

立法會
Legislative Council

LC Paper No. CB(2)1531/07-08
(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 second meeting
held on Wednesday, 12 March 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** : Item II
- Miss Janet WONG, JP
Deputy Secretary (Works) 1, Development Bureau
- Mr Alan AU
Assistant Secretary (Policy & Development),
Development Bureau
- Mr CHUNG Ling-hoi, JP
Deputy Director (Culture), Leisure and Cultural
Services Department
- Mr Tom MING
Executive Secretary (Antiquities and Monuments),
Leisure and Cultural Services Department

Miss Angie LI
Government Counsel, Department of Justice

**Attendance by
invitation** : Item II

Mr William Meacham

Heritage Watch

Mr Jeffrey AU
Member

Mr Paul Zimmerman
Member

Civic Party

Mr Albert LAI
Vice Chairman

The Hong Kong Institute of Architects

Mr Edward LEUNG
Chairman, Heritage and Conservation Committee

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

**Staff in
attendance** : Mr Timothy TSO
Assistant Legal Adviser 2

Mr Stanley MA
Senior Council Secretary (2)6

Miss Carmen HO
Legislative Assistant (2)6

Action

I. Confirmation of minutes
[LC Paper No. CB(2)1312/07-08]

The minutes of the meeting held on 29 February 2008 were confirmed.

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II. Meeting with deputations and the Administration

[LC Paper Nos. CB(2)1311/07-08(01)-(03), LS44/07-08, LS62/07-08, and LS63/06-07, L.N. 59 of 2007, L.N. 21 of 2008, File ref: HAB/CS/CR 4/1/83 and File ref: DEVB/CS/CR 4/1/83]

2. The Subcommittee deliberated (index of proceedings at **Annex**).

Views of deputations/individual

3. Mr William Meacham and representatives of the deputations expressed reservations about the independence and impartiality of the Antiquities and Monuments Office (AMO) and the Antiquities Advisory Board (AAB) in assessing the heritage value of the buildings situated within No. 128 Pok Fu Lam Road (the Building). They queried whether AMO had taken into account other factors in its assessment such as the development value of the Building. In their view, the Administration had an apparent interest in deciding whether the Building should be declared as a monument because if the Building was not declared as a monument, the owner of the Building might redevelop it, and the land premium payable to the Administration for lease modification could be substantial. They considered it important that the Administration should seek independent professional advice by appointing an outside expert to carry out the assessment task.

4. On enhancement of heritage conservation, Mr Meacham and representatives of the deputations made the following suggestions -

- (a) the transparency and independence of the mechanism for assessing the heritage value of buildings and sites should be enhanced;
- (b) the criteria for assessing the heritage value of buildings and sites should be updated in line with the international trend;
- (c) town planning should play an increasingly important role in heritage conservation;
- (d) AAB should be reorganized as an independent statutory body to take over the functions of AMO; and
- (e) the Antiquities and Monuments Ordinance (the Ordinance) should be revamped to strengthen the heritage conservation work.

The Administration's response

5. The Administration stressed the professionalism, impartiality and objectivity of AMO in carrying out its functions relating to the research,

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identification, examination and preservation of historical buildings and archaeological sites in Hong Kong. The Administration pointed out that AMO might carry out the assessment on heritage value of buildings and sites by in-house experts and/or engage outside experts to perform the task, depending on the merits and complexity of each case. In the case of the Building, AMO staff had sufficient professional knowledge and expertise to assess its heritage value. There was no need to commission an independent expert to undertake the task.

6. The Administration also clarified that generation of land premium through lease modification for the redevelopment of the site of the Building had not been an objective or consideration of the Administration. The owner might put forward redevelopment proposals through lease modification to achieve construction of new buildings and the preservation of the Building itself. Any proposal for redevelopment of the Building would require the planning approval of the Town Planning Board (TPB). Moreover, application for lease modifications by the owner of the Building (including the payment of full market value land premium, if applicable) would be considered by the Lands Department in accordance with the established procedures.

Members' views and suggestions

7. Professor Patrick LAU, a member of AAB, informed members that AAB had discussed in-depth the heritage value of the Building, and the architectural value of the Building was the most important consideration in assessing whether it should be declared as a monument. In his view, AAB members had discharged their duties properly.

8. Miss CHOY So-yuk said that she had no doubt about the expertise of AMO and AAB in assessing the heritage value of historic buildings and monuments. However, she expressed reservations about the impartiality and independence of AMO and AAB in carrying out the task as AMO was an executive arm of the Authority under the Ordinance and AAB members were appointed by the Chief Executive. She considered that the Administration should appoint an outside expert to re-assess the heritage value of the Building.

9. Mr Alan LEONG said that in the absence of an objective and transparent policy on heritage conservation and of an independent party to assess the heritage value of the Building, his concern about the use of an administrative means to achieve a political end could not be allayed. As the Administration had held several rounds of discussions with the owner concerning possible options for preservation of the Building and the owner had indicated wish to consider preserving the Building in the redevelopment scheme, the possibility of the Administration making an expedient decision not to declare the Building as a monument under the circumstances could not be ruled out.

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10. The Administration explained that the comprehensive heritage assessment for the Building was conducted by AMO in a professional and independent manner, and the decision of withdrawal of the proposed monument declaration was a result of a proper and professional process. Since the announcement of the Government's new heritage conservation policy in October 2007, the Administration had accepted in principle the need for appropriate economic incentives to facilitate preservation of privately-owned historic buildings. However, the implementation of these incentives was complicated as it straddled a number of different areas including planning, lands and building control. Also each case had its own uniqueness. The Administration had previously reported to the Legislative Council (LegCo) that it was making a start by adopting a case-by-case approach, and that the Building was one of such cases. Against this background, the Administration had discussed with the owner of the Building on possible economic incentives. The Administration stressed that these discussions were held independently of and had no connection whatsoever with the comprehensive heritage assessment conducted by AMO.

Follow-up

11. Members requested the Administration to provide the following -
- (a) papers provided by AMO to AAB concerning the Building;
 - (b) minutes of meeting(s) of AAB at which matters relating to the Building were discussed; and
 - (c) papers and assessment reports concerning the heritage value of the Building and related matters prepared by AMO.

Amendment to the Notice

12. Miss CHOY So-yuk queried why the Notice took effect on the date of its publication in the Gazette. Members considered that the Administration should provide sufficient time for LegCo to complete the due process in making any legislative proposal. An item of subsidiary legislation subject to the negative vetting procedure of LegCo should not take effect until after the expiry of the scrutiny period, unless absolutely necessary.

13. The Chairman invited members' view on whether the Subcommittee should move a motion to repeal the Notice to reflect members' dissatisfaction with the way in which the Administration had handled matters relating to the declaration and withdrawal of the declaration of the Building as a proposed monument. Mr Alan LEONG expressed support for the proposal. As only three members were at the meeting then, members agreed that the Subcommittee's view on the matter be sought by circulation of paper.

Action

[*Post-meeting note* : A circular to invite members' view on the proposal to repeal the Notice was issued on 13 March 2008 vide LC Paper No. CB(2)1348/07-08. By the deadline on 17 March 2008, a total of four replies were received. Three members indicated support and one member indicated objection to the proposal. Members were informed of the result vide LC Paper No. CB(2)1379/07-08 issued on 18 March 2008.]

14. Members agreed to report the deliberations of the Subcommittee on the Notice to the House Committee at the meeting on 28 March 2008. Members also agreed that the report of the Subcommittee should be sent to TPB and AAB for reference.

III. Any other business

15. There being no other business, the meeting ended at 10:23 am.

Council Business Division 2
Legislative Council Secretariat
8 April 2008

**Proceedings of the second meeting of
Subcommittee on Antiquities and Monuments
(Withdrawal of Declaration of Proposed Monument)
(No. 128 Pok Fu Lam Road) Notice
on Wednesday, 12 March 2008, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subjects	Action required
000000 - 000504	Chairman	Briefing on matters arising from the last meeting.	
000505 - 000525	Chairman	Confirmation of minutes	
000526 - 001044	Mr William Meacham	Presentation of views [LC Paper No. CB(2)1311/07-08(03)]	
001045 - 001617	Heritage Watch	Presentation of views [LC Paper No. CB(2)1442/07-08(01)]	
001618 - 002139	Civic Party	Presentation of views [LC Paper No. CB(2)1409/07-08(01)]	
002140 - 002522	The Hong Kong Institute of Architects	Presentation of views [LC Paper No. CB(2)1396/07-08(01)]	
002523 - 003554	Chairman Admin	<p>DS(W)1's response that the Antiquities and Monuments Office (AMO) would decide the use of in-house experts and/or engage outside experts according to the merits and complexities involved in the assessment of the heritage value of a historic building; and her briefing on the new heritage conservation policy.</p> <p>DD(C)'s explanation of the major considerations in assessing the heritage value of a historic building and of the qualifications and experiences of AMO staff.</p> <p>ES(A&M)'s briefing on AMO's inspection and assessment of the heritage value of the Building and the social contributions of its original owner, Mr Thomas TAM. His response to the two cases of archaeological preservation highlighted in the submission from Mr William Meacham.</p>	
003555 - 004531	Chairman Admin	Briefing by the Admin on LC Paper No. CB(2)1311/07-08(01).	
004532 - 004910	Chairman ALA2	Briefing by ALA2 on LS62/07-08.	

Time marker	Speaker	Subjects	Action required
004911 - 005547	Chairman Miss CHOY So-yuk ALA2	<p>Miss CHOY's query about the power and decision of the Admin to effect the Notice on the date of its publication in the Gazette; and her enquiry about the role and power of the Town Planning Board (TPB) in heritage conservation.</p> <p>ALA2's advice about the power of the Admin in making and effecting an item of subsidiary legislation on the date of its publication in the Gazette and the negative vetting procedure for subsidiary legislation. His response that a heritage building could be preserved through declaration of it as a proposed monument or a monument under the Antiquities and Monuments Ordinance.</p>	
005548 - 010201	Prof Patrick LAU Chairman Admin	<p>Prof LAU's comments that the composition of the Antiquities Advisory Board (AAB) had been revised to include a wider representation of the community, and the transparency of its meetings could be enhanced. His view that AAB had thoroughly discussed the heritage value of the Building on 25 January 2008, and that TPB should collaborate with AAB in preservation of historic buildings through the town planning process.</p> <p>DS(W)1's response that she had briefed TPB on heritage conservation policy including preservation of historic buildings such as King Yin Lei.</p>	
010202 - 011402	Mr Alan LEONG Admin	<p>Mr LEONG's view that Hong Kong should develop an objective and transparent policy on heritage conservation. The different descriptions of the social status and contributions of the original owner when declaring the Building as a proposed monument and when withdrawing the declaration had given him the impression that AMO had acted under the influence of the Admin in preservation of historic buildings. His suggestion that the Admin should consider the suggestions of the Civil Party to improve the mechanism and transparency in heritage conservation.</p> <p>DS(W)1's explanation that the purpose of declaring the Building as a proposed monument was to provide a period of 12 months for AMO to conduct a comprehensive assessment of its heritage value. The Admin had no doubt about the capability, impartiality and independence of AMO and AAB in this matter. The Admin had no plan to appoint an outside expert to re-assess the heritage value of the Building, but would improve the work of AAB in heritage conservation including transparency.</p>	

Time marker	Speaker	Subjects	Action required
011403 - 011707	Chairman Miss CHOY So-yuk	Miss CHOY's expression of reservations about the independence and impartiality of AMO and AAB in heritage conservation as the former was a Government department and members of the latter were appointed by the Chief Executive.	
011708 - 012114	Chairman Heritage Watch	Mr Zimmerman's concern about the lack of details on the difference between the preliminary and comprehensive assessment of the heritage value of the Building, the preservation of the Building in its existing conditions, and the financial interest on the part of the Government in withdrawing the declaration of the Building as a proposed monument to allow the owner to propose its redevelopment.	
012115 - 012502	Civic Party	Mr Albert LAI's concern about the description of the social status and contributions of the original owner of the Building in the LegCo Brief for the Notice, and the economic consideration in assessing the heritage value of the Building. His request for LegCo to examine the assessments conducted and papers prepared by AMO and to consider moving a motion to repeal the Notice.	
012503 - 012635	Heritage Watch	Mr Jeffrey AU's concern about the Government's strategy in negotiating with the owner of the Building for preserving it.	
012636 - 013008	The Hong Kong Institute of Architects	Mr Edward LEUNG's query about the existing criteria for assessment of historic buildings and his view that the education and social values, etc. should also be considered in evaluating the heritage value of a historic building. His emphasis on assessment of the architectural value of historic buildings.	
013009 - 013140	Mr William Meacham	Mr Meacham's concern about the unanimous support of AAB for withdrawing the declaration of the Building as a proposed monument and his emphasis on the significance of dissenting views in the assessment of the heritage value of historic buildings.	
013141 - 013941	Chairman Admin Miss CHOY So-yuk ALA2	<p>Chairman's and Miss CHOY's request for the provision of relevant reports and papers compiled by AMO and provided to AAB relating to the Building, including assessment reports and minutes of meetings.</p> <p>DD(C)'s response to relay members' request to AAB for consideration.</p> <p>DS(W)1's clarification that the Administration had previously reported to the Legislative Council that it was making a start by adopting a case-by-case approach on examining economic incentives, and that the Building was one of such cases. DS(W)1's</p>	See para 11 of the minutes

Time marker	Speaker	Subjects	Action required
		further clarification that against this background the Administration had discussed with the owner of the Building on possible economic incentives, and that the assessment of the heritage value of the Building by AMO had nothing to do with the discussions held with its owner on possible economic incentives to preserve the Building.	
013942 - 014650	Chairman Miss CHOY So-yuk Mr Alan LEONG Clerk	Chairman's briefing on the way forward, including the moving of a motion to repeal the Notice, the provision of the Subcommittee's report to TPB for consideration, and the application for judicial review of the Notice. Mr LEONG's expression of support for moving a motion to repeal the Notice. Members' agreement to provide the Subcommittee's report to TPB and AAB for reference and to seek members' view on the proposal to repeal the Notice by circulation of paper.	See para 13 of the minutes
014651 - 015011	Admin Chairman	DD(C)'s clarification that AMO had carried out the preliminary and comprehensive assessments on the heritage value of the Building in accordance with the approved procedures.	
015012 - 015120	Chairman	Chairman's remark on the deadline for giving notice to amend the Notice.	