

For discussion on
20 December 2007

Legislative Council Panel on Home Affairs

Heritage Conservation Policy

PURPOSE

This paper updates Members on the current position in regard to the implementation of initiatives on heritage conservation as set out in the Legislative Council brief “Heritage Conservation Policy” issued on 11 October 2007.

BACKGROUND

2. In the 2007-08 Policy Address delivered on 10 October 2007, the Chief Executive announced a range of initiatives on heritage conservation. On 11 October 2007, we issued to Members the Legislative Council brief “Heritage Conservation Policy” (copy at the **Annex**) which sets out a new policy statement on heritage conservation and further details on those initiatives. The Administration also provided briefings to the LegCo Panel on Development and LegCo Panel on Home Affairs on 15 October 2007.

PRESENT POSITION AND WAY FORWARD

3. Since then, the Administration has further developed the package of initiatives. The latest position is as follows:

(a) **Heritage Impact Assessment (HIA)**

For all new capital works projects, the project proponents and relevant works departments are required to consider whether their projects will affect sites or buildings of historic and archaeological significance (referred to be “heritage sites” below). If the answer is in the affirmative, then an HIA will be required. In general, it will be best to avoid affecting these “heritage sites”. However, if some impact on the sites can really not be avoided, mitigation

measures must be devised to the satisfaction of the Antiquities and Monuments Office (AMO). Furthermore, public engagement should be conducted (e.g. consultation with District Councils, etc.) where necessary. In the submission to LegCo Public Works Subcommittee (PWSC) and Finance Committee for funding to carry out construction works, the project proponent will also need to include a paragraph in the PWSC paper, to be cleared by AMO, stating clearly whether its project will affect any “heritage site” and if it does, what mitigation measures will be taken, their implications and whether the public is in support of these.

Since 22 November 2007, a “Heritage Implications” paragraph, following the requirements stated above, has already been added in submissions to PWSC.

A comprehensive technical circular outlining the details of the conducting of HIA will be issued to works departments in December 2007. The process will be reviewed after one year to see if there is any room for improvement;

(b) Adaptive Re-use of Government-owned Historic Buildings

The Chief Executive has stated in his Election Manifesto the need to adopt creative approaches in preserving historic buildings and expanding their usage, with a view to transforming these buildings into unique cultural landmarks. A scheme, namely, the “Revitalising Historic Buildings Through Partnership Scheme (the Revitalisation Scheme) is being devised to facilitate adaptive re-use of Government-owned historic buildings. The Revitalisation Scheme aims to achieve the dual objectives that historic buildings will be preserved and at the same time be made available for use in the best interest of the community. In particular, we hope to make use of the opportunity to promote active public participation in the preservation and innovative use of historic buildings in the form of social enterprise. For the first batch, a total of seven buildings have been included. A briefing on the Scheme was conducted by the Administration on 8 November 2007 to tap the views of potential applicants. More than 200 persons from around 100 non-governmental organizations

and professional bodies attended. We hope to launch the Scheme in the first quarter of 2008. Details of the Revitalisation Scheme have been set out in a separate paper (LC Paper No. yy) for discussion by this Panel;

(c) Economic Incentives for Conservation of Privately-owned Historic Buildings

The Administration has accepted in principle the need for appropriate incentive schemes to facilitate the conservation of privately-owned historic buildings, e.g. land exchange, transfer of development rights, etc. However, the implementation of this initiative is complicated as it straddles a number of different areas including planning, lands and building control. Also, each case has its own uniqueness. As such, we are making a start by adopting a case-by-case approach. We are currently actively examining the matter in the context of the 128 Pok Fu Lam Road (Jessville) and the 45 Stubbs Road (King Yin Lei) cases, both of which were declared as proposed monuments in April 2007 and September 2007 respectively;

(d) Financial Assistance on Maintenance of Privately-owned Historic Buildings

All along, Government offers to carry out repair and restoration works of declared monuments, or items deemed by Government to be monuments under private ownership. However, Government previously offered no assistance to the maintenance of privately-owned graded historic buildings. To create incentives for proper maintenance of such buildings in private hands, we will expand the existing scheme to assist private owners of both declared monuments and graded historic buildings to carry out repairs and restoration. Private owners would be required to employ suitably qualified consultants and specialist contractors with heritage expertise to carry out the works, in accordance with the Conservation Guidelines issued by the Leisure and Cultural Services Department. The applications would be considered on a case-by-case basis, subject to the technical assessment of an inter-departmental vetting panel and availability of funding.

Factors such as the historic value of the building concerned, urgency of works etc. will be considered. As a condition for financial assistance, Government will require the owners to agree to certain conditions, e.g., to allow reasonable access of the buildings concerned to the public. Government is now working out the implementation details which would be tried out in a number of cases;

(e) Setting Up of a Commissioner for Heritage's Office

Consequent to the transfer of heritage policy responsibility from Home Affairs Bureau to Development Bureau (DEVB), there is no single dedicated directorate staff in the latter bureau to deal with this topical and extensive subject. To overcome this problem and raise the Government profile and visibility on heritage conservation matters, and to provide the focal point for local and overseas networking, the Administration proposes to create in DEVB the post of Commissioner for Heritage (at D2 rank) to be supported by a certain number of staff. The details of this initiative have been set out in a separate paper (LC Paper No. zz) for discussion by this Panel;

(f) Heritage Trust

In many overseas countries, e.g. UK and Singapore, statutory trusts are set up to undertake heritage conservation work. The Administration has started to study relevant overseas experience and consider its appropriateness to our local conditions. However, a heritage trust will be more long term and would be pursued only after other initiatives on heritage conservation have been well in place (say several years down the road); and

(g) Public Engagement and Publicity

The Chief Executive has pledged in his Election Manifesto that heritage conservation policies would be improved and the public would be consulted in a more in-depth and comprehensive manner. Since the Policy Address on 10 October 2007, the Administration has provided briefings on the new initiatives on heritage

conservation to various bodies such as the Antiquities Advisory Board, Urban Renewal Authority, Real Estate Developers Association, professional institutes as well as the general public. Furthermore, interviews on media programmes have been conducted. The Administration will also seek the views of District Councils on the initiatives on heritage conservation after the new term of the District Council has started and logistical matters have been settled.

ADVICE SOUGHT

14. Members are invited to note the above progress and offer their advice on the way forward.

Development Bureau
December 2007

LEGISLATIVE COUNCIL BRIEF

HERITAGE CONSERVATION POLICY

INTRODUCTION

At the meeting of the Executive Council on 25 September 2007, the Council ADVISED and the Chief Executive ORDERED that –

- (A) the following policy statement should be adopted to guide our heritage conservation work –

“To protect, conserve and revitalise as appropriate historical and heritage sites and buildings through relevant and sustainable approaches for the benefit and enjoyment of present and future generations. In implementing this policy, due regard should be given to development needs in the public interest, respect for private property rights, budgetary considerations, cross-sector collaboration and active engagement of stakeholders and the general public.”; and

- (B) the following package of initiatives should be implemented –
- (a) The Administration to focus for the time being on administrative means to implement measures on heritage conservation instead of using legislative means;
- (b) In the Government domain, the Administration to introduce –
- (i) an internal mechanism requiring Heritage Impact Assessments to be conducted for new capital works projects where necessary; and
- (ii) a scheme for adaptive re-use of Government-owned historic buildings by engaging non-profit making organizations for running social enterprises;
- (c) In the private sector domain, the Administration to –
- (i) accept in principle the need for appropriate incentive schemes to facilitate the conservation of privately-owned historic buildings and undertake to actively engage

relevant stakeholders in devising appropriate measures including land exchange and transfer of development rights; and

- (ii) extend the current financial assistance to enhance the maintenance of privately-owned historic buildings from declared monuments to graded buildings subject to certain conditions;
- (d) The setting up of a Commissioner for Heritage's Office in the Development Bureau to provide a focal point for the Government's heritage conservation work and local and overseas networking;
- (e) In the longer run, to examine the setting up of a heritage trust in Hong Kong to take over heritage conservation work and better mobilise community support; and
- (f) The Administration to proactively engage the public to ensure that views of stakeholders and concern groups are taken into account in finalising the above initiatives for implementation.

JUSTIFICATIONS

Policy Statement on Heritage Conservation

2. To guide our work in heritage conservation, we have formulated the following policy statement –

“To protect, conserve and revitalise as appropriate historical and heritage sites and buildings through relevant and sustainable approaches for the benefit and enjoyment of present and future generations. In implementing this policy, due regard should be given to development needs in the public interest, respect for private property rights, budgetary considerations, cross-sector collaboration and active engagement of stakeholders and the general public.”

Initiatives on Heritage Conservation

3. We have elaborated on details of the package of measures below in paragraph 4 to 34.

(A) Rationale for Not Using the Legislative Route to Enhance Heritage Conservation

4. The main legislation for heritage conservation in Hong Kong is the Antiquities and Monuments Ordinance (A&M Ordinance) which took effect in 1976. Apart from the A&M Ordinance, under certain circumstances, the Environmental Impact Assessment Ordinance (EIAO) also allows Government to exercise certain powers to protect historic buildings from the threat of development. In addition, we can also enact a new ordinance. The Administration has weighed the pros and cons of all these and considered that we should not pursue this route for the time being. The reasons are explained in detail in the following paragraphs.

(i) Revamping the A & M Ordinance

5. Under the A&M Ordinance, the Secretary for Development (SDEV) is the Antiquities Authority (AA) who may, after consultation with the Antiquities Advisory Board (AAB) and with the approval of the Chief Executive (CE), by notice in the Gazette, declare a place, building, site or structure which he/she considers to be of public interest by reason of its historical, archaeological or palaeontological significance to be a monument for protection. As at 1 September 2007, there are 82 declared monuments, of which 64 are buildings (e.g. St. John's Cathedral, Government House) and 18 are rock carvings, forts and archaeological sites (e.g. rock carving on Po Toi Island, Tung Chung Fort).

6. Apart from declared monuments, there are as at 1 September 2007, 495 graded historic buildings which are administratively accorded Grade I (e.g. Mei Ho House), Grade II (e.g. Kom Tong Hall) and Grade III (e.g. Central Market) status by the AAB over the years in accordance with their heritage significance.

7. The A&M Ordinance is rather rigid in that it only provides for one form of conservation (i.e. to declare monuments). According to section 6(1) of A&M Ordinance, no person shall excavate, carry on building or other works, plant or fell trees or deposit earth or refuse on or in a proposed monument or monument; or demolish, remove, obstruct, deface or interfere with a proposed monument or monument except with a permit granted by the AA (i.e. SDEV). As a result of the above limitations, property owners do not have the incentive to give consent for declaration. However, even if consent is not forthcoming from the owner, the AA may, after consultation with the AAB and with the approval of CE, by notice in the Gazette, declare the private property to be a monument. Under such circumstances, the property owner can apply to the court for compensation pursuant to section 8 of the A&M Ordinance.

8. As regards the system of grading of buildings, it is only an

internal mechanism practised by AAB to identify buildings with heritage value for proper conservation on an administrative basis. The existing grading system classifies historical buildings into Grades I, II and III as follows -

- (a) **Grade I:** Buildings of outstanding merit, for which every effort should be made to preserve if possible;
- (b) **Grade II:** Buildings of special merit, for which efforts should be made to selectively preserve; and
- (c) **Grade III:** Buildings of some merit, but not yet qualified for consideration as possible monuments.

The system has no statutory status and the grading does not confer buildings statutory protection. If the owner of a private graded building decides to demolish his/her building (and if there is no restriction from the land, town planning, etc. angles), there is no way Government can stop this except for the AA to proceed to declare the building as a monument or proposed monument.

9. In the past, grading of historic buildings was conducted in a relatively ad-hoc manner. To adopt a more systematic and comprehensive approach, with effect from March 2005, an expert panel under AAB has been conducting heritage assessment for over 1 400 historic buildings (including 495 already graded buildings) selected from around 8 800 buildings with over 50 years of age in Hong Kong. The assessment results will provide a better basis for considering how many heritage buildings should be conserved and in what form. The exercise is expected to be completed by end 2008.

10. We have considered the desirability for revamping the A&M Ordinance to protect graded buildings, as well as to widen the protection from individual buildings to groups of buildings, or even conservation areas. After detailed deliberations, we do not recommend to pursue this for the time being on the grounds that -

- (a) the revamping of A&M Ordinance would be a major and protracted exercise. It would not be conducive to producing early success in heritage conservation work; and
- (b) the exercise will inevitably involve granting a certain statutory status to graded historic buildings. Before the expert assessment on the some 1 400 buildings is completed by end 2008, we do not know how many buildings will be involved and the exact implications of doing so. It will be prudent to await the

results and have them deliberated in detail before making a decision.

(ii) Making use of the EIAO

11. In the EIAO, there is reference to “site(s) of cultural heritage”. Under Schedule 1 of the Ordinance, a “site of cultural heritage” is defined as “an antiquity or monument, whether being a place, building, site or structure or a relic, as defined in the A&M Ordinance and any place, building, site or structure or a relic identified by the Antiquities and Monuments Office (AMO) to be of archaeological, historical or palaeontological significance”. Once a building/site is identified as a “site of cultural heritage”, construction works partly or wholly within it can only proceed after the statutory procedures under the EIAO have been complied with and an environmental permit has been issued. The criteria laid down in the Technical Memorandum issued under the EIAO for evaluating impacts which include a general presumption in favour of the protection and preservation of “site of cultural heritage” have to be complied with. Moreover, certain projects in the vicinity of “sites of cultural heritage”, whether public or private, would be subject to environmental permits under the EIAO before construction work may start.

12. So far, only declared monuments under the A&M Ordinance are classified as “sites of cultural heritage” subject to environmental permits under the EIAO. We have considered the feasibility and implications for drawing up a list of graded buildings which, though not being justified to be declared as monuments, are nonetheless justified to be classified as “sites of cultural heritage” and hence can be covered by the EIAO. However, after detailed deliberations, we come to the view that the identification process would be extremely complex involving debates on the sites identified, the identification criteria, the gazetting of the identified sites, and the handling of appeals or objections from private owners if affected. The site identification may also render some private owners feeling aggrieved with the decision on having their properties included in the list or by those who consider a specific heritage site should be included in the list but has not been so included. Hence, we do not recommend to pursue this for the time being.

(iii) Introducing a New Ordinance

13. We have also considered the option of introducing a new heritage conservation ordinance. However, enactment of a new ordinance will face similar problems envisaged above. Also, it will be a long drawn process and cannot bring speedy improvement to the current situation. Hence, we also recommend this option not to be pursued for the time being.

14. In conclusion, we propose to devise a comprehensive and sustainable package of new policy and administrative measures to enhance heritage conservation efforts in both the Government and the private sector.

(B) Measures Proposed in the Government Domain

15. We propose two new initiatives in the Government domain :

- (i) Conducting Heritage Impact Assessment (HIA) for new capital works projects; and
- (ii) Introducing a scheme to promote and facilitate adaptive re-use of Government-owned historic buildings.

(i) Conducting HIA for New Capital Works Projects

16. We propose that for all new capital works projects, we will require the project proponents and relevant works departments to consider whether their projects will affect sites or buildings of historic and archaeological significance (referred to be “heritage sites’ below). If the answer is in the affirmative, then a HIA will be required. In general, it will be best to avoid affecting these heritage sites. However, if some impact on the sites can really not be avoided, mitigation measures must be devised to the satisfaction of the AMO. Furthermore, public engagement should be conducted (e.g. consultation with district councils, etc.) where necessary. In the submission to LegCo Public Works Sub-committee (PWSC) and Finance Committee for funding to carry out construction works, the project proponent will also need to include a paragraph in the PWSC paper, to be cleared by AMO, stating clearly whether its project will affect any “heritage site” and if it does, what mitigation measures will be taken, their implications and whether the public is in support of these. A more detailed explanation of the mechanism is at Annex A.

A

17. The proposed internal mechanism will ensure the best balance be struck between the requirements for development initiated by Government and heritage conservation, starting from the project inception stage. It will also have the following advantages –

- (a) demonstrates Government's commitment to enhance heritage conservation; and
- (b) entails public engagement at an early stage.

18. The proposed new administrative requirement may in theory have some adverse impact on the speedy delivery of capital works projects which is also a pressing concern of both Government and LegCo. However, it should be noted that for mega projects, time would need to be allowed anyway in the design stage for conducting various impact assessments (such as environmental, traffic or drainage) and the HIA can be conducted in parallel. On the other hand, for smaller projects, it is generally not expected that their impact on heritage sites would be large and the delay to the project should therefore be acceptable.

19. To summarize, on balance, even if there is some delay, it does not mean that the proposal is not worth pursuing. It reflects our community's choice. The same will apply to the issue of additional costs should a more costly option be selected to avoid impacting on a heritage site. All relevant information will be presented for deliberations. The decision reached at the end will be one made by a conscious 'choice' and not 'by chance'.

(ii) Adaptive Re-use of Government-Owned Historic Buildings

20. The CE has stated in his Election Manifesto the need to adopt creative approaches in preserving historic buildings and expanding their usage, with a view to transforming these buildings into unique cultural landmarks. In reality, the fact that a considerable number of Government-owned heritage buildings are lying idle is a common cause of concern. To take forward the CE's pledge, we propose to implement a new adaptive re-use scheme. The scheme aims to achieve the dual objectives that historic buildings will be preserved and at the same time be made available for use in the best interest of the community. In particular, we hope to make use of the opportunity to promote active public participation in the preservation and innovative use of historic buildings.

21. In drawing up the scheme, we have considered whether we should adopt an open tender approach involving private enterprises in commercial operations (such as the use of the ex-Marine Police Headquarters in Tsim Sha Tsui) or collaboration with a non-profit-making non-governmental organization (NGO) in the form of social enterprise (SE)⁽¹⁾. We propose to adopt the SE approach on grounds that –

Note ⁽¹⁾ Social enterprises are businesses with primarily social objectives whose surpluses are mostly re-invested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners. There are two existing public-funded SE schemes – one operated by Social Welfare Department to promote employment of people with disabilities and the other run by Home Affairs Department to help create jobs at local level to alleviate poverty. Basically, SEs have to be financially viable and sustainable but under these schemes and in view of their social objectives, the Government provides a capital grant to cover setting up costs such as purchase of equipment and operating deficits for initial years, generally confined to the first two years.

- (a) many vacant historic buildings have limited commercial viability given that they will require a very significant sum to renovate and maintain. The buildings we have in mind in putting into the ARU Scheme include Lui Seng Chun, the old Tai Po Police Station and the former Lai Chi Kok Hospital. Those assessed to have some commercial value such as the Peak Cafe need not be placed under the scheme;
 - (b) NGOs are not short of ideas in running SEs over these years with or without government financial support and the Scheme would provide an additional impetus to encouraging greater entrepreneurial spirit amongst NGOs;
 - (c) with these adaptive re-use being of a non-profit-making nature, the Government would find it easier to render funding and various support to help the buildings' revitalisation; and
 - (d) promotion of SEs to help create jobs at the local level is itself another pledge of the CE in his Election Manifesto and in line with tripartite co-operation between government, business and people in promoting SEs, there is no reason why private businesses could not support such adaptive re-use in various forms.
22. The modus operandi of the scheme is summarized as follows –
- (a) Government-owned historic buildings considered suitable for adaptive re-use would be identified for inclusion in the ARU Scheme. As a pilot, we intend to start off with around six to eight buildings and will review the scheme in the light of experience;
 - (b) Non-profit making organizations (NPOs) that have acquired charitable status under Section 88 of the Inland Revenue Ordinance would be invited to submit proposals for the use of these buildings. In their submissions, they are required to come up with detailed plans to show how the historic buildings would be preserved and their historical significance be brought out effectively, how the SE angle would be satisfied and how the local community would be benefited. Depending on the proposed usage, it may be necessary to amend the outline zoning plan (OZP) or seek approval from the Town Planning Board on various issues;
 - (c) To enhance public participation, relevant District Councils would be consulted on the possible usages of the buildings;

- (d) A vetting committee, comprising Government and non-Government experts will be set up to consider the proposals and related matters;
- (e) On the technical side, Government would provide one-stop shop service for NPOs in the areas of heritage conservation, land use and planning, building architecture, and compliance with Buildings Ordinance. A secretariat will be set up to oversee the operation of the scheme; and
- (f) Given the intention to involve as many interested groups as possible and noting that many potential bidders may not have the ability to meet all the costs involved, we propose to provide various forms of financial support under the scheme. These may include -

(1) **Major renovation to the building in accordance with the proposal of the successful applicant**

We propose to bear the cost, in full or part, so as to renovate the building to suit the proposed usage of the successful applicant. In most cases, the renovation would be carried out by private architects/experts engaged by the NPOs. In exceptional circumstances, Architectural Services Department will be involved;

(2) **Nominal rental to be charged on the successful NPO**

When a NPO's proposal has been accepted, amongst various things, the Administration (as the landlord) will enter into a legally binding tenancy agreement with it (as the tenant). However, in the light of the SE nature of operation, only nominal rental will be charged; and

(3) **Financial assistance to be provided to the NPO selected to help it meet deficit (if any) arising in the initial two years of operation**

Since the adaptive re-use has to be operated as SEs and the operating bodies are not for profit, we propose to extend to these SEs the financial assistance to meet the starting costs and operating deficits in the initial two years, where justified, on the prerequisite that the SE proposal is projected to become self-sustainable after the first two years. The other requirement is that any surplus generated from the SE in future would have to be ploughed back to support the operation/expansion of the SE in accordance with the objective stated in the original application.

We propose the name of the scheme to be “Revitalising Historic Buildings Through Partnership Scheme”. Further details will be announced in due course.

(C) Measures Proposed in the Private Sector Domain

23. There are currently two major problems concerning privately-owned historic buildings -

(a) Threats of demolition of historic buildings for redevelopment

At present, privately-owned declared monuments are protected from demolition under the A&M Ordinance. However, in case where the historic building does not warrant to be classified as a declared monument (but just graded) or yet to be declared, there is no statutory protection if the private owner decides to demolish it. Hence, we need to devise measures to address this; and

(b) Lack of maintenance leading to dilapidation

For privately-owned declared monuments, Government has been providing repairs and regular maintenance often on the condition that the private owners agree to allow public access to the buildings for appreciation. However, there is no such assistance in the case of graded historic buildings. There is concern that, for such historic buildings, the conditions may deteriorate over the years as owners may either be unwilling or do not have the financial ability to maintain them.

24. To address the first problem, the Government has to come up with effective administrative means to prevent privately-owned historic buildings from being demolished. Public comments tend to be in favour of economic incentives in the form of transfer of plot ratio or land exchange to compensate these owners for their loss of development rights.

(i) Land Exchange and Transfer of Development Rights

25. As regards land exchange, arrangements can be either in-situ or non in-situ. On the in-situ side, existing sites with historic buildings can be amalgamated with adjoining Government land (if available) into one site for development, i.e., surrender of the lot with historic building to be preserved and regrant of a new lot comprising the surrendered lot and the Government land. This assumes that the owner will manage the historic building on the surrendered lot regranted to him. If adjoining Government land is not available, non in-situ land exchange may be

considered by surrendering the original site with historic building to Government in exchange of a new Government site with similar value or development potential. This assumes that the owner will not manage the historic building on the surrendered lot and the historic building will be returned to Government for management. For both in-situ and non-in-situ land exchanges, additional Government land will be involved and land premium will be payable by the private owner for any difference in land value between the original site and the amalgamated or new site. Under the current policy, non in-situ land exchange, because of the significant land administration implications, is justified on exceptional merits and requires approval by the Executive Council (ExCo) on a case-by-case basis.

26. A land exchange itself is a land swap and is therefore a form of transfer of development rights. There are other options of transfer of development rights such as the transfer of unused development rights of the site with historical building to another development belonging to the same owner through lease modification. Such transfer could be realized in the form of offsetting the relevant part of the land premium payable for the receiving development under lease modification. Any such transfer of development rights would involve the difficult issues of determination of the value and the development potential of the sites involved and could be potentially litigious. A simple option, but the most restrictive and hence least attractive, would be to transfer the unused development rights of the site with historic building governed by un-restricted lease conditions to another site(s) under the same ownership requiring lease modification for redevelopment.

27. Other options of transfer of development rights such as free trading of certificates of development right entitlement and allowing the total gross floor area (GFA) in a receiving site in excess of its maximum permissible GFA under the OZP and building regulations have been identified. These options will require substantial legislative amendments and Government's obligation in future redemption of such certificates. There will also be complex administration issues, and public's sentiment on excessive development density at the receiving sites will have to be addressed.

28. While accepting in principle the need for appropriate incentive schemes to facilitate the conservation of privately-owned historic buildings, we consider it not prudent to recommend any particular form of economic incentive scheme without a further thorough study or consultation with stakeholders. The Administration will hence actively engage relevant stakeholders in devising appropriate measures including land exchange and transfer of development rights.

(ii) Financial Incentives on Maintenance of Historic Buildings

29. At present, Government offers to carry out repair and restoration works of declared monuments, or items deemed by Government to be monuments under private ownership. Such works are funded under two Capital Account Subheads of Head 95 Leisure and Cultural Services Department (LCSD), viz Subhead 653 Restoration of Monuments (block vote) and Subhead 600 Works, depending on the cost of the individual projects. For projects costing \$300,000 or less, they will be charged to Subhead 653 while those exceeding \$300,000 will be charged to Subhead 600. The average expenditure of Subhead 653 and Subhead 600 are about \$1.3 million and \$5.2 million respectively in the past two years. However, Government offers no assistance to the maintenance of privately-owned graded historic buildings.

30. To allow more flexibility and meeting the demand from the private owners, we propose to expand the existing scheme to assist private owners of both declared monuments and graded historic buildings to carry out repairs and regular maintenance. Private owners would be required to employ suitably qualified consultants and specialist contractors with heritage expertise to carry out the works, in accordance with the Conservation Guidelines issued by LCSD. The applications would be considered on a case-by-case basis, subject to the technical assessment of an inter-departmental vetting panel and availability of funding. Factors such as the historic value of the building concerned, urgency of works etc. will be considered. As a condition for financial assistance, we will require the owners to agree to certain conditions, e.g., to allow reasonable access of the buildings concerned to the public.

31. The details for this proposal are being worked out. We shall seek the resources required, both capital and recurrent, through the established procedures.

(D) Setting up a Commissioner for Heritage's Office

32. Consequent to the transfer of heritage policy responsibility from Home Affairs Bureau (HAB) to Development Bureau (DEVB), there is no single dedicated directorate staff in the latter bureau to deal with this topical and extensive subject. To overcome this problem and raise the Government profile and visibility on heritage conservation matters, and to provide the focal point for local and overseas networking, we propose to create in DEVB the post of Commissioner for Heritage (at D2 rank) to be supported by a certain number of non-directorate staff. We will seek approval for this in due course in accordance with established procedures.

(E) Heritage Conservation Trust

33. In many overseas countries, e.g. UK and Singapore, statutory trusts are set up to undertake heritage conservation work. The Government will study relevant overseas experience and consider its appropriateness to our local conditions. However, a heritage trust will be more long term and would be pursued only after the current proposals have been well in place (say five years down the road).

(F) Public Engagement and Publicity

34. As pledged in CE's Election Manifesto that heritage conservation policies would be improved and the public would be consulted in a more in-depth and comprehensive manner, the Government would undertake the following measures -

- (i) **Working with AAB to enhance its transparency and increase public engagement in its work in the classification of historic buildings**

To enhance the transparency of AAB, we have already made a number of improvement measures such as opening some meetings to the public, allowing public presentations on the grading of buildings, etc. We will continue to move in this direction to further improve transparency to meet the aspirations of the community;

- (ii) **Engaging the public in formulating the details of the proposed administrative measures**

We will present the proposals for public engagement and engage stakeholders and concern groups. Subsequently, the public may also be involved in the HIA in order to build greater consensus before the project proceeds;

- (iii) **Release of information on heritage buildings**

We have already released for public information in 2007 the list of 495 historic buildings which the AAB had accorded heritage grading status in the past. The Expert Panel commissioned by AAB is currently conducting assessment on over 1 400 historic buildings. We will consider the most appropriate way to release the information when the assessment exercise is completed in end 2008. We would be as transparent as possible;

- (iv) **Inviting NPOs to participate in the adaptive re-use of heritage buildings**

NPOs will be invited and facilitated to bid for projects under the ARU Scheme so that Government will not only take into account public views on heritage conservation but also actively involve the community in actual conservation work; and

(v) **Conducting publicity to promote Government's heritage policy and measures**

This will involve advertising the Revitalising Historic Buildings Through Partnership Scheme, the availability of incentive schemes for privately-owned historic buildings, etc.

IMPLICATIONS OF THE PROPOSAL

B

35. The recommendations have financial, civil service, economic, environmental and sustainability implications as set out in Annex B. The proposals are in conformity with the Basic Law, including the provisions concerning human rights.

PUBLIC CONSULTATION AND PUBLICITY

36. HAB has conducted a series of public forum and attended 18 District Council meetings from January to June 2007 to gauge public views on heritage conservation. We will continue to engage the public on this important matter as mentioned in paragraph 34 above.

ENQUIRIES

37. Enquiries may be directed to Mr Edwin K. H. TONG, Chief Assistant Secretary (Works)³ of Development Bureau on 2848 1199.

Development Bureau
October 2007

HERITAGE CONSERVATION POLICY

ANNEXES

Annex A – Mechanism of Heritage Impact Assessment for Capital Works Projects

Annex B – Implications of the Recommendations

Mechanism of Heritage Impact Assessment for Capital Works Projects

Objective

In the implementation of new Government capital works projects (including both major projects approved individually by FC/PWSC as well as minor Cat. D projects but excluding routine maintenance and minor repairs), we will require project proponents and works agents to confirm whether the project will affect any sites of existing declared monuments, graded buildings or sites of archaeological interest (collectively known as “heritage sites” hereafter) and if so, they should conduct a Heritage Impact Assessment (HIA). If impact on the heritage sites cannot be avoided, mitigation measures will be devised and public engagement conducted to converge public views as far as possible before the project proceeds. The proposed mechanism is outlined below.

Proposed Mechanism

Project Inception Stage

- (a) A project proponent and its works agents are required, via a checklist, to confirm with the Antiquities Monuments Office (AMO) whether the project is wholly or partly within any “heritage sites”.
- (b) Upon receipt of the checklist, AMO should affirm the findings and even if the project is not wholly or partly within a “heritage site”, AMO will review on the wider front if the project will affect the heritage value of any “heritage site” in the vicinity of the project.
- (c) An HIA will be required by AMO if :-
 - i. the project is wholly or partly within a “heritage site”; and/or
 - ii. AMO considers that the heritage value of any “heritage site” in the vicinity of the project will be affected.
- (d) For capital works projects requiring the submission of Technical Feasibility Statement (TFS), project proponents and their works agents should include a statement in the TFS along one of the following two lines:
 - i. We have consulted AMO on the necessity for conducting a Heritage Impact Assessment for this project. AMO has advised that such an assessment is not required; or
 - ii. We have consulted AMO on the necessity for conducting a Heritage Impact Assessment for this project. AMO has advised

that such an assessment is required in the design stage of the project.

A copy of AMO's advice should be attached to the TFS. This initial finding on the need or not for an HIA together with other factors such as environmental protection and sustainability development, will be key considerations of the project proponent and its works agent in determining whether the project is technically feasible on a prima facie basis (*which is basically what needs to be confirmed in a TFS according to FC 11/2001*). This will ensure that the needed balance between development and heritage conservation is deliberated at an early stage.

Design Stage

- (e) In the design stage, an HIA on existing heritage site(s), if so required by AMO, will be carried out by project proponent and its works agent for submission to AMO for endorsement. The HIA should contain a conservation plan if existing heritage site(s) is affected. In doing so, project proponents/works agents can make reference to Annex 19 – *“The guidelines for assessment of impact on sites of cultural heritage”* of the Technical Memorandum on Environmental Impact Assessment Process which broadly covers the following:
 - i. Baseline Study
 - ii. Methodology
 - iii. Impact Assessment
 - iv. Mitigation Measures

- (f) If it is not feasible to avoid affecting existing “heritage sites” at all, public engagement (e.g., District Councils, Area Committees and other stakeholders on heritage conservation) on the project proposals should be conducted at the earliest opportunity. Every effort should be made to avoid or minimize affecting “heritage sites”. However, where some effect is not avoidable because of project viability, design constraints or cost implications, and public interest is at stake, the project proponent/works agent will need to have options of the project design with corresponding cost and other implications ready for the public (and in due course, LegCo) to consider in the public engagement process.

- (g) When a project is a “designated project” under the Environmental Impact Assessment Ordinance and when the project proponent is asked by the Director of Environmental Protection to conduct an “assessment of impact on sites of cultural heritage”, a separate HIA on the same site is not required.

Submission to PWSC

- (h) In the submission to PWSC for funding construction works, project proponents will need to include a new paragraph in the PWSC paper, to be cleared by AMO, stating clearly whether the project will affect any “heritage site” and if it does, what mitigation measures will be taken and whether the public are in support of the proposed measures in the public engagement process.

IMPLICATIONS OF THE RECOMMENDATIONS

FINANCIAL AND CIVIL SERVICE IMPLICATIONS

For projects affecting “heritage sites”, project proponents and their works agents are required to carry out Heritage Impact Assessments (HIA) and study a number of options to minimize their impact with cost implications, and seek to converge public views as far as possible before their projects proceed. The financial implications arising from the HIA will depend on individual capital works projects. Additional workload is expected to be absorbed by the bureaux/departments concerned. For the adaptive re-use of Government-owned historic buildings, we would seek capital funding on individual preservation projects selected from amongst proposals submitted by non-profit making organizations (NPOs) under the established RAE procedures and funding approval of the Finance Committee. A separate sum of \$100 million for five years from the General Revenue Account has been set aside for supporting the operation of the adaptive re-use scheme (or the Revitalising Historic Buildings Through Partnership Scheme), including financial support where justified in the initial two years in line with existing publicly-funded Social Enterprises (SE) schemes to meet initial operational expenses of SE operated from the historic buildings under the scheme. The letting of historic buildings to NPOs at nominal rental will involve rental revenue forgone but we will select historic buildings with modest or little commercial value for inclusion in the scheme. On land exchange and transfer of development rights for privately-owned historic buildings, the likely financial implications will be assessed after the policy aspects have been considered. Government financial assistance for graded privately-owned historic buildings would be subject to resource availability not different from the current funding scheme for declared monuments. We will seek the required additional funding and staff resources under the established resource allocation procedures.

ECONOMIC IMPLICATIONS

2. In overall terms, the recommendations represent the Administration's consolidated, full-fledged efforts and denote a pragmatic approach in balancing the need for long-term economic development and social demand for expanding the ambit of heritage conservation. The individual recommendations will also have their economic implications.

3. First, the requirement of HIA may temporarily or to some extent result in delay or longer preparation time for works projects. Yet, the requirement would address the public concerns on heritage preservation and could avoid unnecessary delay and objections arising from concerned parties after the projects begin or shortly before the projects begin. In the longer term, this could ensure Government's capital works projects be delivered smoothly, and in turn help alleviate the ongoing weak performance in the labour market of the construction sector.

4. Second, the adaptive re-use of Government-owned historic buildings will ensure that these buildings will be put into proper uses valuable to the community. This would revitalise the economic value of the historic buildings through attracting local as well as overseas visitors, presence of financially viable business activities and more importantly generation of employment opportunities, complementary to their unique heritage value.

5. Third, the land exchange and transfer of development rights (if materialized in future) would provide greater flexibility in providing incentive for conserving privately-owned graded historic buildings. They may induce building and construction investments and in turn provide opportunities for construction workers.

ENVIRONMENTAL IMPLICATIONS

6. The proposed HIA will help to avoid heritage sites unnecessarily affected by capital works projects and minimize adverse impacts. For the restoration works within the declared monuments under the adaptive re-use scheme, the requirements under the Environmental Impact Assessment Ordinance will be complied with.

SUSTAINABILITY IMPLICATIONS

7. Conserved heritage provides a sense of belonging and continuity, enhance the cultural and historical assets of society, and contribute to the attractiveness of our home city. Through implementation of the HIA process, the adaptive re-use scheme and the incentive schemes for privately-owned historic buildings, it is envisaged that historical buildings in Hong Kong would be better conserved. This is conducive to the sustainability principle of enhancing the vibrancy of Hong Kong's cultural diversity and historical assets. Enhanced public engagement in the HIA process is also in line with the participatory approach to sustainable development as advocated in Agenda 21 adopted at the United Nations' Earth Summit.