

For consideration
on 26 November 2008

BOARD PAPER
AAB/78/2007-08

**MEMORANDUM FOR MEMBERS OF THE
ANTIQUITIES ADVISORY BOARD**

**REVIEW OF THE RELATIONSHIP
BETWEEN THE MONUMENT DECLARATION SYSTEM
UNDER THE ANTIQUITIES AND MONUMENTS ORDINANCE (CAP. 53)
AND THE GRADING SYSTEM OF THE ANTIQUITIES ADVISORY BOARD**

PURPOSE

To seek Member's views on a proposal to define a relationship between the Monument Declaration System under the Antiquities and Monuments Ordinance (Cap. 53) (the Ordinance) and the Grading System of the Antiquities Advisory Board (AAB).

BACKGROUND

2. The issue of the relationship between the Monument Declaration System under the Ordinance and the Grading System of AAB has been discussed on various occasions. During these discussions, Members were briefed on the background of the Monument Declaration System and the Grading System. Members noted that the Grading System was an internal administrative mechanism of the AAB and had no statutory effect while only the Ordinance could offer statutory protection to proposed monuments and monuments. To further strengthen the effort on heritage preservation and taking into account views expressed by Members, we have crystalised our thoughts into this paper which is structured as follows –

- (a) background of the Monument Declaration System and the Grading System (paragraphs 3-14 and Annexes A to D);
- (b) major comments of Members and response to these comments (paragraph 15 and Annex E); and
- (c) our proposals (paragraphs 16-25).

Monument Declaration System

3. The Monument Declaration System was first introduced when the Ordinance was enacted in 1971 and commenced operation in 1976. A monument is defined in the Ordinance to mean “a place, building, site or structure which is declared to be a monument, historical building or archaeological or palaeontological site or structure under section 3”. Under section 3(1) of the Ordinance, “... the Authority may, after

consultation with the Board and with the approval of the Chief Executive, by notice in the Gazette, declare any place, building, site or structure, which the Authority 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.”

4. At the time of enacting this new piece of legislation, it was made clear that the Ordinance would only be invoked on a highly selective basis. This is understandable in light of the stringent statutory controls that a declared monument is being made subject to. Some of these controls (as at today) are highlighted below –

- (a) the Antiquities Authority, and any designated person authorised by her in writing, may, for the purposes of this Ordinance, at all reasonable times – (i) enter and inspect any monument (subject to consent of the lawful occupier or prior notice of not less than 48 hours in writing to the lawful occupier); or (ii) with the prior approval of the Chief Executive (CE), fence, repair, maintain, preserve or restore any monument; and excavate or search for relics in any monument and remove any relics hitherto undiscovered; and
- (b) actions to excavate, carry on building or other works, plant or fell trees or deposit earth or refuse on or in a monument; or actions to demolish, remove, obstruct, deface or interfere with a monument, are prohibited except in accordance with a permit granted by the Antiquities Authority. Any person who contravenes this shall be guilty of an offence and shall be liable on conviction to a fine of \$100,000 and imprisonment for 1 year.

Details of the historical development of the Monument Declaration System are set out at **Annex A**.

5. Some substantive amendments were made to the Ordinance in 1982 mainly to introduce a new procedure for “proposed monument” in order to give historic buildings worth protection some interim protection. The main features governing “proposed monument” are as follows –

- (a) for the purpose of considering whether or not any place, building, site or structure should be declared to be a monument the Antiquities Authority may, after consultation with the Board, by notice in the Gazette declare it to be a proposed monument. There is no need for the Antiquities Authority to have the prior approval by the CE before declaring a proposed monument;
- (b) a declaration of proposed monument only has effect for a period of 12 months from the making, and a declaration of a proposed monument within private land cannot be extended;
- (c) similar stringent statutory controls applicable to a declared monument

are also applicable to a proposed monument; and

- (d) there is a mechanism for the owner or any lawful occupier of private land within a proposed monument to apply for withdrawal of the declaration.

Grading System

6. The Grading System was first introduced by the Antiquities Advisory Board (AAB) in 1980 as an **internal administrative** mechanism with no statutory status. Under the Grading System, historic buildings are graded on the basis of their heritage value. The Antiquities and Monuments Office (AMO) is engaged to undertake background research to facilitate the grading assessment by the AAB of buildings based on their heritage value. The aim of the Grading System is to identify and compare the heritage value of historic buildings and to facilitate AMO's consideration on whether and how a particular building should be preserved. The Grading System does not cover archaeological sites, structures and other items which are not historic buildings. After the introduction of the Grading System in 1980, some refinements were made to the Grading System in 1995 to 1996. Details of the historical development of the Grading System of AAB are set out at **Annex B**. The Terms of Reference of AAB are also set out at **Annex C** for easy reference.

7. Under the Grading System, historic buildings are classified into three grades with the following definitions for internal reference –

Grade I	Buildings of outstanding merit, which every effort should be made to preserve if possible
Grade II	Buildings of special merit; efforts should be made to selectively preserve
Grade III	Buildings of some merit, but not yet qualified for consideration as possible monuments. These are to be recorded and used as a pool for future selection

8. Although there is no specific requirement under the Grading System on how the relevant historical buildings (once graded) should be preserved, the Administration has all along been taking administrative measures where possible with the aim to protect and preserve graded buildings in such a way which is commensurate with the heritage significance of the building concerned and taking into account practical circumstances. The actual preservation arrangement for any graded historical building would have to depend on such factors as the structure, condition and features of individual building, as well as the technical feasibility.

9. While graded buildings are not under statutory control and are not prohibited from demolition or interference under the Ordinance, AMO will make reference to the grading status accorded to the historic buildings when it is asked to provide advice on the heritage value of the buildings concerned to Government bureaux/departments, Town Planning Board as well as Urban Renewal Authority in respect of the preservation, adaptive re-use, revitalisation and redevelopment of the graded buildings. Besides, the

new measures on heritage conservation including the Heritage Impact Assessment mechanism, the financial assistance scheme to private owners for maintenance and the Revitalising Historic Buildings Through Partnership Scheme as detailed in paragraph 22 below are of direct relevance to the Grading System. As for the general public, there was not much interest on the Grading System and the grades accorded to individual buildings in the past. Only people or conservation related associations with a close interest in heritage matters would have paid attention to the Grading System and would urge AAB to upgrade buildings which they consider should be saved from demolition. However, the Grading System has attracted far more attention since the incident of Queen's Pier. AAB's grading of the Queen's Pier was given very prominent media coverage and the subsequent public debate on whether the Queen's Pier should be declared as a monument in order to give it statutory protection has highlighted the issue of linkage between the Grading System and the Monument Declaration System.

The Issue of the Relationship between the Monument Declaration System and the Grading System

10. As the Grading System is an internal administrative mechanism, there has been no automatic linkage or direct correlation between grading and monument declaration. There has been some explanation in certain AAB papers in around 1996 (see **Annex B** for extract of the paper) that as a general rule, monument declaration of Grade I buildings will be more actively pursued while that of selected Grade II buildings will be processed with less vigour. Normally when a Grade II building is under threat or its owners take the initiative to approach the AMO, then the case for its monument declaration will be more actively considered. Furthermore, if a Grade II or even a Grade III building fits into a larger scheme, e.g. in a heritage trail project, or for gaining trust and support from private owners so that preservation of other more important buildings may proceed, then consideration for its monument declaration may also be advanced.

11. There are however some concerns on the current definition for Grade III, which reads "not yet qualified for consideration as possible monuments". This description of Grade III building begs the question of whether Grade I and Grade II would by implication mean to be "qualified for consideration as possible monuments". On the other hand, there were instances of Grade III buildings being declared as monuments due to special and justifiable considerations aforementioned. This may be difficult for the public to understand.

CURRENT ISSUE

12. Since the last major legislative amendment to the Ordinance in 1982 and the refinements to the Grading System of AAB in 1995 to 1996, the matter has been rather settled. As mentioned above, in the context of the Queen's Pier case in late 2006, there were questions from some conservationists and members of the community on whether there was any relationship between the Monument Declaration System under the Ordinance and the Grading System of AAB. A Judgment on *Chu Hoi Dick and Ho Loy vs Secretary for Home Affairs* (the Judgment) was handed down by Hon Justice M

H Lam on 10 August 2007. The Judgment dismissed the application for judicial review of SHA's or the Antiquities Authority's decision not to declare QP as monument. This is the first occasion of an interpretation of key provisions in the Ordinance in the Court. The Judgment provided a detailed account of the current situation as well as confirmed a number of basic principles regarding the Monument Declaration System and the Grading System. Key points include –

- (a) Non-statutory nature of the Grading System – the Judgment confirmed the non-statutory and administrative nature of the Grading System as an internal mechanism;
- (b) No automatic linkage between grading and monument declaration – the Judgment confirmed that there was no automatic linkage between the Grading System of AAB and the Monument Declaration System under the Ordinance;
- (c) Advisory role of AAB – the Judgment confirmed that the AAB played an advisory role but could not dictate monument declaration;
- (d) Discretion of the Antiquities Authority – the Judgment confirmed that the Antiquities Authority had the discretion to consider other relevant matters (besides grading) as regards whether monument declaration should be made; and
- (e) High Threshold for Monument Declaration – the Judgment confirmed that the yardstick of “high threshold” and “indisputable heritage significance” would be reasonable and lawful.

The relevant extracts of the Judgment are set out at **Annex D**.

13. Nonetheless, Government fully understands the rising aspirations of the community on heritage conservation. As set out in the Heritage Conservation Policy Statement announced in the 2007-08 Policy Address in October 2007, the Government is committed –

“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.”

14. Along this new policy statement, Government is implementing a package of measures to enhance the conservation and adaptive re-use of historic buildings in the Government as well as private sector domain. While Government has decided not to pursue the route of legislative amendment (whether revamping the existing Ordinance or introducing a new heritage conservation ordinance) at this stage, which would be a long drawn process and could not bring speedy improvement to the current situation, we

do recognise the need for improving the clarity and transparency of the work of Government and AAB.

VIEWS EXPRESSED BY MEMBERS AND GOVERNMENT'S RESPONSE

15. Views and queries previously expressed by Members are summarised as follows –

- (a) whether the Ordinance should be reviewed;
- (b) whether collective memory should be included as one of the assessment criteria for according gradings to historic buildings;
- (c) whether the Antiquities Authority could commit that each of the Grade I buildings would be considered for monument declaration and the process would be carried out in a transparent manner;
- (d) whether Government-owned Grade I buildings should also be declared as monuments;
- (e) whether regular review would be carried out on the gradings accorded to buildings; and
- (f) whether clear guidelines could be provided to owners on what could and what could not be demolished for each level/type of graded buildings.

These queries and comments have provided useful inputs for our deliberation on the proposals. Our responses to these comments are set out at **Annex E**.

THE PROPOSALS

16. Having considered the background of the Monument Declaration System and the Grading System, as well as the comments from Members, we have crystalised our thoughts and the proposals are set out in the ensuing paragraphs.

(A) Formally establishing a relationship between the Monument Declaration System and the Grading System

17. We propose that the relationship should be based on the following procedure –

- Step 1: AAB to accord gradings to historic buildings which comprises three categories (Grade I, II or III). In doing so, the only relevant consideration of AAB is “heritage significance”. The task of AAB will end here (save for the procedural requirement for the Antiquities Authority to consult AAB for monument declaration). Whether there are other factors outside the “heritage significance”

consideration (such as development needs, financial implications, etc.) will not be the concern of AAB.

Step 2: The list of Grade I buildings will be accepted as providing a “pool” of highly valuable heritage buildings for consideration by the Antiquities Authority as to whether some of these may have reached the “high threshold” of monuments.

Step 3: Government is committed to consider actively each and every Grade I buildings as put up by AAB for possible monument declaration. Given the time-consuming statutory procedure for monument declaration including in particular the lodging of petitions by the owner upon being notified and the resource requirement for careful deliberations of monument declaration, the Antiquities Authority will have to prioritise within the list of Grade I buildings for consideration. It should be noted that since enactment of the Ordinance, only an average of 2 monuments were declared annually. Factors to be taken into account in prioritising those Grade I buildings may include but not limited to heritage value/significance of the buildings as revealed in the grading exercise; the demolition risks of the buildings; the aspirations of the owners and the public; and the ownership of the buildings.

When the Antiquities Authority has accorded priority to a Grade I building for consideration, she will ask AMO, as her executive arm, to provide her with advice on whether this particular Grade I building has reached the high threshold in terms of historical, archaeological or palaeontological significance which qualifies it as a monument under the Ordinance. AMO may, depending on individual merits of the case and public concern commission external experts to help. Based on AMO’s professional assessment, she will consider whether to trigger the statutory process for formal declaration.

While AAB will perform its statutory role to give advice to the Antiquities Authority in the process (where the Antiquities Authority upon the professional advice of AMO is minded to consult AAB and recommend declaration to the CE), the consequential work in seeking owner’s consent and failing which to deal with the owner’s petition, matters of compensation or economic incentives under the new heritage conservation policy statement, etc. will be matters that the Administration, not AAB, should deal with.

18. Under the above proposed framework, “heritage significance” is confirmed as the primary factor or a necessary condition for monument declaration. A link is therefore created between grading and monument declaration (i.e. the administrative Grading System will among other things shortlist candidates for monument declaration consideration). However, such a link is not obligatory because while the building to be

declared as a monument must reach the “high threshold”, other factors will also need to be taken into account (as stated in the Heritage Conservation Policy Statement and confirmed in the Queen’s Pier Judgment). In other words, grading is not the only or a sufficient condition for declaration. The role of AAB will be clearly confined to the assessment from the heritage angle, and AAB will not be tasked to weigh heritage value against other relevant factors in the overall community interest.

19. Furthermore, it should also be noted that –

- (a) while the principle of “heritage significance reaching high threshold” should be a prerequisite for monument declaration, it should not be specified as a rigid requirement that a building must be accorded a Grade I status before the Antiquities Authority could initiate the statutory process for declaring the building as a proposed monument under Section 2A of the Ordinance or as a monument under Section 3 of the Ordinance. Flexibility should be given for the Antiquities Authority to suggest Grade II, Grade III or even ungraded buildings for declaration, subject to sufficient justifications (e.g. new evidence available). After all, the Antiquities Authority will need to consult the AAB as a requirement under Section 3 of the Ordinance before proceeding with the actual declaration;
- (b) the proposed arrangement should only apply to historic buildings (which are covered by the Grading System). It will not apply to archaeological sites or other items (which are not covered by the Grading System); and
- (c) for Grade II and Grade III buildings, Government would recognise the aspiration of the community to take appropriate actions to preserve them. It must therefore be emphasised that the above proposal does not mean that there would be no need to do anything to preserve Grade II and Grade III buildings. We would take the view that the buildings should be preserved in such a way which is commensurate with the merits of the buildings concerned, and priority would be given to those with higher heritage value.

20. We believe that this three-step procedure could improve the situation and enable the Government to strengthen its ability in preserving buildings of high heritage value. In short, the proposals have the following advantages –

- (a) For the first time, a pool of highly valuable heritage buildings for consideration of possible monument declaration is formally established with AAB’s endorsement. The Government will be committed to considering each and every Grade I buildings as put up by AAB for declaration;
- (b) Since Grade I buildings are shortlisted for monument declaration consideration, the Antiquities Authority will readily invoke the relevant

provisions in the Ordinance to declare Grade I buildings as “proposed monuments” when these buildings are under threat of demolition. This would give the highly graded buildings immediate protection and allow time for AMO to complete its assessment and for the Antiquities Authority to come to a view;

- (c) AMO will report to AAB on a regular basis the list of those Grade I buildings being actively explored for possible monument declaration, the progress of assessment and the discussion with the owners, etc. Moreover, no matter whether Government has come to a decision to proceed or not to proceed with monument declaration, it will inform AAB of the decision and the reasons for the sake of transparency; and
- (d) To enhance the transparency of the Grading System and to encourage the preservation of graded historic buildings particularly those under private ownership, the Government will inform the owners about the grading status of the buildings such that negotiations on the preservation of the buildings, if justified, could start earlier.

(B) Improvement to the definition of gradings

21. As pointed out in paragraph 11 above, the current definition of Grade III is not entirely satisfactory. The current definition reads “not yet qualified for consideration as possible monuments”. This description of Grade III building begs the question of whether Grade I and Grade II would by implication mean to be “qualified for consideration as possible monuments”. For simplicity purpose and to reflect the purpose of the Grading System (which is primarily to assess the heritage significance of buildings), we propose to keep the definition of Grade I and Grade II unchanged but amend the definition of Grade III as follows –

Grade I	Buildings of outstanding merit, which every effort should be made to preserve if possible
Grade II	Buildings of special merit; efforts should be made to selectively preserve
Grade III	Buildings of some merit; preservation in some form would be desirable and alternative means could be considered if preservation is not practicable

(C) Application of the Grading System

22. In light of the new measures on heritage conservation, the Grading System of AAB has been accorded new relevance or significance in that –

- (a) the Heritage Impact Assessment mechanism has imposed the requirement for assessing the impacts on historic/heritage sites and buildings (“heritage sites”) arising from the implementation of Government capital works projects so that conservation will be given due considerations. Like monuments and proposed monuments

declared under the Ordinance, all graded historic buildings have been classified as “heritage sites” for the purpose;

- (b) the financial assistance scheme to private owners for maintenance has been extended from monuments only to also cover graded historic buildings. Buildings with higher heritage value (i.e. higher gradings) will be accorded higher priority for funding allocation; and
- (c) a number of Government-owned graded historic buildings have been included in the “Revitalising Historic Buildings Through Partnership Scheme” for adaptive re-use through the operation of social enterprises by non-governmental organisations with funding support from Government. Whether and what changes can be made to the existing elements of the historic buildings in the revitalisation exercise would depend on the heritage value of the historic buildings concerned (i.e. the gradings accorded).

(D) Notification to Private Owners

23. To enhance the transparency of the Grading System and to encourage the preservation of graded historic buildings (particularly those under private ownership), we propose to proactively inform the owners about the Grade I status of the buildings –

- (a) about the mechanism governing the grading of historic buildings in general;
- (b) about the Grade I status accorded to the specific buildings and AAB’s assessment, if any;
- (c) about the eligibility of the buildings to apply for financial assistance from Government for maintenance;
- (d) about the possible outcome in case that there is a threat of demolition –
 - the possibility of the Antiquities Authority invoking the proposed monument mechanism to provide statutory interim protection to the building;
 - the possibility of the Government offering economic incentives for the preservation of the building; and
 - the petition mechanism and compensation mechanism for monument declaration under the Ordinance; and
- (e) where necessary, offering the service of the Commissioner for Heritage’s Office to liaise with other relevant Government bureaux/departments for their buildings when the buildings need to go through renovation requiring prior approval of building plans.

Information about Grade I building as well as Grade II and III buildings will be publicly accessible via the heritage and AMO websites.

24. Upon the completion of the comprehensive assessment of the some 1,440 buildings in Hong Kong, most, if not all, historic buildings of high heritage value should have been properly accorded with a grading. We will in due course publish these information (e.g. via the web site) so that the owners as well as the public can access the information.

(E) Role of AAB

25. There is no need for any change to the Terms of Reference of AAB under the proposed way forward. That said, we believe that the current proposal will provide clarity to the role of AAB. Under the proposed way forward, the role of AAB and the Grading System should focus on “heritage significance” as the only relevant consideration.

ADVICE SOUGHT

26. Members are requested to advise on the above.

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