

立法會
Legislative Council

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**Panel on Planning, Lands and Works
and Panel on Housing**

**Minutes of joint meeting
held on Wednesday, 18 June 2003, at 8:30 am
in the Chamber of the Legislative Council Building**

Members present : Members of Panel on Planning, Lands and Works

- Dr Hon TANG Siu-tong, JP (Chairman)
- * Hon LAU Ping-cheung (Deputy Chairman)
- Hon James TIEN Pei-chun, GBS, JP
- Ir Dr Hon Raymond HO Chung-tai, JP
- * Hon James TO Kun-sun
- Hon CHOY So-yuk
- Hon Timothy FOK Tsun-ting, SBS, JP
- Hon TAM Yiu-chung, GBS, JP
- * Hon Abraham SHEK Lai-him, JP
- * Hon Albert CHAN Wai-yip
- * Hon WONG Sing-chi

Members of Panel on Housing

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 Howard YOUNG, JP

(* Also members of the Panel on Housing)

Member attending : Hon Audrey EU Yuet-mee, SC, JP

Members absent : Members of Panel on Planning, Lands and Works

Hon WONG Yung-kan

Hon LAU Wong-fat, GBS, JP

* Hon IP Kwok-him, JP

Members of Panel on Housing

Hon LEE Cheuk-yan

Hon CHAN Yuen-han, JP

Hon LEUNG Yiu-chung

Hon SIN Chung-kai

Hon Andrew WONG Wang-fat, JP

Dr Hon YEUNG Sum

Hon SZETO Wah

Hon Tommy CHEUNG Yu-yan, JP

Dr Hon LO Wing-lok

Hon Frederick FUNG Kin-kee

(* Also members of the Panel on Housing)

Public officers attending : Mr Michael SUEN, GBS, JP
Secretary for Housing, Planning and Lands

Mr Thomas TSO, JP

Deputy Secretary for Housing, Planning and Lands
(Planning and Lands)

Mr Patrick LAU, JP

Director of Lands

Ms Angel LI

Assistant Director/Legal

(Hong Kong & Headquarters) (Acting)

Lands Department

Attendance by Invitation : Mr Martin CHAN Kwong-fai
Flat purchaser of The Aegean

Ms OR Wai-ping

Flat purchaser of Villa Pinada

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

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Ms Sarah YUEN
Senior Assistant Secretary (1)6

Ms May LEUNG
Legislative Assistant

Action

I. Election of Chairman

Dr TANG Siu-tong was elected Chairman of the joint meeting.

II. System for pre-sale of uncompleted residential properties
(LC Paper No. CB(1)1943/02-03(01) — Paper provided by the Administration)

2. The Chairman advised that the joint meeting had been initiated by the Panel on Planning, Lands and Works and Panel on Housing for members to discuss with the Administration on the system for pre-sale of uncompleted residential properties in the wake of the recent cases involving two residential property development projects, Villa Pinada and The Aegean (the two cases). Two representatives of the affected flat purchasers would also attend the meeting to present their submissions.

3. At the Chairman's invitation, the Secretary for Housing, Planning and Lands (SHPL) briefed members on the paper provided by the Administration. He highlighted that the existing system for the pre-sale of uncompleted residential flats under the Lands Department (Lands D)'s Consent Scheme (the Consent Scheme), which had been running smoothly for over 40 years, was generally sound and that the two cases had mainly been caused by the failure on the part of certain parties concerned to act properly.

4. At the Chairman's invitation, Mr Martin CHAN Kwong-fai and Ms OR Wai-ping briefed members on the submissions from the Coalition of The Aegean's Purchasers and from the flat purchasers of Villa Pinada respectively. The two submissions were tabled at the meeting.

(Post-meeting note: The two submissions were issued to members vide LC Paper No. CB(1)2022/02-03 on 19 June 2003.)

5. Mr James TIEN Pei-chun declared interests that one of his companies was engaged in the pre-sale of uncompleted flats.

Operation of the Consent Scheme in general

6. While considering that the Consent Scheme had its own merits, Messrs CHAN Kam-lam, TAM Yiu-chung, Howard YOUNG and James TIEN saw the need to improve the Consent Scheme in the light of the areas of concern revealed by the two cases to protect the interests of flat purchasers. Mr Albert HO Chun-yan, Mr Albert CHAN Wai-yip and Ms Audrey EU Yuet-mee called for a review of the Consent Scheme to plug the loopholes of the Scheme and to prevent fraud.

7. Mr Abraham SHEK Lai-him expressed support for the Consent Scheme and pointed out that the pre-sale of flats under the Scheme was of mutual advantage to flat developers and purchasers. In Mr SHEK's view, the Consent Scheme was effective and the two cases were probably caused by fraud committed by professionals. Ms Audrey EU and Mr Albert CHAN disagreed and pointed out that if the Consent Scheme was effective, it should have been able to prevent default in residential property developments.

8. SHPL assured members that as detailed in the Administration's paper, the Administration had been taking active efforts to address the major problems revealed by the two cases. In particular, the Administration had begun a preliminary review of the Consent Scheme and held discussions with the relevant professional bodies to ascertain their views. The Administration recognized the continued need to maintain a proper balance between the interests of developers and those of purchasers in the sale and purchase of uncompleted flats. To keep the relevant charges under the Consent Scheme at a reasonable level, there was a need to examine the resource implications of any proposed changes to the Scheme.

9. Mr Albert HO stressed that if the Consent Scheme could be improved, the resources required for the prevention of fraud would decrease over time. Mr TAM Yiu-chung also called upon the Administration to put in more resources for closer monitoring of the Consent Scheme so as to restore public confidence in the Scheme.

Specific areas of concern about the Consent Scheme as highlighted in the two cases

Legal ownership

10. Referring to paragraph 17 of the paper, Mr CHAN Kam-lam considered that the most significant problem revealed in the two cases was that where legal ownership was concerned, a building mortgagee bank had priority over purchasers in pre-sale transactions. In his view, if the purchasers had paid the full purchase price, they should be entitled to full legal ownership of their flats after completion. Even if they

had not paid the full purchase price, they should have priority over the building mortgagee bank.

Admin

11. In response, SHPL pointed out that to address flat purchasers' main concern about their legal ownership of the units, the Administration would explore the suggestion of including a provision in the standard Agreement for Sale and Purchase (ASP) or other aspects of the Consent Scheme to the effect that flat purchasers would be entitled to full legal ownership of their flats after completion, once they had paid up the purchase price. The Administration would, with due regard to Mr CHAN Kam-lam's views, continue to examine with the relevant bodies the feasibility and legal effectiveness of this suggestion and any other safeguards.

Release of money held in the stakeholder's account

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12. Referring to paragraph 20 of the paper, Mr TAM Yiu-chung noted that the sale proceeds paid by flat purchasers were held by the developer's solicitor in an independent stakeholder's account and that the Administration would consult the relevant professional bodies on the suggestion of appointing an independent trust company as stakeholder to hold the sale proceeds as a trustee. To provide additional safeguard, Mr TAM requested the Administration to consider the Democratic Alliance for Betterment of Hong Kong's suggestion that the sale proceeds kept in the trust account could only be used as security for the relevant building mortgage, but not for other purposes. He undertook to provide further details of the suggestion to the Administration. Mr James TIEN considered that the release of the sales proceeds from the account should be restricted. SHPL agreed to consider the above suggestions.

Conflict of interests

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13. Mr TAM Yiu-chung, Mr Howard YOUNG, Ms Audrey EU and Mr James TIEN urged for the improvement of the Consent Scheme to enhance the transparency of the Scheme and to avoid conflict of interest of the parties concerned (including the developers, Authorized Person (AP) and solicitors). Referring to paragraph 19 of the paper, SHPL advised that the Administration was considering a possible option under which the parties concerned would be required to declare any interest in the company involved in the development project. The Administration would further consult the relevant professional bodies on this suggestion and other possible measures to minimize risk of fraud in the existing system. Mr TIEN considered that apart from declaration of interest, an officer or a shareholder of a development company and their family members should not be allowed to act as the AP of the company's projects or act as the solicitor holding the stakeholder's account. SHPL agreed to consider this suggestion.

14. Mr Abraham SHEK however considered that if the professionals failed to act properly in the sale of uncompleted flats, the relevant professional indemnity schemes

should be responsible for compensating flat purchasers for their loss. In this regard, Ms Audrey EU pointed out that loss caused by fraud was not covered by solicitors' indemnity schemes. Mr SHEK then proposed that the relevant indemnity schemes could be expanded to cover fraud.

Other problems that needed to be addressed

15. Mr Albert CHAN pointed out that the standard form of ASP under the Consent Scheme provided little protection for flat purchasers and the terms therein were extremely unfair to flat purchasers as exemplified by the following -

- (a) The same solicitor appointed by the developer represented both flat purchasers and the developer. The flat purchasers concerned were required by the solicitor to sign a document agreeing that in case conflicts arose between the purchaser and the vendor, the solicitor who was also representing the vendor would not be able to protect the purchaser's interest. This arrangement was unfair to flat purchasers. To rectify the situation, developers and flat purchasers should have their own legal representatives.
- (b) After paying the purchase price, flat purchasers had no right to check how the sum of money would be/had been used or the progress of the development. Even if they asked for such information, the developer would not accede to their request. To rectify the situation, a fund should be established for keeping the sum of money and flat purchasers should be allowed to have access to information on how the sum would be/had been used. For example, the developer might be required to provide the purchasers with regular reports in this aspect.
- (c) The developer had no obligation to directly inform flat purchasers of any delay in the completion of the development and could refuse to explain the reasons therefor. Since the period for raising objection to the delay (such as by rescinding the relevant ASP) was only 28 days from the AP's estimated date of completion of the development provided in the ASP or any extended date, and the above 28-day period could not be extended, the flat purchasers would on most occasions be unable to raise any objection to completion delay, which could be unduly long owing to insufficient restrictions thereon.
- (d) Flat purchasers were allowed to inspect their flats only upon payment of the remaining purchase price within two weeks from completion of the development. Since the purchasers had already paid the full purchase price, they would have to accept the flats even if the flats were in poor conditions.

Admin

16. In view of the above, Mr Albert CHAN pointed out that flat purchasers had been put in a very disadvantageous position. He urged the Administration to take the opportunity of the review of the Consent Scheme to rectify the above problems so as to effect a long-overdue comprehensive overhaul of the Scheme. While pointing out that the above problems were not directly related to the Consent Scheme, SHPL agreed to examine the problems outside the context of the Review. Mr CHAN maintained his view that the problems were related to the Consent Scheme, and urged the Administration to cover them in the review.

Admin

17. Mr James TO Kun-sun and Ms Audrey EU expressed their full support for Mr Albert CHAN's views stated in paragraphs 15 and 16 above. SHPL still considered it more appropriate to address the problems stated in paragraph 15 above outside the context of the Review. Upset by SHPL's reply, Mr TO interrupted and queried whether SHPL was aware of the problems arising from the operation of the Consent Scheme. SHPL asked for the Chairman's ruling on whether such an interruption was allowed. The Chairman advised in the negative and requested SHPL to continue with his reply. SHPL pointed out that the Administration was aware of the problems of the Consent Scheme, and had been making efforts to identify the best solutions to address the problems. In fact, the Consent Scheme had been refined from time to time as and when necessary. He assured members that the Administration would take into consideration all views expressed by Members at this meeting and examine the problems identified.

Admin

18. Ms Audrey EU suggested the Administration to make reference to the existing system in Guangzhou, where consent for sale of uncompleted flats would not be approved until two-thirds of the building had been constructed, as opposed to the current practice in Hong Kong of approving consent for pre-sale once the developer had obtained the consent of the Building Authority to commence building works. SHPL agreed to make reference to the relevant system implemented in Guangzhou.

Duration of the review

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19. Ms Audrey EU, Mr Albert HO and Mr James TO were concerned about how long it would take for the Administration to complete the review of the Consent Scheme. SHPL undertook to complete the review as soon as practicable, i.e. in a few months' time. In response to the Chairman, SHPL also agreed to provide progress reports on the Review for the Panel's consideration.

Interim measures

20. Ms Audrey EU enquired about the measures that could be taken pending completion of the review of the Consent Scheme. In this regard, Mr Albert HO urged the Administration to stop approving consents for pre-sale of uncompleted flats as an interim measure. Mr James TO supported his view.

21. Mr Abraham SHEK opposed to the proposed suspension of the Consent Scheme on grounds that the Consent Scheme per se was not to be blamed for the two cases. Mr James TIEN was concerned that suspension of the Consent Scheme might result in monopoly of the property market by a few large developers who were in a financially strong position and did not need to receive money in advance of flat completion to finance the development projects.

22. SHPL pointed out that as a result of the two cases, the Legal Advisory and Conveyancing Office (LACO) of Lands D had already taken the initiative to write to the developers of the 44 developments that were currently covered by the Consent Scheme and 17 developments for which applications were being processed to ask them to provide updates on the documents submitted in support of their applications for pre-sale consent. The Administration would continue to monitor the developments closely and there was no need to stop approving pre-sale consents.

23. To minimize the risk of fraud in the existing system, Mr James TO requested the Administration to provide before the conclusion of the review the names of the various parties (including the developers, solicitors and APs) involved in individual residential property developments once consents for pre-sale of uncompleted flats had been approved. SHPL agreed to provide such information subject to legal advice.

(Post-meeting note: Members were informed of the Administration's response to the request in paragraph 23 above vide LC Paper No. CB(1)2266/02-03 on 23 July 2003.)

Assistance to the affected purchasers in the two cases

24. Mr CHAN Kam-lam opined that the Administration should render assistance to the affected purchasers in the two cases in getting title to their units. In response, SHPL stressed that the remedies available to the purchasers would hinge on the terms of the relevant preliminary ASPs and mortgage agreements. The affected purchasers might consider taking actions to ensure that the parties concerned would fulfil their obligations under the ASPs. The Government had a limited role to play in these contractual disputes.

25. Mr Albert HO and Mr Albert CHAN did not accept that the Government had a limited role to play in the two cases. Mr HO was concerned whether there was any party willing to inject funds to undertake the outstanding works in the two cases, in particular The Aegean. This was because with only one-third of its works completed, it was very unlikely that The Aegean would be completed before its Building Covenant Period expired at the end of 2003. In other words, any developer taking over it would have to pay premium to the Government for extending the Building Covenant Period. Mr HO requested the Administration to consider waiving the premium. Mr HO and Mr TAM Yiu-chung enquired whether the Government would

ensure that the outstanding works of the two cases would be completed up to the required standard.

26. SHPL advised that the Government adopted a prudent approach and refrained from intervening in private disputes. However, the Administration would address the areas of concern as highlighted in the two cases. He assured members that the Administration was closely working with the relevant parties and would take Members' views into due consideration.

27. Mr Albert HO was not convinced that the Government should refrain from intervening in private disputes. Quoting the CA Pacific incident in 1998 as an example, Mr HO considered that the Government should play a more active role in the two cases which were partly caused by loopholes in the existing system and had wide implications. He urged the Administration, especially LACO, to assist the affected purchasers.

28. The Director of Lands pointed out that the Consumer Council (CC) was also actively following up the two cases. However, as stated in the editorial of the June issue of CC's official publication "Choice", owing to the different payment and mortgage methods and transaction dates involved in the two cases, CC was still examining the varied circumstances of individual affected purchasers. This indicated that time was required for examining individual purchasers' circumstances before any form of assistance could be worked out.

Admin 29. As to whether the premium for extending the Building Covenant Period of the two cases should be waived, SHPL assured members that the issue would be handled as appropriate in due course. Mr Abraham SHEK considered that an early indication by the Administration in this regard would clear any uncertainty about the developments concerned so as to encourage interested developers to take over the projects. In response, SHPL explained that in deciding whether to waive the premium, regard had to be given to the latest developments. Hence a decision could not be made before the end of 2003, i.e., expiry of the Building Covenant Period.

Other concerns

30. Mr Howard YOUNG highlighted the two main modes of payment of the purchase price, namely, down payment of 10% of the purchase price to be immediately followed by payment of the balance, and down payment of 30% of the purchase price followed by payment of the balance upon completion of the developments concerned. In his view, flat purchasers adopting the former payment mode would be more vulnerable to total loss should the development project fail. He enquired whether the Administration would assess the risks of the above two payment methods and impose restrictions as necessary to better protect flat purchasers. In reply, SHPL told Members that the review of the Consent Scheme aimed, among other

things, to facilitate flat purchasers to obtain legal ownership of their units once they had paid up the purchase price.

31. Mr LAU Ping-cheung was concerned how the protection for flat purchasers could be enhanced in the following circumstances:

- (a) That because of the falling property market the sale proceeds fell short of repaying the building mortgage concerned; and
- (b) That because the development could not be completed due to financial problems of the developer concerned, the mortgagee bank under the building mortgage had difficulty in releasing the units from its security to enable ownership to be assigned to the flat purchasers concerned upon full receipt of the purchase price.

32. In reply, SHPL remarked that developers should not work on so tight a budget as to place themselves in the above situations. He however pointed out that there were a number of measures the developer could resort to for financial relief to prevent their projects from failing, such as sale of other assets to raise money. In this regard, Mr Albert HO suggested that the developer be required to obtain a bank guarantee to ensure the completion of the property should he face financial problems. In response, SHPL said that the proposal would incur higher development costs and hence would need to be examined carefully.

33. Mr LAU Ping-cheung enquired about the protection available to flat purchasers under the Non-Consent Scheme. In reply, SHPL and the Assistant Director/Legal (Hong Kong & Headquarters) (Acting), Lands D explained that Non-Consent Scheme applied to the developments in which the lease conditions did not prohibit alienation before compliance with all the conditions in the lease. Although the pre-sale of units in this kind of developments did not fall within the scope of the Consent Scheme, the Law Society of Hong Kong had developed the Non-Consent Scheme with a view to protecting purchasers of the units of such uncompleted developments. The protection for flat purchasers under the Non-Consent Scheme was therefore similar to that under the Consent Scheme.

Way forward

34. Mr Albert HO proposed that a subcommittee be set up under the Panel on Planning, Lands and Works and the Panel on Housing to address the problems of the Consent Scheme with the Administration and CC. Mr Albert CHAN supported the proposal and said that the terms of the standard form of ASP should be examined in this context.

35. In the absence of a quorum, the Chairman directed that the way forward should be considered by the two Panels when the report of the review was available.

III. Any other business

36. There being no other business, the meeting ended at 10:30 am.

Council Business Division 1
Legislative Council Secretariat
11 August 2003