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**Paper for the House Committee meeting on 4 March 2011
Report of the Subcommittee on Antiquities and Monuments
(Declaration of Proposed Monument) (Ho Tung Gardens) Notice**

Purpose

This paper reports on the deliberations of the Subcommittee on the Antiquities and Monuments (Declaration of Proposed Monument) (Ho Tung Gardens) Notice.

Background

The Antiquities and Monuments (Declaration of Proposed Monument) (Ho Tung Gardens) Notice (L.N. 26 of 2011)

2. On 28 January 2011, with the support from the Antiquities Advisory Board (AAB), the Secretary for Development (SDEV), in her capacity as the Antiquities Authority (AA) under the Antiquities and Monuments Ordinance (Cap. 53) (the Ordinance), published in the Gazette, the Antiquities and Monuments (Declaration of Proposed Monument) (Ho Tung Gardens) Notice (the Declaration Notice) under section 2A(1) of the Ordinance.

3. The Declaration Notice declared as "a Proposed Monument" the land situated within Rural Building Lot No. 670, No. 75 Peak Road, Hong Kong, together with all buildings and structures erected on that lot, and the gateway of the Ho Tung Gardens situated on an access road off Peak Road leading to that lot (collectively referred to as "the Ho Tung Gardens" hereinafter). The declaration has effect for 12 months from the gazettal date, unless withdrawn earlier by the AA, during which the AA could consider in a more comprehensive manner whether or not the Ho Tung

Gardens should be declared as a monument under section 3 of the Ordinance, and the Administration would also further discuss preservation options with the owner.

4. The Ho Tung Gardens, which was on the list of 1 444 historic buildings in Hong Kong and was accorded a Grade 1 status on 25 January 2011 by the AAB, was built around year 1927 on a site of 11 520 square metres in the area. It is zoned "Residential Group C2" on the approved The Peak Outline Zoning Plan with a maximum plot ratio of 0.5 and a maximum building height of four storeys.

5. The owner of the Ho Tung Gardens has submitted to the Buildings Department (BD) a building plan and a demolition plan for the site for developing 11 houses. Both plans have recently been approved by BD as they comply with all the relevant requirements under the Buildings Ordinance which regulates building safety.

The Subcommittee

6. At the House Committee meeting on 11 February 2011, members agreed to form a subcommittee to study the Declaration Notice. Hon KAM Nai-wai was elected Chairman of the Subcommittee. The membership list of the Subcommittee is in **Appendix**. The Subcommittee held one meeting with the Administration on 23 February 2011 to examine the Declaration Notice.

Deliberations of the Subcommittee

7. In recognition of the high heritage merit and architectural value of the Ho Tung Gardens, and from the heritage conservation point of view, members of the Subcommittee generally welcomed and supported the Declaration Notice declaring the Ho Tung Gardens a proposed monument for statutory protection within the specified period of 12 months.

8. In the course of deliberation, members have raised concerns about the principles and criteria for determining the grading of historic buildings; the mechanism for declaration of proposed monuments and monuments;

the compensation and the economic incentives to be provided to the owners of proposed monuments and graded historic buildings; public participation in heritage assessment and conservation, as well as the heritage conservancy policy in general. Their concerns were set out in the ensuing paragraphs.

Principles and criteria for determining grading of historic buildings

9. Some members of the Subcommittee consider that the Legislative Council (LegCo) Brief (Ref: DEVB/CS/CR6/5/284) and the heritage assessment report in respect of the Ho Tung Gardens were too brief and have not spelt out clearly the assessment criteria for determining the grading of historic buildings. Members have also sought information on the relevant AAB deliberations, such as minutes of meeting, discussion papers, reference materials and expert opinion that AAB has taken into consideration in deciding to declare the Ho Tung Gardens as a proposed monument. Hon Mrs Sophie LEUNG, Prof Hon Patrick LAU Sau-shing, Hon Cyd HO and Hon Tanya CHAN are of the view that the Administration should have elaborated in the LegCo Brief the community leadership of Sir Robert Ho Tung and Lady Clara Ho Tung, their close involvement in the development of social services in Hong Kong, as well as the historical, cultural and the architectural value of the building, including the significance of the design and decorations of the building, so as to help the public better understand and appreciate the need for preservation.

10. The Administration has explained that under the assessment approach endorsed by the AAB, each building (including the Ho Tung Gardens) was first assessed individually against six criteria, namely historical interest, architectural merit, group value, social value and local interest, authenticity, and rarity. This assessment was then refined on the basis of a comparison with other buildings having regard to three parameters, i.e. historical (illustrating a particular historical development with a specific theme); typological (being the key exemplars of particular building types and architectural styles); and contextual (building group able to reflect the development of a settlement/cluster, and its social, cultural and economic lives). According to the assessment of the expert

panel¹, established under the AAB, the Ho Tung Gardens is of a high heritage and architectural value because it is the only remaining residence in Hong Kong directly related to Sir Robert Ho Tung, Lady Clara Ho Tung and General Robert Ho Sai Lai, and is a masterpiece of the Chinese Renaissance style architecture which exemplifies a mixture of Chinese and Western architectural elements.

11. Hon Sophie LEUNG has suggested that reference should be made to international standards such as that of the United Nations Educational, Scientific and Cultural Organization in assessing the heritage value of buildings and sites. The Administration has advised that the prevailing selection principles in identifying historic buildings in Hong Kong and the methodology for evaluating their heritage value have been devised having regard to well-recognized principles and practices adopted in Mainland China and other jurisdictions such as Canada, the United Kingdom, and Australia, as well as international documents on heritage conservation, and also the local circumstances.

Mechanism for declaration of proposed monuments and monuments

12. Noting that the owner of the Ho Tung Gardens has already obtained the BD's approval for developing 11 houses, Professor Hon Patrick LAU Sau-shing has asked about the time sequence of events leading to the declaration of the Ho Tung Gardens as a proposed monument. The Chairman and Hon IP Kwok-him have expressed concern about the mechanism for triggering the procedures for determining whether or not a graded/proposed graded building should be declared as a proposed monument for statutory protection. These members have called for better coordination of heritage conservation work and a more effective mechanism for offering timely protection to graded historic buildings to prevent a recurrence of incidents such as King Yin Lei. Referring to the incidents in which a number of Grades 2 and 3 buildings of historic value in Yuen Long were proposed to be used as private columbaria, Hon Tanya CHAN has asked whether regular site inspections were conducted on graded buildings. Citing the tree-felling case at Maryknoll Convent School, she urges the Administration to conduct a tree survey for the Ho Tung Gardens to monitor tree-related work within the

¹ The expert panel comprises historians, members of the Hong Kong Institute of Architects, the Hong Kong Institute of Planners, and the Hong Kong Institution of Engineers.

site.

13. The Administration has advised that there is an internal monitoring mechanism to better protect privately-owned monuments, proposed monuments, graded historic buildings or those proposed to be graded from the threat of demolition, alteration and addition works or material changes in their uses which may affect the heritage value of these buildings. Under such mechanism, BD, Lands Department and Planning Department will alert the Commissioner for Heritage's Office (CHO) and the Antiquities and Monuments Office (AMO) to any identified possible threat that may affect privately-owned sites of archaeological interests, monuments, and historic buildings, if such threat has been brought to these departments' attention through applications and enquiries received and in the normal course of duty such as regular inspections. The District Offices also assist in alerting the CHO and the AMO if their staff, in the course of carrying out their duty, notice any demolition of/alterations to monuments/proposed monuments or graded/proposed to be graded buildings. On receipt of alerts from relevant departments that any privately-owned monument or graded/proposed to be graded building is under threat of damage or redevelopment, the Administration will proactively approach the private owners concerned to explore preservation options. Depending on the merit of each case, the AA may, in consultation with the AAB, also take action to declare a building as a proposed monument under section 2A(1) of the Ordinance for statutory protection, as was the case of the Ho Tung Gardens.

14. As regards the mechanism for triggering the procedures for considering whether a graded/proposed to be graded building should be declared as a monument for statutory protection, the Administration has explained that the grading of a building per se is an administrative mechanism to provide an objective basis for determining the heritage value and the preservation need of individual historic buildings. It does not automatically put the building under statutory protection. In November 2008, the AAB endorsed the establishment of a formal relationship between the statutory monument declaration system and the AAB's administrative grading system for historic buildings. Under the endorsed arrangements, the list of Grade I buildings, defined as "buildings of outstanding merit, which every effort should be made to preserve if possible", will be regarded as a pool of highly valuable heritage buildings for consideration by the AA. The AA is committed to actively considering each and every Grade 1 building for possible monument declaration and to assess whether any of them may have reached the "high

threshold" of monuments to be put under statutory protection under section 3(1) of the Ordinance. However, such a linkage would not oblige the AA to declare all Grade 1 buildings as monuments. Given the resources required, the AA will naturally have to prioritise the list of Grade 1 buildings for consideration, based on such factors as the buildings' heritage significance, demolition risks, as well as the aspirations of the owners and the public.

Compensation policy and economic incentives

15. Hon IP Kwok-him and Hon Abraham SHEK are of the view that active communication with the owners of proposed monuments and graded historic buildings is necessary to obtain support for the conservation cause. Since compulsory conservation might meet with strong resistance, the Administration should inform the building owners concerned as soon as practicable, and actively discuss with them possible preservation arrangements. Where appropriate, economic incentives and financial assistance should be provided to private owners to facilitate and encourage the preservation of proposed monuments and graded buildings in their ownership. Hon Abraham SHEK suggests that instead of a case-by-case approach, there should be a clear and transparent mechanism, with consistent and fair principles and criteria, for determining the form and amount of compensation and economic incentives to be provided to the owners affected.

16. The Administration has advised that section 8 of the Ordinance stipulates a mechanism for the payment of compensation to the owner or the lawful occupier of a proposed monument in respect of financial loss suffered or likely to be suffered by the owner/occupier. The amount of compensation may be agreed between the owner and the AA having regard to the merits and the specific circumstances of each case. In default of such an agreement, the owner may apply to the District Court to assess the amount of compensation payable under section 8 of the Ordinance. The District Court may award to the applicant such compensation as it thinks reasonable in the circumstances.

17. The Administration has also advised that under the new heritage conservation policy announced by the Chief Executive in October 2007, the Administration acknowledges the need to provide suitable economic incentives to encourage private owners to preserve historic buildings in their ownership. The CHO and the AMO have informed the owners of the graded/proposed to be graded historic buildings various forms of assistance available to encourage preservation, including Government's

willingness to discuss with the owner appropriate forms of economic incentives if the case so requires. The CHO and the AMO will also proactively approach owners when redevelopment proposals are brought to their attention under the monitoring mechanism so that discussions could be held with owners on possible economic incentives, on a case-by-case basis, for preserving the buildings.

18. The Administration has further advised that the type and extent of economic incentives are determined on a case-by-case basis and should be commensurate with the heritage value of the historic buildings in question. Other relevant factors that would be taken into account include planning parameters, land status and condition, the financial implications to Government, if applicable, as well as the special circumstances of each case. For example, the preservation of Jessville in Pokfulam involved the partial uplifting of the Pokfulam Moratorium; the preservation of the historic portion of a shophouse at 179 Prince Edward Road West involved a minor relaxation of the plot ratio of the site; the preservation of King Yin Lei on Stubbs Road required a non-in-situ land exchange with the previous owner; and the preservation of all four historic buildings in the Central compound of the Hong Kong Sheng Kung Hui (HKSKH) involved a transfer of part of the planned development to another site owned by HKSKH. Assistance in the form of grant through the Financial Assistance for Maintenance Scheme as well as expert technical advice on preservation works is also provided to owners of privately-owned graded historic buildings for carrying out maintenance works.

Public participation in heritage assessment and conservation

19. Hon Abraham SHEK, Hon Cyd HO and Hon Tanya CHAN are of the view that heritage conservation require the concerted efforts of the whole community. To secure public support for heritage conservation, these members have called on the Administration to enhance the transparency of and public participation in heritage assessment and, as far as practicable, to ensure public accessibility to revitalized historic buildings. To enable the public to better understand and appreciate the heritage value and preservation need of individual historic buildings, the reasons for the selection and the historical, cultural and architectural significance of the graded buildings should be clearly explained to the public. The principles, assessment criteria as well as the procedures and mechanism for determining the grading of historic buildings and for declaration of monuments and proposed monuments should be publicized to enhance public awareness.

20. The Administration has advised that the AMO had conducted a public consultation exercise from March to September 2009 on the proposed grading (Grades 1, 2 or 3 or nil grading)² of 1 444 historic buildings made by the expert panel. The assessment criteria and procedures for the grading were explained in writing and published on the website of the CHO and the AMO. Private owners of these buildings were also informed of the proposed grading and invited to give views. Taking into account the views and additional information received from members of the public and the owners, the expert panel has subsequently reviewed some of the proposed grading and made adjustments as necessary. The expert panel's recommended gradings were then submitted to the AAB for consideration and confirmation. As at the end of January 2011, AAB has confirmed the gradings of more than 1 100 historic buildings. Information on the graded historic buildings and justifications for the assigned grading as well as the assessment criteria and selection principles were uploaded in March 2009 onto the AMO website and updated regularly for easy reference by the public. In the case of the Ho Tung Gardens, the relevant AAB meeting held on 25 January 2011 was a closed-door meeting to avoid premature public disclosure of the proposed declaration, which might otherwise jeopardise the intended timely protection to be accorded to the Ho Tung Garden by declaring it as a proposed monument. SDEV and the Chairman of the AAB met the media immediately after the meeting to explain the outcome of the AAB meeting and the AA's decision on the proposed declaration.

21. On public accessibility to historic buildings, the Administration has advised that allowing public access to historic buildings as far as feasible is already a general requirement in heritage preservation work. The Administration has undertaken to further enhance, as far as practicable, the public accessibility to revitalized historic buildings for public enjoyment.

Heritage conservation policy

22. Hon LEE Wing-tat and Hon Abraham SHEK have expressed concern about the apparent absence of a long-term, holistic and sustainable

² (a) Grade 1 status refers to buildings of outstanding merit, which every effort should be made to preserve if possible.

(b) Grade 2 status refers to buildings of special merit; efforts should be made to selectively preserve.

(c) 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.

policy to preserve privately-owned historic buildings. While acknowledging the need for flexibility in discussing preservation arrangements with owners of declared monuments and graded historic buildings, these members consider that the existing approach for considering the preservation approach for individual historic buildings on a case-by-case basis is unsatisfactory and reactive.

23. The Administration has noted members' concern, and advised that the Government has adopted a proactive approach under the new heritage conservation policy announced by the Chief Executive in October 2007. The grading of historic buildings by the AAB provides an objective basis for determining the heritage value and the preservation need of individual historic buildings. In parallel with the public consultation conducted in March 2009 on the proposed gradings for the 1 444 historic buildings, the Administration also proactively informed owners of these buildings about the proposed gradings, invited them to give views, and explained to them the Administration's conservation policy and measures (e.g. financial assistance to maintenance cost and expert technical advice from the AMO on preservation).

24. Hon LEE Wing-tat has enquired about the progress of the proposed establishment of a heritage trust and urged the Administration to expedite the initiative. Hon Mrs Sophie LEUNG holds a different view and considers that there should be flexibility to allow agreement to be reached with the owners concerned on a case-by-case basis on the preservation arrangements and type of economic incentives to be offered.

25. The Administration has advised that it was studying the feasibility of setting up a heritage trust. More time will be required for the various heritage conservation initiatives to show their full effect.

Policy issues to be followed up

26. The Subcommittee considers that members' views and concerns regarding the need for a long-term, holistic and sustainable policy to preserve privately-owned historic buildings, including a fair and transparent compensation and economic incentive policy should be referred to the Panel on Development for consideration and follow up.

Recommendation

27. The Subcommittee has completed scrutiny of and generally support the Declaration Notice.

Advice sought

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

Council Business Division 1
Legislative Council Secretariat
3 March 2011

**Subcommittee on
Antiquities and Monuments (Declaration of Proposed Monument)
(Ho Tung Gardens) Notice**

Membership List

Chairman	Hon KAM Nai-wai, MH
Members	Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP Dr Hon Philip WONG Yu-hong, GBS Hon Abraham SHEK Lai-him, SBS, JP Hon LEE Wing-tat Prof Hon Patrick LAU Sau-shing, SBS, JP Hon IP Kwok-him, GBS, JP Hon Alan LEONG Kah-kit, SC Hon Tanya CHAN (Total : 9 members)
Clerk	Ms Annette LAM
Legal Adviser	Mr KAU Kin-wah