's indication of non-acceptance of the Administration's explanations. His expression of disappointment with the self-complacent attitude of AMO in assessing the heritage value of the Building. His concern about the use of an administrative means to achieve a political end, as shown in the significant different assessment of the contribution of the owner of the Building and its heritage value in the two LegCo Briefs.	
005610 - 010451	Chairman Miss CHOY So-yuk ALA4	Miss CHOY's enquiry about the feasible options to protect the Building from demolition. ALA4's reiteration that a repeal of L.N. 21 would not restore the legal effect of L.N. 59. Chairman's suggestion to schedule another meeting to further discuss the matter.	

Time marker	Speaker	Subjects	Action required
		DS(W)1's reiteration of the purpose of declaring the Building as a proposed monument and of the results of the comprehensive assessment of the heritage value of the Building which did not meet the high threshold for declaring it as a monument.	
010452 - 010828	Chairman Miss CHOY So-yuk Clerk Prof Patrick LAU	Agreement on the date of next meeting at 8:30 am on 12 March 2008. Miss CHOY's request for written information on feasible options for preservation of the Building.	
010829 - 011417	Chairman Miss CHOY So-yuk Clerk Admin Mr Alan LEONG	Chairman's request for the following information - <ul style="list-style-type: none">- the available options for preserving the Building;- the rezoning application filed by the owner; and- the expertise of AMO in assessing the heritage value of the Building. Miss CHOY's suggestion to invite experts to give views on L.N. 21 at the next meeting. Mr LEONG's request for the Administration's written response to his concerns in paragraph 10(c), (e) and (f) of the minutes.	See para 10 of the minutes
011418 - 011430	Chairman	End of meeting	

Council Business Division 2
Legislative Council Secretariat
11 March 2008