

立法會
Legislative Council

LC Paper No. CB(1) 549/02-03
(These minutes have been seen
by the Administration)

Ref : CB1/PL/PLW/1

Panel on Planning, Lands and Works

Minutes of meeting
held on Friday, 5 July 2002 at 8:30 am
in the Chamber of the Legislative Council Building

Members present : Dr Hon TANG Siu-tong, JP (Chairman)
Hon LAU Ping-cheung (Deputy Chairman)
Ir Dr Hon Raymond HO Chung-tai, JP
Hon James TO Kun-sun
Hon WONG Yung-kan
Hon Timothy FOK Tsun-ting, SBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon LAU Wong-fat, GBS, JP
Hon Albert CHAN Wai-yip
Hon WONG Sing-chi
Hon IP Kwok-him, JP

Members attending : Hon Albert HO Chun-yan
Hon LEUNG Yiu-chung

Member absent : Hon Abraham SHEK Lai-him, JP

Public officers attending : **Item IV**
Miss CHEUNG Siu-hing
Deputy Secretary (Planning and Lands) 2
Housing, Planning and Lands Bureau

Mr Kim SALKELD
Land Registrar

Ms May LEE
Deputy Principal Solicitor
Land Registry

Mrs Jenny WONG
Acting Registry Manager
Land Registry

Item V

Mr Gary Y S YEUNG
Principal Assistant Secretary
Housing, Planning and Lands Bureau

Mr H K NG
Assistant Director (Valuation)
Lands Department

Mr Roger TSANG
Chief Land Executive/Acquisition
Lands Department

Clerk in attendance : Miss Salumi CHAN
Chief Assistant Secretary (1)5

Staff in attendance : Mrs Queenie YU
Senior Assistant Secretary (1)6

Action

- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)2143/01-02 — Minutes of the meeting held on
12 April 2002)

The minutes of the meeting held on 12 April 2002 were confirmed.

II. Date of next meeting and items for discussion

(LC Paper No. CB(1)2142/01-02(01) — List of outstanding items for discussion

LC Paper No. CB(1)2142/01-02(02) — List of follow-up actions)

2. The Chairman reminded members of the meeting arrangements for July, as follows:

(a) Joint meeting on 5 July 2002

A joint meeting of the Panel and the Panel on Housing would be held immediately after this meeting at 10:00 am for the Secretary of Housing, Planning and Lands to brief the two Panels on the policy initiatives, work plans and operation of the new Housing, Planning and Lands Bureau.

(b) Special meeting on 9 July 2002

A special meeting had been scheduled for Tuesday, 9 July 2002 from 8:30 am to 9:30 am for the Security Bureau to brief members on the feasibility study and preliminary site investigation for land formation and infrastructure works for the Prison Development Plan. The Administration planned to submit the proposal to the Public Works Subcommittee (PWSC) in October 2002.

(c) Informal meeting on 11 July 2002

An informal meeting had been scheduled for Thursday, 11 July 2002 from 9:00 am to 9:30 am for the Clerk to update and consult members on the arrangements for the overseas duty visit of the Panel.

III. Draft Report of the Panel on Planning, Lands and Works for submission to the Legislative Council in July 2002

3. Members endorsed the draft report of the Panel for submission to the Legislative Council (LegCo) on 10 July 2002.

(Post-meeting note: The report of the Panel (LC Paper No. CB(1)2211/01-02) was presented to LegCo on 10 July 2002.)

IV. Land Titles Registration System

(LC Paper No. CB(1)2142/01-02(04) — Paper provided by the Administration)

4. The Deputy Secretary (Planning and Lands) 2 of Housing, Planning and Lands Bureau (DS(PL)/HPLB) briefed members on the background of the legislative proposals on the Land Titles Registration System (LTRS). In 1994, the Administration had introduced a Land Titles Bill into LegCo but the Bills Committee formed to study the Bill was unable to complete scrutiny of the Bill by the end of the term in July 1995. In January 1999, the Administration had briefed the Panel on Planning, Lands and Works on a revised draft Land Titles Bill and subsequently issued the draft Bill to the concerned parties for comments. In November 1999, the Administration had briefed the Panel on the outcome of the consultation exercise. Following that, the Administration had critically reviewed and revised various elements of the draft Bill, and consulted the Hong Kong Bar Association, Law Society of Hong Kong, Heung Yee Kuk (HYK) and the Hong Kong Institute of Surveyors on the revised draft Bill. The Administration was consulting the Panel at this meeting on the revised legislative proposals.

5. DS(PL)/HPLB briefed members on the merits of the proposed LTRS as compared with the current Deeds Registration System (DRS) in Hong Kong. She pointed out that under DRS, in a property transaction it was necessary to peruse the historical title deeds for 15 years to trace the chain of title. Under the proposed LTRS, however, a person was recognized by law as the owner, upon registration of his property in the land register. The proposed LTRS therefore provided better assurance of title. It also simplified conveyancing procedures and reduced the amount of paper involved in property transactions, thus facilitating electronic registration and transactions.

6. DS(PL)/HPLB and the Land Registrar (LR) then briefed members on the main features of the proposed LTRS, as follows:

(a) Conversion arrangements

In 1999, the Administration had proposed gradual conversion with a 15-year transitional period at the end of which the remaining deeds would be automatically converted to the LTRS. However, the proposed automatic conversion had aroused considerable concern. To address the concern, the Administration's current proposal was not to specify a cut off date for conversion from the DRS to LTRS. The two registration systems would run in parallel over a period of time. With the reforms undertaken by the Land Registry in recent years to increase its efficiency, the Administration was confident that the two registration systems could be operated in parallel without undue costs. The Administration would consider automatic conversion afresh after

the community had become acquainted with title registration in practice.

(b) Principle of indefeasibility of ownership

On the principle of indefeasibility, i.e. the registered owner on the land register would be recognized by law as the owner and his title would not be defeasible, some had argued that the principle should be diluted to protect an innocent former owner who lost his property through a third party's fraud. The Administration had considered the issue very carefully. The Administration recognized the need to protect the interests of not only an innocent former owner, but also an innocent purchaser. It was therefore not justified to bind the court to rule always in favour of the owner. The Administration's current proposal was to include two criteria that the court might take into account when considering whether to rectify the title register where a fraud had occurred. These were the acts of the parties and the hardship to the parties. The Administration considered that the court's discretion should not be further fettered.

(c) Indemnity provisions

On the proposed self-financing indemnity fund to back up the title guarantee under the LTRS, the Administration had, in 1999, proposed that there would be a cap of \$30 million on the indemnity that would be paid in the event of an entry in or omission from the register due to fraud affecting ownership. The Administration then received representations that there should not be any limit on the indemnity. The Administration was of the view that if there was no cap on the value of claims from the indemnity fund, the levy rate would have to be increased substantially for all owners, sellers and purchasers. It would be unreasonable and unfair to impose the insurance cost for a minority of very high-value properties upon the majority of property owners. The Administration considered it reasonable to keep the cap and therefore maintained its original proposal.

(d) Overriding interests

There had been calls for either registering all overriding interests or defining them as clearly as possible so that people knew exactly what those would be. In view of the fact that some overriding interests could not be registered, such as the Government's power of resumption which was latent against any property, the Administration proposed to define a limited list of overriding interests in the Land Titles Bill to give clarity and protection of ownership, as follows:

- (i) easements and rights of way;
- (ii) Chinese custom and customary rights;
- (iii) Rights on the Government leases;
- (iv) Short-term leases of less than three years; and
- (v) Defined statutory rights.

(e) Land boundaries

As the land boundary surveys conducted since the establishment of the Geodetic Datum in 1980 covered less than 10% of all lots, the Administration considered it not appropriate to introduce a guarantee of land boundaries at this stage. Nevertheless, the Administration proposed to provide an avenue for lot owners to apply to the Director of Lands to have their lot boundaries surveyed and registered in the Land Registry. As the number of properly surveyed lots in Hong Kong built up in future, the Administration might revisit the issue and consider providing a guarantee of land boundaries in due course.

(f) Title certificates

In 1999, the Administration proposed that title certificates would be issued on application for a fee. As there was general acceptance of the proposal, the Administration proposed no change to it.

(g) Solicitor's criminal liability

In 1999, the Administration proposed that an offence would be committed only if the person intended to defraud when verifying an application for registration. As there was general acceptance of the proposal, the Administration proposed no change to it.

7. DS(PL)/HPLB said that the Administration aimed to introduce the Land Titles Bill into LegCo in the 2002-2003 session.

General views

8. Mr IP Kwok-him, Mr TAM Yiu-chung and Mr Albert CHAN Wai-yip supported the introduction of the proposed LTRS in principle. Mr LAU Wong-fat pointed out that the Administration had incorporated a number of suggestions of HYK into the proposed LTRS. They considered the revised legislative package an improvement to the original one.

Conversion arrangements

9. Responding to Mr TAM Yiu-chung, DS(PL)/HPLB advised that under the LTRS, conversion of properties to guaranteed titles would occur upon:

- (a) issue of all new Government leases; or

- (b) registration of the first transfer of a property after the Land Titles Bill came into operation; or
- (c) voluntary submission of applications for conversion.

DS(PL)/HPLB also advised that a solicitor's certificate of good title was required in the two circumstances mentioned in items (b) and (c) above.

10. Mr TAM Yiu-chung pointed out that before a solicitor issued a certificate of good title, he had to make sure that the historical title deeds were in order. Mr TAM was concerned that for some old properties where a number of previous transactions had taken place, the problems identified in the historical title deeds could not be rectified, e.g. missing signature of a previous owner of the property who had already passed away. The Deputy Principal Solicitor of Land Registry (DPS/LR) advised that whether the problems identified in the historical title deeds could be rectified would depend on the circumstances of the case. If a solicitor confirmed that a property was not qualified for a certificate of good title, the Administration would allow the property to be registered under the DRS. The Chairman asked whether the property in question would never be allowed to be registered under the LTRS. DPS/LR advised that in a property transaction, it was necessary to peruse the historical title deeds for 15 years to trace the chain of title. If a problem identified in the historical title deeds, which could not be rectified, was beyond the 15-year period, the property in question might be able to register under the LTRS.

11. Referring to paragraph 8 of the paper provided by the Administration, Mr LAU Ping-cheung noted that the Administration had received strong representations against automatic conversion. Responding to Mr LAU's enquiry, LR advised that the major ground of objection was one of principle that if automatic conversion was introduced, certain rights enforceable, though not necessarily registered, under the DRS would automatically be extinguished at the cut-off point. This would be the case irrespective of the length of the notification period. A lot of people considered that highly objectionable. On the other hand, there were practical issues to be considered. For example, some complex cases required a long period of time to sort out the long history behind the property in question. Automatic conversion would have impact on those cases.

12. Mr LAU Ping-cheung considered it more appropriate to adopt the gradual conversion approach. Referring again to paragraph 8 of the paper provided by the Administration, he noted that the United Kingdom (UK) had adopted the same approach before introducing compulsory land title registration in the 1960s. Mr LAU was concerned whether the experience in UK was applicable to Hong Kong, having regard to the fact that a majority of the properties in Hong Kong were leasehold, not freehold as in the case of UK. In response, LR pointed out that whether a property was leasehold or freehold was not a consideration. As a majority of the properties in both

UK and Hong Kong had a long history, automatic conversion would have impact on them. The Administration therefore proposed to adopt a gradual conversion approach so as to facilitate an orderly and systematic conversion, and to provide ample time for the public and legal practitioners to familiarize themselves with the new system.

13. Responding to Mr LAU Ping-cheung, DS(PL)/HPLB advised that the Administration had not proposed a fixed period after which automatic conversion would take place. After the community had become acquainted with title registration, the Administration would consider the need to introduce automatic conversion and if the need was established, the appropriate timing. Mr LAU considered that a fixed date for automatic conversion might be useful in the sense that it would serve as a target for all. DS(PL)/HPLB pointed out that the Administration had put forward for consultation in 1999 the option of gradual conversion from the current system to the new system over a period of 15 years. In view of the strong objections received, the Administration considered it not appropriate to set a fixed date for automatic conversion at this stage. However, the Administration would keep in view developments and bring up the issue again at an opportune time.

Fees and levy

14. Mr IP Kwok-him and Mr Albert CHAN were concerned about the additional fees and levy to be imposed on property owners under the LTRS. Mr CHAN pointed out that during the present economic downturn, some property owners might not afford the additional fees and levy, such as the owners of village houses or small houses in the New Territories who depended their living on the monthly rent. Mr IP was concerned that there would be a substantial increase in the fees to be charged by solicitors.

15. DS(PL)/HPLB advised that the fees included the following two categories:

- (a) Fees to be charged by the Land Registry
 - (i) Registration fees; and
 - (ii) A levy on application for registration to finance the indemnity fund.
- (b) Fees to be charged by solicitors

Solicitors would charge fees for conveyancing and to fulfil the requirements for certificates of good title.

16. DS(PL)/HPLB assured members that the Administration would try to keep the registration fees and levy at a low level as far as possible. Its aim was to keep the registration fees plus levy under the new system at a level comparable to that of the registration fees under the current system. DS(PL)/HPLB said that the levy levels were still being worked out. It was expected that the levy for each application would not be more than a few hundred dollars. The Administration would report to the Panel

once a decision was made. As regards the fees to be charged by solicitors, DS(PL)/HPLB advised that they would be a matter for individual solicitors to decide. However, the Administration would liaise with the Law Society of Hong Kong to ascertain the likely order of fees to be charged.

17. On registration fees, LR added that following the passage of the Land Registration (Amendment) Bill 2000 on 3 July 2002, a new system would be introduced in the Land Registry, which would enable the department to keep down its operational costs. Accordingly, the Land Registry would keep down the registration fees to be charged under the LTRS. On the levy to finance the indemnity fund, LR advised that the Administration was considering a number of options, including a graduated scale. The objective was to keep the impact on the majority of first-time property buyers and/or buyers of low-value properties to a minimum. The Administration aimed to put forward the proposed charges in early 2003.

18. Referring to the proposed cap of \$30 million on the indemnity fund, Mr LAU Wong-fat noted that properties valued at over \$30 million would be protected up to \$30 million. HYK was of the view that the Administration should set up a mechanism to provide reasonable protection to the owners of such properties. DS(PL)/HPLB advised that owners of such properties could secure title insurance for value in excess of the \$30 million indemnity limit if necessary.

Overriding interests

19. Referring to the Administration's proposal that under a title register, land would be subject to overriding interests, Mr LAU Wong-fat said that HYK was concerned that the proposal would have impact on ownership of properties. In other words, the registered owner under the LTRS would not be 100% recognized by law as the owner of the property. DS/HPLS pointed out that overriding interests were important rights affecting land although it might not be practicable to enter such interests in the land register. The Administration would keep the categories of overriding interests to be protected to a minimum and define them clearly in the legislation so as to give property owners, purchasers and sellers the greatest possible degree of certainty.

Principle of indefeasibility of ownership

20. Referring to paragraph 13 of the paper provided by the Administration, the Chairman sought clarification on the criteria that the court might take into account when considering whether to rectify the title register where a fraud had occurred. DPS/LR clarified that the first criterion, "acts of the parties", might include the acts committed before and after the change of property ownership. As regards the other criterion, "hardship to the parties", the court might consider the hardship caused to the parties by the loss of the ownership of the property in question.

Land boundaries

21. Mr Albert CHAN said that he had recently come across some cases where owners of private land in the New territories were required by the Administration to conduct land boundary survey. He pointed out that the owners concerned could not afford to appoint professionals to conduct the survey. He requested the Administration to address the issue under the Land Titles Bill. DS(PL)/HPLB clarified that the issue was not directly related to the Bill. Under the LTRS, the Administration proposed to provide an avenue for lot owners to apply to the Director of Lands to have their lot boundaries surveyed and registered in the Land Registry. However, it was not a compulsory requirement. As regards the cases mentioned by Mr CHAN, DS(PL)/HPLB undertook to follow up with the relevant department(s) after the meeting.

Admin

V. Review of land resumption administrative arrangements and the ex gratia allowance for owners and tenants of industrial properties affected by land resumption

(LC Paper No. CB(1)2142/01-02(05) — Paper provided by the Administration

LC Paper No. CB(3)934/00-01 — Progress report (September 2001) provided by the Planning and Lands Bureau in response to the motion on “Reviewing the compensation policy on land resumption” moved by Hon Albert CHAN Wai-yip at the Legislative Council meeting of 4 July 2001)

22. The Chairman briefed members that during the motion debate on "Reviewing the compensation policy on land resumption" held at the Council meeting of 4 July 2001, the Administration had undertaken to review the land resumption procedures and the Ex-gratia Allowance (EGA) relating to the resumption of industrial properties. In September 2001, the then Planning and Lands Bureau had indicated, in its progress report on the actions taken to follow up the motion, that the review of EGA for owners and tenants of industrial properties affected by land resumption would be completed in early 2002. The Administration was therefore invited to brief the Panel at this meeting on the latest position of the review.

23. The Principal Assistant Secretary of Housing, Planning and Lands Bureau (PAS/HPLB) briefed members on the new administrative arrangements for land resumption as detailed in paragraph 8(a) to (i) of the paper provided by the Administration. As a number of claims arising from the resumption of Wah Kai Industrial Centre had still not been settled, PAS/HPLB advised that the Administration considered it inappropriate to change the EGA for the resumption of industrial

properties at the present time. Under the prevailing arrangement, if a clearee was not satisfied with the compensation offered by the Government, he might accept it as a provisional payment and continue to negotiate with the Government regarding his claim in relation to the resumed industrial property. If agreement could not be reached on the amount claimed by the clearee, he might refer the claim to the Lands Tribunal for determination.

24. Mr TAM Yiu-chung considered the present compensation arrangements for land resumption relating to industrial properties complex and unfair to owners of industrial properties. The Administration should conduct a comprehensive review of the existing EGA and draw up concrete measures to address the concerns raised on the subject. In his view, the review should be conducted without further delay.

25. Mr Albert CHAN was dissatisfied with the current mechanism for compensating owners of industrial properties upon land resumption. He considered the nine improvement measures stated in paragraph 8(a) to (i) of the paper inadequate, as they were only administrative measures to improve the arrangements for land resumption. Referring to the Administration's view that it was not appropriate to consider any changes to the EGA for the resumption of industrial properties before the settlement of the claims arising from the resumption of Wah Kai Industrial Centre, Mr CHAN considered the Administration's view not justified. As far as he knew, it was not uncommon for the Administration to review policy issues while legal cases relating to relevant Government policies were in progress. He queried whether the Government had something to hide, which might be the main reason for delaying the review it had promised to complete in early 2002. PAS/HPLB clarified that the Administration had nothing to hide. The whole land resumption process was a transparent mechanism governed by the relevant legislation. If agreement could not be reached on the amount claimed by the clearee, the clearee might refer the claim to the Lands Tribunal for determination. He also pointed out that the nine improvement measures set out in the paper were applicable to arrangements for land resumption, including resumption of industrial properties.

26. Pointing out that a large number of land resumption cases took place in the New Territories, Mr LAU Wong-fat appreciated that the Administration had consulted HYK and incorporated its suggestions in the new administrative arrangements for land resumption. Referring to paragraph 8 of the paper, Mr LAU suggested that the Administration should make further improvements in the following aspects-

- (a) On paragraph 8(d) of the paper, the Administration should clarify that the receipt of the provisional payment of compensation would not affect the right of the owners of agricultural lots in the New Territories to make statutory claims to the Lands Tribunal.
- (b) On paragraph 8(e) of the paper, the Administration should allow owners of agricultural lots to include in their compensation claims not

only the expenses incurred in hiring surveyors, but also lawyers, to help them prepare claims.

- (c) On paragraph 8(f) of the paper, the Administration should set up a mechanism to coordinate clearance operation and enhance smooth implementation of clearance operations among various bureaux and departments.
- (d) On paragraph 8(g) of the paper, the work of the special team to expedite the processing of business loss claims for large scale resumption of industrial properties should not be confined to discussion with claimants and their surveyors on the claims. The special team should be authorized to make decisions on claims.
- (e) On paragraph 8(i) of the paper, the interest on the amount of compensation should be paid to claimants together with the amount of compensation.

27. In response, PAS/HPLB advised that a mechanism was in place to coordinate matters relating to clearance operations. In general, the Home Affairs Department or the Lands Department would provide necessary assistance to the affected owners/occupants of resumed land. The Assistant Director (Valuation) of Lands Department (AD/LD) advised that the special team mentioned in paragraph 8(g) of the paper would make decisions on the claim amount subject to the submission of the necessary supporting documents by the claimants to substantiate their claims. As regards the suggestion of allowing owners of agricultural lots to include in their compensation claims the expenses incurred for hiring lawyers to help them prepare claims, AD/LD said that the Lands Department would consider such request on its own merits.

28. Mr IP Kwok-him was concerned about the representativeness of the membership of the special team. AD/LD said that the special team was chaired by an Assistant Director of Lands Department who was familiar with the valuation of industrial properties and calculation of business loss. Two or three Senior Estate Surveyors would assist the Chairman in valuation matters and calculation of compensation payment. A solicitor would attend the meetings of the special team where necessary. The team would discuss with claimants and their surveyors at meetings on compensation matters. Subject to availability of supporting documents and complexity of the case, the amount of compensation would be calculated and agreed at the meetings. Responding to the Chairman, AD/LD advised that as compensation matters mainly involved the claimant and the Administration and checking of documents might be at a preliminary stage, there was no independent member in the special team. Mr IP considered that the special team should comprise independent members to enhance its representativeness.

29. Pointing out that there were over 100 outstanding claim cases arising from the resumption of Wah Kai Industrial Centre, Mr LEUNG Yiu-chung questioned whether the special team could cope with the substantial number of claim cases. To allay the cash flow problem of owners of resumed industrial properties, Mr LEUNG considered that the Administration should provide loans to the clearers similar to that provided for the small and medium-size enterprises. PAS/HPLB said that the provision of loans was considered not viable by the relevant bureaux when the suggestion was raised during the resumption of Wah Kai Industrial Centre. Nevertheless, the Administration would expedite the claim procedures and payment of compensation to clearers. Mr LEUNG requested the Administration to set out the reasons for turning down the suggestion of providing loans to owners of resumed industrial properties.

30. Mr Albert CHAN reiterated his view that the review of EGA relating to the resumption of industrial properties should not be put on hold. In this regard, the Chairman requested the Administration to complete the review as soon as possible and report to the Panel in due course.

(Post-meeting note: The Administration's response to members' requests in paragraphs 29 and 30 above was circulated to members vide LC Paper No. CB(1)2517/01-02 on 13 September 2002.)

VI. Any other business

31. There being no other business, the meeting ended at 10:00 am.

Legislative Council Secretariat
29 November 2002