

# **立法會**

## ***Legislative Council***

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### **Paper for the House Committee meeting on 28 April 2017**

#### **Report of the Subcommittee on Antiquities and Monuments (Declaration of Proposed Monument) (Hung Lau) Notice**

#### **Purpose**

This paper reports on the deliberations of the Subcommittee on Antiquities and Monuments (Declaration of Proposed Monument) (Hung Lau) Notice ("the Subcommittee").

#### **Background**

2. Under section 2A(1) of the Antiquities and Monuments Ordinance (Cap. 53) ("A&MO"), the Antiquities Authority ("AA"), after consultation with the Antiquities Advisory Board ("AAB"), may publish a notice in the Gazette to declare a place, building, site or structure as a proposed monument. Under section 2B(1) of A&MO, the declaration of the proposed monument is to have effect for a period of 12 months unless earlier withdrawn by AA. Under section 2B(2) of A&MO, the proposed monument declaration within private land cannot be extended beyond the aforementioned 12 months. By virtue of section 6(1) of A&MO, the effect of a section 2A(1) notice is to prohibit excavation, building works, demolition and certain other acts on or in the proposed monument, except in accordance with a permit granted by AA. Under section 19(2) of A&MO, any person who contravenes section 6(1) is guilty of an offence and is liable on conviction to a fine of \$100,000 and imprisonment for one year.

## **The Antiquities and Monuments (Declaration of Proposed Monument) (Hung Lau) Notice (L.N. 37 of 2017)**

3. The Antiquities and Monuments (Declaration of Proposed Monument) (Hung Lau) Notice ("Hung Lau Notice"), made by the Secretary for Development<sup>1</sup> under section 2A(1) of A&MO, was published in the Gazette on 13 March 2017 and came into operation on the same day. The Hung Lau Notice declares the building known as "Hung Lau" within Lot No. 36 in D.D. 300, Tuen Mun, New Territories to be a proposed monument for the purposes of A&MO.

4. Hung Lau is a two-storey brick building blending Chinese and Western architectural characteristics and located within the site of the former Castle Peak Farm ("CPF") in Tuen Mun. The farm was originally owned by Li Ki-tong, a dedicated follower of Dr Sun Yat-sen and a member of Hsing Chung Hui (or Xingzhonghui), an anti-Qing revolutionary society. Between 1901 and 1911, CPF was used as a depot for weapon storage, a ground for manufacturing and experimentation of firearms for the contemplated uprisings, a place for meetings by the revolutionaries, and a haven for disbanded revolutionaries escaping from the Manchu vengeance. AAB accorded a Grade 1 status to Hung Lau in 1981, and subsequently discussed the grading in 1985, 1995, 2009, and 2011.

### **The Subcommittee**

5. At the House Committee meeting on 17 March 2017, Members agreed to form a subcommittee to study the Hung Lau Notice. Hon LAU Kwok-fan was elected Chairman of the Subcommittee. The membership list of the Subcommittee is in **Appendix**. The Subcommittee has held two meetings with the Administration to examine the Notice.

6. To allow more time for the Subcommittee to study the Hung Lau Notice, Hon YIU Si-wing, on behalf of the Subcommittee, has given notice to move a resolution at the Council meeting of 12 April 2017 to extend the scrutiny period for the Notice to the Council meeting of 10 May 2017. When the Council meeting of 12 April 2017 was adjourned, the agenda on the proposed resolution was not reached. The scrutiny period for the Notice therefore expired at the Council meeting of 12 April 2017.

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<sup>1</sup> Under section 2 of the Antiquities and Monuments Ordinance (Cap. 53), the Secretary for Development is AA.

## **Deliberations of the Subcommittee**

7. In recognition of the high historical value of Hung Lau, in particular its location in the former CPF which was an area closely connected with revolutionary activities led by Dr Sun Yat-sen in the 1900s, the Subcommittee generally welcomes and supports the Hung Lung Notice. The deliberations of the Subcommittee are summarised in the ensuing paragraphs.

### Heritage value of Hung Lau and its declaration as a proposed monument

8. The Subcommittee considers that the appraisal report on the heritage value of Hung Lau at Annex B of the Legislative Council Brief (Ref: DEVB/CHO/IB/CR/14/39) ("the LegCo Brief") is too brief. Members have sought details on AAB's deliberations and considerations in relation to the grading of Hung Lau since 1981.

9. The Government has elaborated that AAB had adopted the grading system for historic buildings since 1980. Under the grading system, Grade 1 buildings are those of outstanding merit; Grade 2 buildings are those of special merit; and Grade 3 buildings are those of some merit. Hung Lau was originally included in the list of buildings of Chinese style, and was tentatively given a Grade 2 status. In 1981, AAB noted that architecturally, Hung Lau was in Western style, and that it should be accorded a Grade 1 status. AAB had also considered whether to declare the building as a monument under section 3(1) of A&MO but members were not in favour of the declaration as direct association between Hung Lau and Dr Sun Yat-sen could not be established. In April 1985, AAB reviewed the position of Grade 1 historic buildings and maintained Hung Lau as a Grade 1 historic building. AAB did not recommend declaring Hung Lau as a monument. In February 1995, AAB reviewed the grading previously accorded to Hung Lau. The analysis of the heritage value of Hung Lau at the time was broadly the same as what has been set out at Annex B of the LegCo Brief. This included the difficulties to ascertain the date of construction of Hung Lau, and the lack of evidence to support the building having direct relation with the revolutionary activities led by Dr Sun Yat-sen. AAB members noted that the building carried some characteristics of the architecture in the 1920s and 1930s, and that the location and configuration of the present Hung Lau were different from those shown on the survey plan of 1900-1905. Members of AAB expressed doubts in the common belief that the present building of Hung Lau per se (vis-à-vis the CPF site as a whole), probably built in the 1920s at the earliest, had direct relationship with the revolutionary activities. Eventually, AAB did not adjust the previous grading of Hung Lau. With AAB's adoption of the six criteria to assess the heritage value of historic buildings since 2005 (i.e. historical interest, architectural merit, group value, social value and local interest, authenticity, and rarity), the

previous grading of Hung Lau was reviewed by AAB as part of the recent grading assessment of 1 444 historic buildings based on the six assessment criteria. All available materials retrieved from extensive research, as well as views and additional information received during public consultation, had been thoroughly studied. In December 2009, AAB confirmed to retain the Grade 1 status of Hung Lau, taking into account the assessment results of the independent Historic Buildings Assessment Panel ("HBA Panel"), the appraisal report on the heritage value of Hung Lau based on the assessment criteria, and collective memory<sup>2</sup> as one of the important factors for consideration of the grading. In June 2011, AAB deliberated on the proposal to declare Hung Lau as a monument in response to an AAB member's request. As it was uncertain whether Hung Lau was built before 1911, thus its relevance to the 1911 Revolution, AAB agreed at the time that Hung Lau would not be considered for declaration as a monument for the time being unless there was new information to support the direct relationship between Hung Lau and the revolutionary activities.

10. The Government has explained that AAB has opened up its regular meetings and made available the discussion papers and minutes of the open meetings to the public since September 2005. In line with established practice, the appraisal report of Hung Lau has also been uploaded onto AAB's website in 2009.

11. The Subcommittee has asked why AAB had decided to recommend declaring Hung Lau as a proposed monument in March 2017 while it had been maintaining Hung Lau's Grade 1 status since 1981.

12. The Government has explained that Hung Lau was sold to its current owner, i.e. Goodberg Limited, in November 2016. In the light of the works carried out near Hung Lau in mid-February 2017 to remove vegetation and temporary structures, the Buildings Department ("BD") has reminded the owner of Hung Lau that prior approval and consent from BD are required for demolition works at the site in accordance with the Buildings Ordinance (Cap. 123) ("BO").<sup>3</sup> BD carried out on-site inspection daily from 18 February 2017 up to 13 March 2017 when Hung Lau was declared as a proposed monument. Meanwhile, AAB discussed at a special meeting on 28 February 2017 whether AAB should recommend AA to declare Hung Lau as a proposed monument. AAB at the time considered it not necessary to trigger the proposed monument

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<sup>2</sup> According to the Government, collective memory falls within the criterion of "social value and local interest"

<sup>3</sup> Under section 14(1) of the Building Ordinance ("BO"), no person shall commence or carry out any building works without having first obtained from the Building Authority (i.e. Director of Buildings) his approval in writing of documents submitted to him in accordance with the regulations, and his consent in writing for the commencement of the building works shown in the approved plan. Under section 2(1), the term "building works" includes demolition.

declaration for Hung Lau for the time being, given that there was no imminent demolition threat and that the Government had been in discussion with the owner on preservation proposals. Notwithstanding, on 8 March 2017, it was noticed and widely reported that two windows had been removed at Hung Lau, with possible further demolition works in the pipeline. BD on the same day issued a statutory order under section 23 of BO<sup>4</sup> to require the owner to stop the works. In view of the imminent demolition threat, AAB at its meeting on 9 March 2017 recommended AA to declare Hung Lau as a proposed monument, with a view to offering immediate statutory protection to the building.

13. The Government has pointed out that after the declaration as a proposed monument, Hung Lau will be temporarily protected from demolition threat for 12 months, during which the Government could explore possible preservation options for Hung Lau with its owner and at the same time consider whether Hung Lau should be declared as a monument for permanent protection under A&MO. Under section 2B(2) of A&MO, the proposed monument declaration within private land cannot be extended beyond the aforementioned 12 months. Hence, the Government has to be prudent with the timing in making the declaration.

#### Actions to be taken during the 12-month period

##### *Independent assessment on Hung Lau*

14. Members of the Subcommittee note that both Tuen Mun District Council and Heung Yee Kuk are supportive of declaring Hung Lau as a monument. They are keen to ensure that the Government and AAB will follow-up the issue proactively during the 12-month period. Some members of the Subcommittee have requested the Government to disclose the scores in respect of each of the six criteria given by HBA Panel on Hung Lau based on the historic building assessment form ("the assessment form"), with a view to understanding whether Hung Lau meet the "high threshold" of monument, and the Government can focus on the required areas in reassessing the heritage value of Hung Lau. Some members have urged the Government to carry out an independent and comprehensive expert study on Hung Lau in the 12-month period to clearly establish the heritage value of the building and its cultural landscape, including ascertaining the construction year of Hung Lau and its relationship with the revolutionary activities led by Dr Sun Yat-sen.

15. The Government has explained that AAB adopts the six criteria to assess the heritage value of historic buildings since 2005. The grading system

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<sup>4</sup> Section 23(1) of BO relevantly provides that where in the opinion of the Director of Buildings any building works are being carried out in contravention of any provisions of BO, he may by order in writing require that such works cease until the order is withdrawn.

provides an objective basis for determining the heritage value, and hence the preservation need, of historic buildings in Hong Kong. A Grade 1 historic building may only be considered for declaration as a monument if it reaches the "high threshold" of monument. The independent HBA Panel, which was established in March 2005, has been entrusted to undertake in-depth evaluation of the heritage value of historic buildings under the grading assessment. The Panel comprises historians as well as members of the Hong Kong Institute of Architects, the Hong Kong Institute of Planners and the Hong Kong Institution of Engineers. Individual members of HBA Panel use the assessment form as a guideline in making a preliminary evaluation of the heritage value of a historic building against the six criteria. HBA Panel will then discuss and recommend a proposed grading of the building for AAB's consideration. AAB will deliberate the building's grading at open meetings taking into account of the assessment results of HBA Panel and the views and additional information received during public consultation.

16. Hon Tanya CHAN has pointed out that the Government conducted two independent assessments on the heritage value of Ho Tung Gardens after it was declared as a proposed monument in 2011. She has queried why the Government refuses to conduct an independent assessment on Hung Lau. Some members have expressed concern that HBA Panel's assessment may only focus on the value of Hung Lau as a building per se. They opine that the heritage value of Hung Lau lies in its importance in the cultural landscape. In this regard, Dr Hon Junius HO has pointed out that the declaration of King Yin Lei and the former French Mission Building as monuments (which both have similar construction years as Hung Lau) has demonstrated the importance of the historical significance in the preservation of heritage buildings.

17. The Subcommittee considers that Hung Lau constitutes an important component in the collective memory of Hong Kong people and this should be given higher weighting than other factors like the construction year and architectural characteristics of the building in assessing Hung Lau's heritage value. Subcommittee members are of the view that Hung Lau is a reminder of Hong Kong's role in the revolutionary movement in Chinese history. As such, declaration of Hung Lau as a monument is well justified. Some members have further pointed out that pro-Kuomintang groups in Hong Kong have been carrying out celebration activities for the National Day of Taiwan at Hung Lau and the adjacent Zhong Shan Park since the 1950s. They opine that AAB should consider whether the Zhong Shan Park (or the memorial in it) should also be declared as monument along with Hung Lau under a "point-line-plane" approach.

18. The Subcommittee has reiterated the need for the Government to conduct an independent assessment on the heritage values of Hung Lau. At the meeting on 10 April 2017, the Subcommittee passed the following motion

moved by Dr Hon YIU Chung-yim urging the Government to conduct the independent assessment:

(Translation)

"This Subcommittee urges the Antiquities and Monuments Office to conduct an independent expert study on the cultural landscape and heritage value of Hung Lau and, prior to the expiry of the proposed monument declaration, submit the findings to the Panel on Development of the Legislative Council for discussion, and to the Antiquities Advisory Board for its reconsideration as to whether Hung Lau should be declared as a monument."

19. The Government has advised that, when assessing the heritage value of a historic building, the cultural setting and the associated cultural landscape of a building will be considered under the assessment criterion of "authenticity", while the symbolic importance of a building recognized by the community and consideration on cultural identity will be taken into account under the assessment criterion of "social value and local interest". In other words, under the grading mechanism, not only the architectural value of the tangible building is evaluated, but factors relating to the cultural landscape and social value associated with a building will also be assessed. For King Yin Lei, it was declared as a monument after taking into account considerations such as the outstanding Chinese and Western architectural features of the building which are rare in Hong Kong. The former French Mission Building has high heritage value as it has reflected the religious and administration history of colonial Hong Kong and has unique architectural features.

20. In respect of Hung Lau, the Government has highlighted that when AAB confirmed to maintain the Grade 1 status in December 2009, it had duly considered the assessment results of the independent HBA Panel and the views and additional information received during public consultation. The Government has reiterated that the independent HBA Panel has been formed since March 2005 to undertake in-depth evaluation of the heritage value of historic buildings under the grading assessment. The Panel comprises experts in various fields, including historians, members of the Hong Kong Institute of Architects, the Hong Kong Institute of Planners and the Hong Kong Institution of Engineers. The Panel conducts grading assessment in an impartial manner. In terms of the purpose and design, the Government considers that HBA Panel is on par with the suggested independent assessment.

21. The Government has pointed out that consultancies were commissioned in the case of Ho Tung Gardens to fully assess its heritage value. Yet, unlike Ho Tung Gardens, the Antiquities and Monuments Office ("AMO") has in the past few decades studied all materials available on Hung Lau in

assessing its heritage value. Meanwhile, AMO will conduct in-depth study on the heritage value of Hung Lau. Besides reviewing materials examined in previous grading exercises, AMO will scrutinize papers submitted by community groups and look for new information on Hung Lau from various sources, with a view to refining the assessment on Hung Lau's heritage value. The Government has assured members that it will adopt an open mind in reassessing Hung Lau's heritage value taking into account all relevant factors and materials, not just the age of the building. It has been AAB's practice to invite HBA Panel to review assessment results of previous exercises upon receipt of new information. AMO will submit the updated appraisal report on Hung Lau to AAB as per the prevailing practice. Moreover, in accordance with section 3(1) of A&MO, the Government will consult AAB on whether AA should declare Hung Lau as a monument. The Government has supplemented that should AA declare a building as monument by notice in the Gazette, the notice, which is a subsidiary legislation, will be subject to negative vetting by LegCo.

*Discussion with the owner of Hung Lau on preservation options*

22. The Subcommittee has enquired about the discussion between the Government and the owner of Hung Lau on preservation proposals for the building, including economic incentives the Government may offer and arrangement for the existing tenants in Hung Lau. In considering providing compensation for the owner of Hung Lau in preserving Hung Lau, Hon CHU Hoi-dick has pointed out that the lot where Hung Lau is located is zoned for agricultural use and therefore subject to restrictions in development. In his view, an increase in plot ratio would be an inappropriate option for the preservation of Hung Lau. He has urged the Government to take this into account in considering compensation for the owner of Hung Lau.

23. The Government has advised that it has been discussing with the owner of Hung Lau on preservation options since mid-February 2017, and it will be inappropriate to disclose the details at the moment. Under the prevailing heritage conservation policy, the Government recognizes that in the premise of respecting private property rights, appropriate economic incentives should be offered to encourage private owners to conserve historic buildings in their ownership. The current economic incentives offered include compensation to private owners for their loss due to conservation of historic buildings. For example, private owners would be given policy support for their planning applications to relax the restrictions on plot ratio, building height and/or site coverage in order to encourage them to adopt a "preservation-cum-development" approach in preserving and revitalizing their historic buildings. The Government has pointed out that the area where Hung Lau is located is zoned "Green Belt". Planning application to relax restrictions for development in a "Green Belt" zone will require policy support. As for the existing tenants



of Hung Lau, the Social Welfare Department ("SWD") has been assisting them to find other accommodation. It is understood that currently only two tenants remain in Hung Lau and SWD will continue to render assistance to them.

### Monitoring and protection of historic buildings

24. The Subcommittee has expressed concern that developers may be induced to purchase a historic building at a low price and damage or demolish it in order to bargain with the Government for compensation in preserving the building. The Subcommittee has enquired how the Government would monitor and protect graded historic buildings. The Subcommittee has urged the Government to take proactive action in protecting graded historic buildings from damages and demolition, and enquired about the compensation mechanism for owners of graded historic buildings, proposed monuments and monuments.

25. The Government has advised that it has put in place a monitoring mechanism to monitor any demolition of/alterations to declared monuments/proposed monuments or graded historic buildings. Relevant government departments (including the Planning Department, BD and Lands Department) will alert the Commissioner for Heritage's Office and AMO regarding any identified possible threat which may affect privately-owned monuments/proposed monuments or graded historic buildings that have been brought to the departments' attention through applications and enquiries received and in the normal course of duty (e.g. regular inspections). The monitoring mechanism enables the Commissioner and AMO to take timely follow-up actions with the private owners concerned. Moreover, under BO, prior approval by the Building Authority is required for demolition and alteration works. Consent from the Building Authority should be obtained before the commencement of works.

26. In respect of protecting graded historic buildings, the Government has advised that AAB announced in March 2009 the completion of the assessment of the 1 444 historic buildings. The respective assessment results and gradings of these buildings have been uploaded onto AAB's web site for public information. Currently, there are some 100 privately-owned Grade 1 historic buildings in Hong Kong. The majority are temples, churches and ancestral halls. Since 2008, AA has been proactively reviewing whether individual buildings (such as some Grade 1 historic buildings) have reached the "high threshold" of monuments and should be declared as "monument" under A&MO for permanent protection. Under prevailing practice, an agreement with the owner of the historic building shall be reached before declaring the building as monument. Any building, demolition, or excavation works as well as other works in the declared proposed monuments and monuments will be prohibited unless a permit is granted by AA.

27. The Government recognizes that in the premise of respecting private property rights, it is necessary to offer appropriate economic incentives to private owners of historic buildings to compensate them for their loss due to the conservation of the buildings in question. Given individual circumstances, the requisite economic incentives to achieve the policy objective will be considered prudently and on a case-by-case basis. There are a number of successful examples on the preservation of privately-owned graded historic buildings through the provision of economic incentives such as the Cheung Chau Theatre, which is preserved through minor relaxation of plot ratio and site coverage approved by the Town Planning Board. In addition, the Government has launched the Financial Assistance for Maintenance Scheme since 2008 to provide assistance in the form of grant for private owners to carry out maintenance works in a comprehensive manner for the privately-owned graded historic buildings.

### **Recommendation**

28. The Subcommittee has completed scrutiny of and generally supports the Hung Lau Notice.

### **Advice sought**

29. Members of the House Committee are requested to note the deliberations of the Subcommittee.

**Subcommittee on Antiquities and Monuments  
(Declaration of Proposed Monument) (Hung Lau) Notice**

**Membership list**

**Chairman** Hon LAU Kwok-fan, MH

**Members** Hon Michael TIEN Puk-sun, BBS, JP  
Hon YIU Si-wing, BBS  
Hon MA Fung-kwok, SBS, JP  
Hon Alice MAK Mei-kuen, BBS, JP  
Dr Hon KWOK Ka-ki  
Dr Hon Fernando CHEUNG Chiu-hung  
Hon IP Kin-yuen  
Ir Dr Hon LO Wai-kwok, SBS, MH, JP  
Hon Andrew WAN Siu-kin  
Hon CHU Hoi-dick  
Dr Hon Junius HO Kwan-yiu, JP  
Hon Holden CHOW Ho-ding  
Hon SHIU Ka-fai  
Hon SHIU Ka-chun  
Hon Tanya CHAN  
Hon Kenneth LAU Ip-keung, MH, JP  
Hon KWONG Chun-yu  
Dr Hon YIU Chung-yim

(Total : 19 members)

**Clerk** Ms Connie SZETO

**Legal Adviser** Mr Bonny LOO