

# **Complaint against Development Bureau for failing to assume responsibility for preserving some heritage items**

## **Investigation Report**

On 9 January 2020, a complainant complained to us against the Commissioner for Heritage's Office ("CHO") and the Antiquities and Monuments Office ("AMO") of the Development Bureau ("DEVB").

### **The Complaint**

2. Allegedly, the physical conditions of two Stone Tablets of Old Kowloon Customs ("the Stone Tablets")<sup>1</sup> in Ma Wan together with their cement mount and the rock inscription "Mui Wai (梅蔚)" ("Mui Wai")<sup>2</sup>, also in Ma Wan, have been deteriorating. The Stone Tablets were accorded a Grade 3 status by the Antiquities Advisory Board ("AAB") but the cement mount with tiled roof and the commemorative plaque subsequently erected by the relevant Rural Committee ("RC") were not graded, while "Mui Wai" is located at a site of archaeological interest. In early 2019, the complainant complained to CHO about the problem of deterioration. In an email of 27 June 2019 to the complainant, CHO described the condition of the two heritage items as "大致良好" (generally in good condition). CHO also said that "古蹟辦已主動聯絡鄉委會，建議鄉委會盡快維修，鄉委會反應正面" (AMO had contacted the RC and suggested to them doing the repair as soon as possible and the RC's feedback was positive). However, the complainant found the problem to have persisted. Against this background, the complainant complained against:

#### **(1) CHO**

- (a) for unreasonably refusing to assume responsibility for preserving the two heritage items. In its email of 3 January 2020, CHO explained that AMO would continue to offer technical advice to the Leisure and Cultural Services Department ("LCSD") to maintain "Mui Wai",

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<sup>1</sup> The Stone Tablets consist of two tablets. One of them was inscribed with "九龍關借地七英尺" and the other with "九龍關", both dated "光緒二十三年", i.e. 1897.

<sup>2</sup> "Mui Wai" is a rock inscribed with two characters "梅蔚". Some renowned scholars believed that Ma Wan is related to "Mui Wai", one of the places that the last emperor of Southern Song dynasty had passed in the 13<sup>th</sup> century as recorded in historical archives.

where necessary. As for the Stone Tablets, CHO said that given that the cement mount was located on Government land, AMO had drawn the Lands Department's ("LandsD") attention to the matter. The complainant considered this inadequate, as CHO should have monitored the progress of the rectification work to be carried out by the RC.

- (b) for giving inconsistent replies on the conditions of the two heritage items. Specifically, CHO's email of 3 January 2020 described the condition of the Stone Tablets as "generally acceptable" and said that "Mui Wai" was "in a stable condition". However, its email of 27 June 2019 described the conditions of the two heritage items as "大致良好" (generally in good condition).
- (c) for not providing any contact information of its officers in its emails and failing to issue timely interim replies after receiving the emails of 12 February and 27 November 2019 from the complainant.

(2) **AMO**

- (d) for wrongly assessing the conditions of the two heritage items. The complainant alleged that "there are moulds on the two tablets, paints have been peeling and the erosive condition of the inscription is rather serious".

## **Our Findings**

3. Having examined the information and explanation provided by DEVB, we completed our investigation on 25 May 2020. Our findings follow.

### ***Administrative Grading System***

4. Since the 1980s, AAB has implemented an administrative grading system classifying historic buildings into three grades, namely Grades 1, 2 and 3 according to their heritage significance. The grading system is administrative in nature. It provides an objective basis for determining the heritage value, and hence the preservation needs, of historic buildings in Hong Kong. It does not accord statutory protection to graded buildings from being demolished or altered. It also does not affect

the ownership, usage, management and development rights of the buildings or structures graded.

***Complaint Point (a): CHO Unreasonably Refusing to Assume Responsibility for Preserving the Two Heritage Items***

DEVB's response

5. The responsibility of maintaining and repairing Government buildings/structures, regardless of whether they are graded items or not, rests with the managing bureaux/departments. Bureaux/departments may seek AMO's advice from the heritage conservation perspective on their maintenance or repair proposals for the graded items under their management.

6. The Stone Tablets were given a Grade 3 status<sup>3</sup>. Yet, the cement mount, the tiled roof and the commemorative marble plaque were not graded items since they were constructed by the RC in 1990. They are currently situated on a piece of unleased and unallocated land administered by LandsD. After receiving the complainant's complaint about the Stone Tablets, AMO contacted the RC by phone on 12 April 2019, advising it to carry out repair works to the cement mount. AMO also issued a memo to LandsD on 30 April 2019 to ask for its follow-up action as appropriate.

7. "Mui Wai" has been included, since 2000, in the list of Sites of Archaeological Interest ("SAIs"), an internal administrative measure to preserve archaeological sites, so as to preserve it for further study. The list and the site plans of all SAIs are circulated at suitable intervals to relevant bureaux/departments, which are required to inform AMO once there are development proposals or works projects that may affect SAIs which they come across. "Mui Wai" is now located at a site within Yuk Sau Garden, which is managed by LCSD. AMO's inspections revealed that "Mui Wai" was in a stable condition. AMO will continue to offer technical advice to LCSD on its maintenance and repair works as necessary.

Our comments

8. The Government has in place a system to identify and grade historic buildings and structures (which the Stone Tablets are) and to preserve SAIs (of which "Mui Wai"

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<sup>3</sup> For the avoidance of doubt, the Stone Tablets are not monuments under the Antiquities and Monuments Ordinance, Cap. 53.

is one). The system also defines the management and maintenance responsibility of such items of heritage significance. Given that the management responsibility of the Stone Tablets and “Mui Wai” does not fall on DEVB, it is reasonable of CHO to refer the problem the complainant raised to relevant Government departments for follow-up action, which it did. Hence, we consider this complaint point unsubstantiated.

***Complaint Point (b): CHO Giving Inconsistent Replies on the Conditions of the Two Heritage Items***

DEVB’s response

9. According to the internal circular about written communication with the public, CHO is required to use the same language that the complainant/enquirer uses. Since the complainant used Chinese in her email dated 2 April 2019, CHO corresponded in Chinese on 27 June 2019 and described the two heritage items as “大致良好” (generally in good condition) based on AMO’s technical advice. On 7 December 2019, the complainant wrote to CHO in English, alleging that the condition of the Stone Tablets was deteriorating. CHO, after consulting AMO, replied to her on 3 January 2020 in English and described the condition of the Stone Tablets as “generally acceptable” and that of “Mui Wai” “in a stable condition”.

10. CHO opined that the terms “大致良好” (generally in good condition), “generally acceptable” and “in a stable condition” were only different presentations to describe the physical condition of an object in a moderately good condition. They do not contradict each other and are not inconsistent.

Our comments

11. We understand that there are no specified or well-defined expressions for the description of condition of historic buildings/structures or SAIs. We also do not consider the descriptions of “大致良好” (generally in good condition), “generally acceptable” and “in a stable condition” as contradicting one another. We, therefore, consider this complaint point unsubstantiated.

***Complaint Point (c): CHO Failing to Provide Any Contact Information of Its Officers and Failing to Issue Timely Interim Replies***

DEVB’s response

12. According to the relevant work guideline, DEVB should acknowledge receipt of a written complaint no later than ten calendar days from the date of receipt of the complaint. CHO admitted that this rule had not been observed in the present case. It had subsequently advised the relevant staff to observe its guideline and maintain a register on outstanding complaints.

13. As regards the provision of contact information of its officers in replies, there is no hard and fast rule governing this within DEVB. After learning the complainant's request for contact information on 2 April 2019, CHO provided in its reply of 27 June 2019 the names and phone numbers of the AMO officers concerned.

#### Our comments

14. DEVB admitted that it had failed to issue acknowledgement of receipt to the complainant. This was in violation of its work guideline. On the other hand, it has provided the names and phone numbers of the staff members in its reply after receiving the complainant's request for such information. We consider this complaint point partially substantiated.

#### ***Complaint Point (d): AMO Having Wrongly Assessed the Conditions of the Two Heritage Items***

#### DEVB's response

15. The physical condition was assessed by professional conservators<sup>4</sup>. The Stone Tablets were made of granite which is highly resistant to weathering and corrosion. AMO considered that the Stone Tablets were structurally stable and the moulds and water stains on the tablets could be easily removed with water. As regards the peeling off/fading of the red paint on the inscriptions of the Stone Tablets, AMO pointed out that the Stone Tablets were unpainted originally and so peeling off and fading of later added paint are not signs of deterioration. The inscriptions on the Stone Tablets are still well preserved.

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<sup>4</sup> The conservators in AMO perform a wide range of heritage conservation works, such as assisting in conserving and restoring declared monuments, graded historic buildings and maintaining archaeological sites. They also help monitor the climatic environment and examine the heritage sites as well as document the physical condition of heritage. Last but not least, they perform scientific analysis and research on conservation materials and undertake conservation treatment and tasks.

16. As for “Mui Wai”, there is a layer of rendering on the rock surface. AMO considered it to be in a stable condition.

Our comments

17. How the condition of the heritage items concerned should be assessed and the condition so assessed are matters of professional judgment. They are not administrative matters within our purview.

18. DEVB has explained why AMO did not consider the physical condition of the two heritage items as deteriorating. We note that its assessment was made by professionals and the queries made by the complainant on the heritage items’ condition (peeling off of paint, etc.) had been fully addressed. We, therefore, consider this complaint point unsubstantiated.

**Office of The Ombudsman**

**May 2020**