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Paper for the House Committee meeting on 24 November 2017

**Report of the Subcommittee on Antiquities and Monuments
(Declaration of Monuments and Historical Buildings)
(Consolidation) (Amendment) Notice 2017**

Purpose

This paper reports on the deliberations of the Subcommittee on Antiquities and Monuments (Declaration of Monuments and Historical Buildings) (Consolidation) (Amendment) Notice 2017 ("the Subcommittee").

Background

2. Under section 3(1) of the Antiquities and Monuments Ordinance (Cap. 53) ("A&MO"), the Secretary for Development ("SDEV") as the Antiquities Authority ("AA") may, after consultation with the Antiquities Advisory Board ("AAB") and with the approval of the Chief Executive, by notice in the Gazette, declare any place, building, site or structure, which he considers to be of public interest by reason of its historical, archaeological or palaeontological significance, to be a monument, historical building or archaeological or palaeontological site or structure. Once so declared, the place, building, site or structure in question will become a "monument" for the purposes of A&MO and as such will enjoy the protection under section 6(1) which forbids anyone to excavate, carry on building or other works, plant or fell trees or deposit earth or refuse on or in the monument, or demolish, remove, obstruct, deface or interfere with it except in accordance with a permit granted by SDEV. Under section 19(2) of A&MO, any person who contravenes section 6(1) shall be guilty of an offence and shall be liable on conviction to a fine of \$100,000 and imprisonment for one year.

The Antiquities and Monuments (Declaration of Monuments and Historical Buildings) (Consolidation) (Amendment) Notice 2017 (L.N. 170 of 2017)

3. The Antiquities and Monuments (Declaration of Monuments and Historical Buildings) (Consolidation) (Amendment) Notice 2017 ("the Declaration Notice") was made by SDEV under section 3(1) of A&MO to declare the following three buildings to be historical buildings (hereinafter collectively referred to as "the three historical buildings"),¹ by adding them to paragraph 3 of the Antiquities and Monuments (Declaration of Monuments and Historical Buildings) (Consolidation) Notice (Cap. 53B):

- (a) the building known as Tung Lin Kok Yuen (東蓮覺苑) at 15 Shan Kwong Road, Happy Valley;
- (b) the building known as Kowloon Union Church (九龍佑寧堂) at 4 Jordan Road, Yau Ma Tei; and
- (c) the building known as Yeung Hau Temple (楊侯古廟) at Po Chue Tam, Tai O.

4. The respective situations of the three historical buildings are delineated and shown edged red on the relevant plans (i.e. Plan Nos. HKM10171, KM9818 and ISM2803) signed and deposited in the Land Registry by SDEV in accordance with section 3(4) of A&MO.²

Declaration of the three buildings as monuments

5. According to the Legislative Council Brief on the Declaration Notice (File Ref.: DEVB/CHO/1B/CR 141), the three historical buildings have been accorded Grade 1 status by AAB having regard to the recommendations of an independent assessment panel under the existing administrative grading mechanism.³ As the three buildings are situated on private lands, the

¹ Under section 2 of A&MO, "historical building" is a type of "monument".

² Copies of the plans are given at Annex C to the Legislative Council Brief on the Declaration Notice (File Ref: DEVB/CHO/1B/CR 141).

³ Grading of historic buildings is accorded by AAB as follows:

- Grade 1 status refers to buildings of outstanding merit, which every effort should be made to preserve if possible.
- Grade 2 status refers to buildings of special merit; efforts should be made to selectively preserve.
- Grade 3 status refers to buildings of some merit; preservation in some form would be desirable and alternative means could be considered if preservation is not practicable.

Administration has obtained the explicit agreement of the owners of the relevant buildings to the declaration proposal.⁴

6. The Declaration Notice was published in the Gazette on 13 October 2017, and came into operation on the same day.

The Subcommittee

7. At the House Committee meeting on 20 October 2017, Members agreed to form a subcommittee to study the Declaration Notice. Hon MA Fung-kwok was elected Chairman of the Subcommittee. The membership list of the Subcommittee is in the **Appendix**. The Subcommittee has held one meeting with the Administration to examine the Declaration Notice.

8. To allow more time for the Subcommittee to report its deliberations to the House Committee, the Chairman has given notice to move a resolution at the Council meeting of 15 November 2017 to extend the scrutiny period for the Declaration Notice to the Council meeting of 6 December 2017. When the Council meeting of 15 November 2017 was adjourned, the agenda on the proposed resolution was not reached. The scrutiny period for the Declaration Notice therefore expired at the Council meeting of 15 November 2017.

Deliberations of the Subcommittee

9. In recognition of the heritage merits of the three historical buildings, the Subcommittee generally welcomes and supports the Declaration Notice. The deliberations of the Subcommittee are summarized in the ensuing paragraphs.

Mechanism for declaring graded historic buildings as statutory monuments

10. The Subcommittee has expressed concern about the protracted process for declaring graded historic buildings as statutory monuments. Members have noted that Tung Lin Kok Yuen, Kowloon Union Church and Yeung Hau Temple were confirmed as Grade 1 historic buildings in 2009, 2013 and 2010 respectively, but it was not until June 2017 that AAB had recommended their declaration as statutory monuments. Members have asked about the declaration mechanism, the procedures involved and the factors that will affect the progress.

⁴ Tung Lin Kok Yuen, Kowloon Union Church and Yeung Hau Temple are currently situated on private lands owned by Tung Lin Kok Yuen, the Trustees of Kowloon Union Church and the Secretary for Home Affairs Incorporated respectively.

11. The Administration has advised that since 2009, AAB has been focusing its efforts on reviewing the grading of 1 444 historic buildings, which were selected as a result of a territory-wide survey and a public consultation exercise conducted back then. As at September 2017, AAB has confirmed the grading of 1 384 historic buildings having regard to the assessment by an independent assessment panel, the views and information received from members of the public and the owners of the buildings concerned during public consultation exercises. Of the 1 384 graded historic buildings, 179 are accorded Grade 1 status. These Grade 1 historic buildings form a "pool" of highly valuable historic buildings for consideration by AA for possible monument declaration under A&MO. Throughout the years, AA has been proactively reviewing whether some of these buildings have reached the "high threshold" of monuments to be put under statutory protection.

12. Given that the grading system is administrative in nature and does not provide historic buildings with statutory protection, Mr CHU Hoi-dick is keenly concerned about how long it will take before the existing 179 Grade 1 historic buildings can be finally declared as monuments. As many of these buildings are already in dilapidated conditions, he is worried that they might be demolished long before the declaration. He urged the Administration to identify any common gridlock with a view to expediting the declaration process. Ms Tanya CHAN has questioned about the specific criteria for determining whether a building has reached the extremely "high threshold" of monuments. Mr KWOK Wai-keung has enquired if it is possible to directly declare a historic building as a monument without first grading it, and whether there is a faster track for monument declaration of particular types of buildings, such as religious buildings.

13. The Administration has advised that the Antiquities and Monuments Office ("AMO"), as the executive arm of AA, has spared no effort in taking forward the task of conducting professional and independent assessments on the heritage value of historic buildings. In assessing whether a building reaches the "high threshold" that justifies its declaration as a monument, AMO will carry out on-site inspection, and conduct comprehensive and in-depth assessment based on the information gathered. The time required for the assessment will depend on the depth of information available to AMO, the merits and complexity of each case, and for privately owned buildings, the co-operation of the owners. The heritage merits of the building itself, rather than the building type, are most critical in considering whether to declare it as monument.

Monument declaration of privately-owned historic buildings

14. Mr LAU Kwok-fan has expressed concern that taking in view the substantial costs required for maintenance, many private owners of historic

buildings will hesitate in giving consent to any proposals of monument declaration of the historic buildings they own. He has asked if the Administration will consider purchasing the privately-owned historic buildings or offering land exchange to the owners. Mr CHU Hoi-dick has also asked if the Administration will provide more attractive economic incentives such as financial assistance to the private owners concerned. Referring to section 8 of A&MO, Ms Tanya CHAN has queried why the Administration has avoided exercising the power thereby conferred to provide compensation in respect of financial loss suffered or likely to be suffered by the owner or lawful occupier of a proposed monument or monument.

15. The Administration has advised that, as recommended by AAB in its Report on the Policy Review on Conservation of Built Heritage released in 2015 ("the AAB Report"), given the diverse views in the community, the option of using public funds to purchase or resume privately-owned historic buildings should not be pursued. That said, the Administration recognizes that on the premise of respecting private property rights, it is necessary to offer appropriate economic incentives to owners of private 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.

16. The Subcommittee has noted from the Administration that 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 implemented the Financial Assistance for Maintenance Scheme since 2008 to provide assistance in the form of a grant for private owners to carry out maintenance works in a comprehensive manner for privately-owned graded historic buildings.

Delineation of the three historical buildings

17. The Subcommittee has examined the plans showing the locations and delineation of the three historical buildings and deposited in the Land Registry in accordance with section 3(4) of A&MO.

18. Ms Tanya CHAN has noted with concern about the non-inclusion of the surrounding area and other buildings in the vicinity of Kowloon Union Church under the delineation. She considers that it is important to preserve not only the historical buildings themselves, but also the historical ambience in the area. However, under A&MO, only specific historical buildings, but not their surrounding areas, will be afforded conservation. She has requested the Administration to actively explore the adoption of the "point-line-plane"

approach to expand the existing scope of heritage conservation from buildings (point) to streets (line) and surrounding areas (plane). She has also suggested that a special protected area should be designated to cover the conjunct Manse building (a Grade 3 historic building) of Kowloon Union Church and the cluster of other historic buildings in the neighbourhood, given the significance of the building cluster in depicting the historical and socio-cultural development of the Jordan area.

19. The Administration has advised that having regard to the recommendations made in the AAB Report, it has launched a pilot funding scheme for thematic research projects under the Built Heritage Conservation Fund. With a research theme of "point-line-plane" approach, the eight degree-awarding academic institutes have been invited to submit applications for conducting research on this subject.

20. The Chairman has noted that a developer has earlier on indicated interest in redeveloping a site next to Kowloon Union Church. He has expressed concern over the adverse impact on the Church and the integrity of the surrounding environment. The Administration has informed members that to the best of its understanding, the potential redevelopment as mentioned does not affect the Kowloon Union Church. It has further advised that prior consultation with AMO is necessary for any developments or rezoning proposals affecting declared and proposed monuments, graded historic buildings and sites of archaeological interest and their immediate environment.

21. As for the delineation of Tung Lin Kok Yuen and Yeung Hau Temple on the plans, members have noted from the Administration that all important parts of the premises with heritage value have already been covered. The Subcommittee has also noted the exclusion of a new annex building (i.e. Man Kam Building (文錦樓)) to Tung Lin Kok Yuen.

Public education and publicity

22. The Subcommittee considers it essential for the Administration to build on public education and publicity work to enhance the understanding and awareness of the public (including private owners of historic buildings) on the conservation of built heritage. Members have noted that the Administration has publicized information on the heritage front and the heritage conservation work through a dedicated heritage website (www.heritage.gov.hk) and a bimonthly heritage newsletter "活化@Heritage". A new version of "Geographical Information System on Hong Kong Heritage" was launched in August 2016 to provide information of declared monuments, graded historic buildings and sites of archaeological interest in Hong Kong. Various public engagement and education activities, such as guided tours and workshops arranged for Friends

of Heritage, have been held from time to time to facilitate public understanding of the historical and cultural values of the historical buildings.

23. To increase attractiveness of the publicity programmes, the Chairman has suggested taking an integrated approach in the programme design by combining the publicity for Kowloon Union Church with the cluster of historic buildings in the area. He also considers that the publicity for Yeung Hau Temple should highlight its strong association with the Tai O Dragon Boat Water Parade, which was inscribed onto the third national list of intangible cultural heritage of China in 2011. Ms Alice MAK offers the view that publicity programmes for built heritage should fully reflect the rich historical and cultural background of the historical buildings and the local community. Members are pleased to note that the Administration will launch a series of diversified publicity programmes, including guided tours covering Kowloon Union Church and selected historic buildings in the area, such as Hong Kong Observatory and the Former Kowloon British School. It has also planned to include Yeung Hau Temple in the Tai O Cultural Tour programme.

Recommendation

24. The Subcommittee has completed scrutiny of and generally supports the Declaration Notice. Both the Subcommittee and the Administration will not propose any amendment to the Declaration Notice.

Advice sought

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

**Subcommittee on Antiquities and Monuments
(Declaration of Monuments and Historical Buildings)
(Consolidation) (Amendment) Notice 2017**

Membership list

Chairman Hon MA Fung-kwok, SBS, JP

Members Hon Abraham SHEK Lai-him, GBS, JP
Hon CHAN Chi-chuen
Hon LEUNG Che-cheung, SBS, MH, JP
Hon Alice MAK Mei-kuen, BBS, JP
Hon KWOK Wai-keung, JP
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Hon CHUNG Kwok-pan
Hon CHU Hoi-dick
Dr Hon Junius HO Kwan-yiu, JP
Hon Tanya CHAN
Hon HUI Chi-fung
Hon LAU Kwok-fan, MH
Hon Kenneth LAU Ip-keung, BBS, MH, JP

(Total 5 members)

Clerk Ms Doris LO

Legal Adviser Mr Alvin CHUI