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

Background brief

Purpose

This paper provides background information on the Antiquities and Monuments (Declaration of Proposed Monument) (Ho Tung Gardens) Notice (L.N. 26 of 2011) and a summary of views and concerns expressed by members of the Panel on Development on Government Heritage Conservation Policy in past discussions.

Background

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

2. On 25 January 2011, after consultation with the Antiquities Advisory Board (AAB), the Secretary for Development (SDEV), in her capacity as the Antiquities Authority (AA) under the Antiquities and Monuments Ordinance (the Ordinance) (Cap. 53), made 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 situate within Rural Building Lot No. 670, No. 75 Peak Road, Hong Kong, together with all buildings and structures erected on that lot (collectively known as "Ho Tung Gardens"), and the Gateway of Ho Tung Gardens situate on an access road off Peak Road, Hong Kong, leading to that lot (the Gateway). The declaration has effect for 12 months from the gazettal date, unless withdrawn earlier by the SDEV, during which the

AA could consider in a more comprehensive manner whether or not Ho Tung Gardens should be declared as a monument under section 3 of the Ordinance, and AA could also further discuss preservation options with the owner.

Ho Tung Gardens and declaration as a Proposed Monument

4. On 25 January 2011, the AAB, taking account of the assessment of an independent expert panel as well as the views and information received during the public consultation, confirmed the Grade 1¹ status of Ho Tung Gardens which is on the list of 1 444 historic buildings in Hong Kong. According to the Administration, 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 which exemplifies a mixture of Chinese and Western cultural elements.

5. Ho Tung Gardens was built around year 1927 on a 11 520 square metre site. 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 4 storeys. The owner of 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.

6. Section 6 of the Ordinance provides that no person shall, except with the consent of SDEV, excavate, carry on building or other works, plant or fell trees, deposit earth or refuse on or in the proposed monument, or demolish, obstruct, remove, deface or interfere with the proposed monument. Under section 2C, the owner or any lawful occupier of any private land within the proposed monument may at any time apply to SDEV for the withdrawal of the declaration. The owner or the lawful occupier of the proposed monument may make a claim, under section 8 of the Ordinance, for compensation in respect of any financial loss he suffered or would suffer as a result of the refusal to grant the permit. With prior approval of the Chief Executive, the AA may pay compensation to the owner or the lawful occupier. The amount of compensation may be agreed upon between the owner and the AA, and in

¹ A Grade 1 historic building by definition is a “building of outstanding merit, which every effort should be made to preserve if possible.

default of an agreement, may be assessed and awarded by the District Court as it thinks reasonable in the circumstances.

7. Since the coming into force of the Ordinance in 1976, there have been four cases in which historic buildings in private ownership were declared as proposed monuments without the owner's prior consent: Ohel Leah Synagogue at Robinson Road in 1987, Morrison Building in Tuen Mun in 2003, 128 Pok Fu Lam Road (known as "Jessville") in 2006 and King Yin Lei at Stubbs Road in 2007. In the end, Ohel Leah Synagogue was saved based on a preservation arrangement agreed between Government and the owner without payment of any compensation to the owner. Morrison Building was declared as a monument by the Antiquities Authority in April 2004 for permanent protection. Jessville has been saved following the decision by the Chief Executive in Council in September 2009 to partially uplift the Pokfulam Moratorium to facilitate a mutually-agreed preservation-cum-redevelopment proposal. King Yin Lei was declared as a monument in July 2008 and has been saved with a non in-situ land exchange with the owner.

Heritage Conservation Policy

8. On 10 October 2007, the Development Bureau (DEVB), which took over the policy responsibility on heritage conservation from the Home Affairs Bureau effective 1 July 2007, announced the Heritage Conservation Policy (Legislative Council Brief, File Ref: DEVB(CR)(W) 1-55/68/01). The brief outlines the Administration's policy as follows:

Policy statement

"To protect, conserve and revitalize as appropriate historical and heritage sites and buildings through relevant and sustainable approaches for the benefit and enjoyment of present and future generation. 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."

9. On the conservation of privately-owned historic buildings, the Administration undertook to engage relevant stakeholders in devising appropriate measures such as land exchange and transfer of development rights to facilitate the conservation of privately-owned historic buildings,

and to extend current financial assistance schemes to enhance the maintenance of privately-owned historic buildings from declared monuments to graded buildings.

Discussion by the Panel on Development

10. The Panel on Development was regularly updated on the progress of the implementation of various heritage conservation initiatives and the Administration's work plan. In the course of discussion, members have expressed views on issues including the transparency of and public participation in heritage assessment; the protection of privately-owned heritage buildings from damage, demolition and alteration; economic incentives for conservation of privately-owned historic buildings; collaboration with District Councils in promoting heritage buildings and sites, as well as accessibility of revitalized historic buildings to the general public. Members called for an effective mechanism for offering timely protection to graded historic buildings to prevent incidents like the King Yin Lei and Jessville from recurring; better coordination of heritage conservation work; formulation of a holistic conservation strategy; and the strengthening of heritage education and publicity. The Administration was also urged to enhance the transparency and independence of the mechanism for assessing the heritage value of buildings and sites.

11. In respect of conservation of privately-owned historic heritage buildings, some members, while supporting heritage conservation, suggested that the Administration should inform the affected building owners and the general public as soon as practicable once a decision was taken to preserve certain buildings or sites so that owners and potential investors could make appropriate prior arrangements. Members were of the view that the Administration should actively communicate with and adequately consult the concerned private owners since compulsory conservation could meet with strong resistance from affected parties. Where appropriate, economic incentives and financial assistance should be provided to private owners to facilitate and encourage the preservation of their historic buildings.

12. The Administration has agreed to step up consultation with local communities and the concerned stakeholders to draw up and promulgate a blueprint clearly specifying buildings or sites earmarked for redevelopment, rehabilitation, preservation and revitalization so that stakeholders and the Administration could have adequate time to plan ahead. The Administration undertook to proactively reach out to private

owners and offer them a wide range of assistance, including technical advice and financial assistance for the maintenance of historic buildings as well as economic incentives for heritage-cum-development projects. In particular, on receipt of alerts from relevant departments under the monitoring mechanism that plans are afoot for the demolition or redevelopment of any privately-owned monuments or graded buildings, the Administration would approach the private owners to explore conservation options.

13. The Administration also accepted in principle the need for providing economic incentives as appropriate to private owners to facilitate preservation of privately-owned historic buildings. Different kinds of economic incentives, such as in-situ land exchange, non-in-situ land exchange, cash compensation or additional development rights could be offered on a case-by-case basis. Financial support would also be provided to private owners of graded buildings which were not declared as monuments to facilitate renovation and conservation of those buildings. Since the introduction of the Financial Assistance for Maintenance Scheme in August 2008, nine applications, involving a total grant of about \$7.2 million, were approved as at end October 2010.

Relevant papers

14. The relevant papers are available at the following links:

Administration's Legislative Council Brief on "Heritage Conservation Policy" (October 2007) [File Ref: DEVB(CR)(W) 1-55/68/01]
<http://www.legco.gov.hk/yr07-08/english/panels/ha/papers/ha-devbcrw1556801-e.pdf>

Minutes of the Development Panel meeting on 28 April 2009
<http://www.legco.gov.hk/yr08-09/english/panels/dev/minutes/dev20090428.pdf>

Minutes of the Development Panel meeting on 30 March 2010
<http://www.legco.gov.hk/yr09-10/english/panels/dev/minutes/dev20100330.pdf>

Updated Legislative Council Secretariat's Background Brief on Heritage Conservation (November 2010)
<http://www.legco.gov.hk/yr10-11/english/panels/dev/papers/dev1123cb1-467-5-e.pdf>

Administration's paper "Progress report on Heritage Conservation Initiatives" (November 2010)

<http://www.legco.gov.hk/yr10-11/english/panels/dev/papers/dev1123cb1-467-4-e.pdf>

Minutes of the Development Panel meeting on 23 November 2010

<http://www.legco.gov.hk/yr10-11/english/panels/dev/minutes/dev20101123.pdf>

Administration's Legislative Council Brief on Declaration of Ho Tung Gardens at Peak Road as a Proposed Monument under the Antiquities and Monuments Ordinance (January 2011)

http://www.legco.gov.hk/yr10-11/english/subleg/brief/26_brf.p

Legal Services Division Report on Antiquities and Monuments (Declaration of Proposed Monument) (Ho Tung Gardens) Notice (February 2011)

<http://www.legco.gov.hk/yr10-11/english/hc/papers/hc0211ls-25-e.pdf>

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