

立法會
Legislative Council

LC Paper No. CB(1)2459/02-03
(These minutes have been seen
by the Administration)

Ref : CB1/PL/HG/1

Panel on Housing

**Minutes of special meeting held on
Wednesday, 16 July 2003, at 8:30 am
in the Chamber of the Legislative Council Building**

Members present : Hon CHAN Kam-lam, JP (Chairman)
Hon Albert HO Chun-yan (Deputy Chairman)
Dr Hon David CHU Yu-lin, JP
Hon Fred LI Wah-ming, JP
Hon NG Leung-sing, JP
Hon James TO Kun-sun
Hon CHAN Yuen-han, JP
Hon LEUNG Yiu-chung
Hon SIN Chung-kai
Dr Hon YEUNG Sum
Hon Abraham SHEK Lai-him, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon WONG Sing-chi
Hon Frederick FUNG Kin-kee
Hon IP Kwok-him, JP
Hon LAU Ping-cheung

Non-Panel Member attending : Hon Emily LAU Wai-hing, JP

Members absent : Hon LEE Cheuk-yan
Hon Andrew WONG Wang-fat, JP
Hon Howard YOUNG, SBS, JP
Hon SZETO Wah
Hon Albert CHAN Wai-yip
Dr Hon LO Wing-lok, JP

- Public officers attending** : Housing, Planning and Lands Bureau
- Mr Michael M Y SUEN, GBS, JP
Secretary for Housing, Planning and Lands
- Mr C M LEUNG, JP
Permanent Secretary for Housing, Planning and Lands (Housing)
- Housing Department
- Ms Elaine CHUNG, JP
Deputy Director of Housing (Strategy)
- Mr Carlson CHAN
Assistant Director of Housing (Strategic Planning)
- Department of Justice
- Mr Simon LEE
Deputy Law Officer (Civil Law)
Planning, Environment, Lands and Housing Unit,
Civil Division, Department of Justice
- Clerk in attendance** : Miss Odelia LEUNG
Chief Assistant Secretary (1)4
- Staff in attendance** : Mr KAU Kin-wah
Assistant Legal Adviser 6
- Ms Sarah YUEN
Senior Assistant Secretary (1)6
- Ms Christina SHIU
Legislative Assistant
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I. Median rent-to-income ratio for public housing flats

(LC Paper No. CB(1) 2217/02-03(01) — Information paper provided by the Administration

LC Paper No. CB(1)2217/02-03(02) — Judgment delivered by the Court of First Instance: HCAL 174/2002 Ho Choi Wan v. Hong Kong Housing Authority and HCAL198/2002 Lam Kin Sum v. Hong Kong Housing Authority)

The Chairman advised that this special meeting had been called to discuss the issue of median rent-to-income ratio (MRIR) for public rental housing (PRH) flats pursuant to the outcome of the Judicial Review in respect of the Housing Authority (HA)'s decisions to defer the review of PRH rents in 2001 and 2002. The Court of First Instance had ruled in favour of the two applicants for the Judicial Review (the Applicants).

2. A submission from the Hong Kong People's Council on Housing Policy was tabled at the meeting.

(Post-meeting note: The submission was circulated to members after the meeting vide LC Paper No. CB(1)2236/02-03.)

3. The Deputy Chairman declared interests that his law firm was representing the Applicants. Mr NG Leung-sing declared interests as Chairman of HA's Finance Committee.

4. The Secretary for Housing, Planning and Lands (SHPL) briefed members on the Administration's paper for the meeting.

Whether appeal would be lodged against the outcome of the Judicial Review

Factors to be considered in making decision

5. In reply to Dr YEUNG Sum on whether the Administration planned to lodge an appeal against the ruling, SHPL said that the matter would be decided by HA and HA would act according to law and the existing legal procedures. In this regard, Mr Fred LI Wah-ming opined that HA should not use further resources to appeal.

6. Ms Emily LAU Wai-hing queried whether the decision to appeal or not rested entirely with HA as HA's Chairman was SHPL and its members were all appointed by the Government. She also opined that the Legislative Council (LegCo) should have a role to play in the decision process as at the end of the day, the Administration might need to inject funds into HA and amend the relevant provisions in the Housing Ordinance (HO) (Cap.283), both of which would require the scrutiny of LegCo. She was disappointed that SHPL was unable to advise at

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the meeting on the actions to be taken pursuant to the outcome of the Judicial Review.

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7. In response, SHPL explained that under HO, HA was a legal entity and had financial and administrative autonomy. SHPL was answerable to LegCo for housing and land matters through attendance at LegCo and its Panels. He would also convey members' views to HA for consideration. He would explain to LegCo and the public HA's decision and the basis for it.

8. Quoting press reports that HA would lose \$48.7 billion in rents in the ten years from 2002 onwards if it had to cut rents for PRH in the light of the outcome of the Judicial Review, Mr James TO Kun-sun sought clarification of the major factors to be considered by HA in making the decision. He was concerned whether legal analysis and not financial consideration would be the major determinant in making the decision. Mr Frederick FUNG Kin-kee also suspected that financial consideration was reigning high in the process. In response, SHPL emphasized that legal grounds rather than financial factors were the main considerations. He also clarified that he had not disclosed details of HA's financial situation to the mass media. In response to Mr TO, SHPL said that he was not in a position to confirm that no staff from HA or the Administration had made such disclosure.

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9. On Mr James TO's query as to whether HA had sufficient grounds for appeal, SHPL pointed out that it rested with the Court to decide whether to grant leave for appeal. Mr James TO said that he would support if HA decide not to appeal and HA should take into account political reasons in making the decision.

Time taken to make decision

10. Ms Emily LAU opined that HA should decide as soon as possible whether or not to appeal as there was grave public concern on the Court's Judgment. In reply to Ms Emily LAU and Miss CHAN Yuen-han on the time required to make the decision, SHPL said that the Court had yet to make the order on relief (the Order). The Judge had stated in his Judgment that if necessary he would hear the parties as to the precise terms of the Order. HA had the right to appeal to the Court of Appeal within four weeks of the sealed order of the Judge. In deciding whether or not to appeal, SHPL stressed that HA needed to examine the terms of the Order, seek legal advice, study the legal issues expounded in the Judgment and clarify legal points where necessary. It was therefore difficult to say when a decision could be made. Any decision to appeal would be made on sound legal basis and there would be no question of abuse of legal proceedings.

11. In this regard, Ms Emily LAU enquired if a deadline had been set for the Judge to hear the parties as to the precise terms of the Order. In response, SHPL pointed out that no deadline had been stated in the Judgment. He however believed that the legal representatives of both parties would act expeditiously.

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Rent review

12. As the Court had found that HA had a duty to review rent regularly, the Deputy Chairman enquired whether and when rent review would be conducted. In reply, SHPL advised that HA would have to consider the scope of application of the Order; whether it applied to the two Applicants only or to all PRH tenants across the board. The Deputy Chairman found the answer surprising and said that it was clear from the Judgment that the Order would apply to all PRH tenants. In response to his repeated request for a timetable for rent review, SHPL said that he could not make any undertaking in this regard. He also drew members' attention to paragraph 65 of the Judgment which said that the Court would make an order in terms of the relief sought by the Applicants. As the Order had yet to be made, it would not be appropriate to pre-empt the scope of its application at the moment. He assured members that all necessary actions would be taken as soon as possible.

13. Messrs Frederick FUNG, LEUNG Yiu-chung, IP Kwok-him and Fred LI urged the Administration to respond to the public demand for rent review without delay on the following grounds -

- (a) HA should not take further time to examine whether it should review PRH rents regularly and abide by the MRIR ceiling because such had already been clearly spelt out in the HO and again in the Judgment;
- (b) The Court had already found that the Applicants had a legitimate expectation to have their rents periodically and regularly reviewed; and
- (c) The deferral of rent review would further delay the making of the decision to convert overhung Home Ownership Scheme (HOS) units into PRH units because of difficulties in setting the levels of rents for these flats.

14. In response, SHPL reiterated the need to examine the relevant legal points and the terms of the Order. The Deputy Law Officer (Civil Law), Planning, Environment, Lands and Housing Unit, Civil Division, Department of Justice said that it was inappropriate to comment on the interpretation of the Judgment as the judicial proceedings had not been completed.

Rent reduction

15. Referring to the Court's finding that when HA carried out its duty to review rent, the MRIR ceiling should be abided by, Dr YEUNG Sum asked whether PRH rents would be reduced to such levels in compliance with the MRIR ceiling.

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16. Messrs LEUNG Yiu-chung, Fred LI, Frederick FUNG and Miss CHAN Yuen-han requested for a reduction of PRH rents as soon as possible. They put forward the following views -

- (a) The intention of introducing the MRIR ceiling in the HO was to protect PRH tenants from paying levels of rents which would compromise their living standard. HA's decision to freeze PRH rents since 1998 by way of not conducting rent review had violated the spirit of the law;
- (b) PRH was a kind of welfare and, as such, the level of rents should not be linked to the relevant costs;
- (c) HA was envisaged to have financial problems mainly because of its decision to cease production and sale of HOS flats. It was unfair to expect PRH tenants to shoulder the consequences of this decision; and
- (d) The economic situation had been worsening since the MRIR ceiling was introduced in 1997. Hong Kong people were facing great financial hardship and the number of PRH tenants receiving public assistance was increasing. There was a pressing need to reduce PRH rents to relieve the financial burden of the general public.

17. In response, SHPL made the following points -

- (a) HA would decide the next course of action after the Order was made by the Court. HA would need to consider both the interest of public housing tenants and the overall interest of Hong Kong;
- (b) Many factors accounted for MRIR exceeding 10%. These included improvement in living density of PRH tenants, enhanced standard of new PRH estates with higher rents, redevelopment of old flats with lower rents, and drop in household incomes of PRH tenants, etc; and
- (c) Recognizing that PRH was a kind of welfare, the Administration had been providing rent relief to tenants having genuine financial difficulties. Substantial resources had been allocated to meet the different needs of PRH tenants. At present, 19% of households living in PRH were receiving Comprehensive Social Security Assistance (CSSA) and PRH rents payable by these households were covered by Government. Families paying rents exceeding 25% of their income could apply for the Rent Assistance Scheme, which provided for 50% rent reduction. Tenants might also move to other public housing flats with lower rents.

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18. Commenting on Miss CHAN Yuen-han's view that the assistance schemes mentioned in paragraph 17(c) above could not help those who fell marginally short of the criteria for the assistance, SHPL highlighted that many Hong Kong people and not just PRH tenants were suffering in the present economic downturn. The ultimate solution lay in the revival of Hong Kong's economy as a whole. In this regard, a number of measures had already been put in place by the Government.

19. In reply to the enquiry of the Deputy Chairman, Miss CHAN Yuen-han and Mr Fred LI as to how the MRIR ceiling could be abided by, SHPL pointed out that there were no guidelines in this regard. At the enactment of the relevant provision in the HO, LegCo had not had any discussion on the methodology of how the MRIR ceiling should be achieved. It was unclear whether the rent for each type of PRH should not exceed 10% of the MRIR or the MRIR ceiling was an overall benchmark for PRH to be attained by whatever means. Since different estates were completed at different times, the time for reviewing rents of PRH estates should be different. How this would affect the attainment of the MRIR ceiling had to be carefully examined.

Possible implications of rent reduction

20. In response to Mr IP Kwok-him, Miss CHAN Yuen-han and Mr LEUNG Yiu-chung, SHPL also highlighted the implications of rent reduction as follows -

- (a) If rents in excess of the MRIR ceiling since 2000 were to be reimbursed to tenants, the sum involved was roughly estimated to be around \$4.5 billion;
- (b) Should excess rents be reimbursed to public housing tenants, there would be operational difficulties in implementation. For example, there was a need to determine to whom the excess rents should be returned; how to locate tenants who had already moved out; how to work out the proportion of rents to be returned to co-tenants who had subsequently split tenancy, etc; and
- (c) The present medium income of PRH households was around \$10,000. Based on the MRIR of 10%, the rents of all PRH units would be around \$1,000. If rents were fixed at that level without regard to the varying types and standards of accommodation, it was questionable whether HA's incomes would be sufficient to meet the maintenance and operating expenses of its estates; sustain its PRH production programme; or maintain the present standard of PRH. It was also doubtful whether HA could live up to the pledge of maintaining the average waiting time for PRH at three years.

21. SHPL emphasized that while the circumstances of PRH tenants should be taken into consideration, there was also a need to consider the impacts on HA. SHPL also pointed out that under section 4 of the HO, the policy of HA should be

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directed to ensuring that the revenue accruing to it from its estates should be sufficient to meet their recurrent expenditure. SHPL stressed the need to consider the issue of PRH rents in a way that would enable sustainable development of PRH.

22. Mr NG Leung-sing opined that PRH units were already heavily subsidized and he agreed on the need to balance quality and quantity to achieve sustainable development. Mr NG called upon the Administration to consider exchanging land allocated to HA which was in better locations for larger pieces of land in less desirable locations; examine how construction costs could be further reduced; and adjust the standard and management of PRH so that users could better understand HA's financial position.

23. In response, SHPL said that HA was seriously examining how to maintain the standard of PRH and, at the same time, adhering to the pledge of average three-year waiting time for PRH. HA had been making efforts to save costs and increase incomes, e.g. reviewing the organisation of the Housing Department and plans to divest HA's retail and car-parking facilities. SHPL agreed to consider Mr NG's suggestions.

24. Mr Frederick FUNG said that HA's reluctance to review and reduce rents in response to the Judgment was probably due to financial consideration. He urged the Administration to seriously consider injecting funds into HA to effect rent reduction without adversely affecting HA's operation. Mr LEUNG Yiu-chung made the same request. In response, SHPL said that the Administration had considered how the situation should be handled if HA did go into a financial crisis.

25. In response to the Deputy Chairman on any plans to amend the HO to obviate the need to observe the MRIR ceiling, SHPL said that at the moment the Administration did not have a position on the matter. Legal proceedings should be completed first before contemplating the next course of action. Any legislative amendment to the HO would need to be scrutinized and approved by LegCo.

26. Noting that the Judgment referred to the outline of submissions made by HA to the Court, Mr James TO requested that the outline be provided to the Panel to enable Members to study the Judgment in context. SHPL agreed.

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Order in committee

27. Noticing that a member of the public sitting in the public gallery had been displaying two \$100 notes with both hands, the Chairman requested the woman to put away the notes and behave herself. Thereafter, he asked the Secretariat's security assistants to remove her from the meeting. He also reminded the public to behave during the meeting. Mr LEUNG Yiu-chung raised objection to the Chairman's decision and said that the member of the public had not disrupted the meeting. Mr James TO also urged the Chairman to reconsider his decision on the grounds that the meeting had not been disrupted; no complaint had been lodged and no prior warning had been given to the member of the public before removing her

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from the meeting. In response, the Chairman explained that he had taken action according to Rule 87 of the Rules of Procedure, which provided that "The President, Chairman of a committee of the whole council or chairman of a committee or subcommittee may order the removal from a meeting of any member of the press or of the public who behaves, or who appears likely to behave, in a disorderly manner." He also elaborated that the member of the public had been behaving in a disorderly manner for quite some time. Initially she stuck the notes on the glass panel before her. Then she raised up the notes by both hands and later even waved the notes. The security assistant had repeatedly warned her but to no avail. For the purpose of preventing her from causing further disturbance to the meeting, there was a need to take precautionary action. The Chairman also stressed that he had a duty to ensure that the meeting could proceed smoothly and not only LegCo Members and public officials but also members of the public were free from disturbance.

28. Mr James TO opined that the Chairman should have given the member of the public sufficient warning before removing her from the meeting. In his view, removing a member of the public from a meeting was a serious matter and should not be taken because of anticipated disorderly behaviour. The Deputy Chairman also considered that the Chairman had exercised Rule 87 too stringently and asked if the member of the public could be allowed to observe the meeting if she behaved herself. The Chairman said that any member of the public was welcome to attend committee meetings if they behaved in an orderly manner.

Motion

29. Messrs Frederick FUNG, Fred LI, LEUNG Yiu-chung and IP Kwok-him proposed to move the following motion -

“本會就高等法院裁決有關檢討公屋租金一事，房委會在法院就判決頒令後須盡速進行會議，檢討公屋租金，並依法把租金調整至租金與入息比例中位數百分之十或以下。”

30. In consideration of the fact that the legal proceedings had yet to be completed, the Chairman invited Assistant Legal Adviser 6 (ALA6) to advise if the proposed motion had any sub judice implications. In response, ALA6 said that the proposed motion should not directly affect the relevant proceedings but, since the Order had yet to be issued, the last part of the motion might not be consistent with terms of the Order. Moreover, the urging for reduction of rent in the motion might pre-empt the outcome of the rent review, if conducted.

31. In reply to Dr YEUNG Sum on the implications of the proposed motion on HA's right to appeal, ALA6 commented that the wording "在法院就判決頒令後須盡速進行會議，檢討公屋租金 (to meet as soon as possible to review the rent of public housing units following the High Court's making of an order in respect of the judgment)" might have the implication of requiring HA not to appeal. He suggested that the relevant wording be suitably revised.

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32. In the light of ALA6's advice, the Chairman said that although the proposed motion, even if passed, would not be legally binding, it was necessary to proceed the matter with care to avoid prejudice to public interests.

33. Mr Frederick FUNG believed that the proposed motion would not be in conflict with the Judgment because it reflected the Court's findings. Since HA had yet to decide whether or not to appeal, he considered it appropriate to proceed with the motion. Mr James TO also saw no need to revise the wording of the motion because the motion only sought to ask HA to abide by the Judgment. Moreover, the motion, which would not be legally binding, was only a political statement made by the Panel to the best of its knowledge at the time of moving it. Members agreed to proceed with the motion.

34. At the suggestion of the Chairman, the movers agreed to make textual improvement to the motion as follows -

“就高等法院裁決有關檢討公屋租金一事，本會促請房屋委員會在法院就判決頒令後，須盡速進行會議，檢討公屋租金，並依法把租金調整至租金與入息比例中位數百分之十或以下。”

35. Mr Tommy CHEUNG Yu-yan sought to confirm whether the proposed textual improvement had any implication. ALA6 confirmed that the revision was purely linguistic.

36. The Chairman put the motion to vote. Messrs Fred LI, James TO, LEUNG Yiu-chung, Dr YEUNG Sum and Mr Frederick FUNG voted for and Mr Tommy CHEUNG voted against the motion. The Chairman declared that the motion was carried.

(Post-meeting note: A letter formally advising the Administration of the passing of the above motion was issued on 16 July 2003.)

37. SHPL requested to put on record that the motion was not legally binding. Mr James TO stressed that although the motion was not legally binding, HA should strive to act in accordance with it. He queried why SHPL sought the clarification. SHPL clarified that he wished to ensure there was no misunderstanding.

II. Any other business

38. There being no other business, the meeting ended at 10:40 am.