

立法會
Legislative Council

LC Paper No. CB(1)1877/04-05
(These minutes have been seen
by the Administration)

Ref : CB1/PL/PLW/1

Panel on Planning, Lands and Works

Minutes of meeting
held on Tuesday, 24 May 2005, at 3:45 pm
in the Chamber of the Legislative Council Building

Members present : Hon LAU Wong-fat, GBS, JP (Chairman)
Hon Patrick LAU Sau-shing, SBS, JP (Deputy Chairman)
Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
Hon James TO Kun-sun
Hon WONG Yung-kan, JP
Hon CHOY So-yuk
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Albert CHAN Wai-yip
Hon LEE Wing-tat
Hon LI Kwok-ying, MH
Hon Alan LEONG Kah-kit, SC
Hon CHEUNG Hok-ming, SBS, JP

Member absent : Hon Daniel LAM Wai-keung, BBS, JP

Public officers attending : **Agenda item IV**

Mr Thomas TSO
Deputy Secretary for Housing, Planning and Lands
(Planning & Lands) 1

Miss Diane WONG
Principal Assistant Secretary for Housing, Planning and
Lands (Planning & Lands) 1

Miss WONG Yuet-wah
Assistant Secretary for Housing, Planning and Lands
(Planning & Lands) (Lands) 1

Mr A L ROBERTSON
Assistant Director/Legal/Kowloon & Land Supply
(Legal Advisory and Conveyancing Office/Headquarters)
Lands Department

Mr Simon YU
Assistant Director (Estate Management)
Lands Department

Mrs Alice LEE
Registry Manager
Land Registry

Ms Teresa WONG
Deputy Principal Solicitor
Land Registry

Clerk in attendance : Miss Odelia LEUNG
Chief Council Secretary (1)4

Staff in attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Ms Sarah YUEN
Senior Council Secretary (1)6

Ms Christina SHIU
Legislative Assistant

Action

- I Confirmation of minutes**
(LC Paper No. CB(1)1566/04-05 -- Minutes of special meeting on
21 January 2005
LC Paper No. CB(1)1567/04-05 -- Minutes of meeting on
26 April 2005

The minutes of the meetings held on 21 January and 26 April 2005 respectively were confirmed.

II Information papers issued since last meeting

- (LC Paper No. CB(1)1381/04-05(01) -- Memorandum dated 15 April 2005 referring to the Panel views expressed by Sai Kung District Council members at the meeting with Legislative Council Members on 7 April 2005 on South East New Territories Development Strategy Review
- LC Paper No. CB(1)1397/04-05(01) -- Submission from the Environmental Group of the Tung Chung Crescent Owners' Committee on Concept Plan for Lantau
- LC Paper No. CB(1)1416/04-05(01) -- Memorandum dated 28 April 2005 referring to the Panel views expressed by Southern District Council members at the meeting with Legislative Council Members on 7 April 2005 on three projects
- LC Paper No. CB(1)1447/04-05(01) -- Memorandum dated 3 May 2005 referring to the Panel issues raised by Heung Yee Kuk Councillors at their meeting with Legislative Council Members on 25 January 2005
- LC Paper No. CB(1)1453/04-05(01) -- Memorandum dated 14 April 2005 referring to the Panel issues raised by Islands District Council members at the meeting with Legislative Council Members on 3 February 2005 on Concept Plan for Lantau
- LC Paper No. CB(1)1454/04-05(01) -- Memorandum dated 14 April 2005 referring to the Panel views expressed by Islands District Council members at the meeting with Legislative Council Members on 3 February 2005 on the proposed government-cum-commercial heliport in Wan Chai

- LC Paper No. CB(1)1489/04-05(01) -- Memorandum dated 21 April 2005 referring to the Panel concerns raised by the Tai O Residents' Rights Concern Group at the meeting with Legislative Council Members on 31 March 2005 on the likely construction of Container Terminal No. 10 off Tai O
- LC Paper No. CB(1)1531/04-05(01) -- Administration's response to the views expressed by Sai Kung District Council members at the meeting with Legislative Council Members on 7 April 2005 on South East New Territories Development Strategy Review
- LC Paper No. CB(1)1552/04-05(01) -- Information paper on 174WC - Replacement and Rehabilitation of Water Mains, Stage 1 Phase 2
- LC Paper No. CB(1)1559/04-05(01) -- Information paper on Proposed Amendments to the Building (Planning) Regulations – Clarification on the Criteria of Street for Site Classification Purpose
- LC Paper No. CB(1)1560/04-05(01) -- Information paper on Proposed Amendments to the Technical Memorandum for Supervision Plans under the Buildings Ordinance
- LC Paper No. CB(1)1573/04-05(01) -- Information paper on 244WF – Water Supply to Sha Tin Development Area 56A
- LC Paper No. CB(1)1612/04-05(01) -- Minutes of the meeting between Sai Kung District Council members and Legislative Council Members on 7 April 2005)

2. Members noted the above information papers issued since the last monthly regular meeting of the Panel on 26 April 2005.

III Items for discussion at the next meeting

(LC Paper No. CB(1)1565/04-05(01) -- List of outstanding items for discussion

LC Paper No. CB(1)1565/04-05(02) -- List of follow-up actions)

3. Members agreed to discuss the following items at the next regular meeting scheduled for 28 June 2005:

(a) Wan Chai Development Phase II Review – Harbour-front Enhancement Review -- Wan Chai and Adjoining Areas : A Public Engagement Exercise;

(b) South East Kowloon Development; and

(c) Review on the policy to handle major unauthorized building works on agricultural lots in the New Territories (NT).

Having considered that there would be three discussion items, members agreed to extend the regular meeting by half an hour.

IV Missing Leases

(LC Paper No. CB(1)1565/04-05(03) -- Information paper provided by the Administration

LC Paper No. CB(1)1565/04-05(04) -- Background brief on “Missing Government leases” prepared by the Legislative Council Secretariat)

4. The Deputy Secretary for Housing, Planning and Lands (Planning & Lands)1 (DS/HPL(P&L)1) briefed members on the Administration’s paper. With the aid of power-point, the Principal Assistant Secretary for Housing, Planning and Lands (Planning & Lands)1 (PAS/HPL(P&L)1) briefed members on the proposed legislation for the reconstitution of missing or illegible Government leases and related land documents (the proposed legislation).

(Post-meeting note: The hard copy of the power-point presentation was circulated to members vide LC Paper No. CB(1)1637/04-05(01) on 25 May 2005.)

5. Members in general welcomed the proposed legislation.

Automatic reconstitution

6. Mr Alan LEONG Kah-kit suggested that instead of by application as proposed, the Administration might consider reconstituting through an automatic

reconstitution mechanism missing or illegible Block Government Leases (BGLs) that should have been automatically reconstituted had they been identified before enactment of the proposed legislation. This could be achieved by way of a schedule to the proposed legislation which listed out identified missing or illegible BGLs. As the schedule would be a subsidiary legislation, amendment by negative vetting would be easier. DS/HPL(P&L)1 thanked him for his proposal and said that the Administration would examine it further.

7. Mr CHEUNG Hok-ming noted that under the automatic reconstitution mechanism, if a Government lease in its paper form as deposited in the LR was illegible or was missing and the Land Registry (LR) had a microfilm or image legible copy of that lease, the proposed legislation would empower the LR to reconstitute the lease in the terms and conditions of the copy held by LR. In this regard, he enquired about how discrepancy, if any, between LR's copy and the information in the possession of the owner concerned would be handled.

8. The Assistant Director/Legal/Kowloon & Land Supply (Legal Advisory and Conveyancing Office/Headquarters), Lands Department (AD of L/L (K & LS)) responded that in the very unlikely event that such reconstitutions did result in reconstitutions different from the original and the owner suffered loss or damage, the proposed legislation would contain a right for the owner(s) to claim compensation from the Government.

9. PAS/HPL(P&L)1 added that in respect of reconstructed leases, the proposed legislation would provide for further reconstitution of them. The procedures for these further reconstitutions would be similar to those for reconstitution upon application. Under the contemplated objection and appeal procedures, holders of registered interests could state their objections to the reconstitution to the Director of Lands (the Director), and further to the Lands Tribunal or higher court if they were not satisfied with the Director's determination. Noting that the appeal would need to be made within a certain period, Mr CHEUNG commented that to accord better protection for land owners, no deadline should be set for appeal because many of them were residing overseas and might not be made aware of the reconstitution of their leases in time to file appeals.

Reconstitution by application

10. Mr Alan LEONG noted that in the case of missing or illegible leases copies of which in the LR were also illegible or missing, the owners concerned could still seek reconstitution by application if their names could be found in the LR. In this regard, he enquired whether the Administration had considered the feasibility of reconstituting such missing or illegible leases on the basis of the terms and conditions of the leases of neighbouring lots issued in the same period.

11. In response, DS/HPL(P&L)1 confirmed that the Administration was thinking of an approach along the line suggested by Mr LEONG. In this regard,

consideration was being given to whether the relevant timing, location or type should be the criterion for selecting the leases or Gazette Notices to be used as the basis of reconstitution. However, such reference materials might not always be available. The owners concerned might also not agree to the approach. As such, an appeal mechanism would be provided in the proposed legislation.

12. Addressing Mr LI Kwok-ying's concern about difficulties in finding proofs to support applications for reconstitution, DS/HPL(P&L)1 said that the approach highlighted in the above two paragraphs could be adopted in overcoming such difficulties. He further assured members that the Government had a complete copy of the Block Crown Leases (referred to as BGLs after July 1997) issued in around 1905 which were substantially in the same terms and were in only two forms, namely, standard form and taxlord form. Subsequent leases granted in the NT were also mostly issued subject to the terms and conditions in Government Gazette Notices prevailing at the time with relatively few conditions specific to each lease. AD of L/L (K&LS) supplemented that in the event that all relevant references were incomplete and illegible, the Administration could still determine the terms to be reconstituted on the basis of the nature of the lease concerned and when it was issued, and any evidence the Director might have in his possession. The intention of the proposed legislation was to reconstitute as many leases as possible.

13. Mr Albert CHAN Wai-yip expressed concern about how fraud cases could be detected. AD of L/L (K & LS) said that only those persons registered with LR would be entitled to apply for reconstitution. Moreover, the proposed legislation intended to provide a mechanism for reconstituting the terms and conditions of Government leases and related land documents and not for establishing ownership of land.

14. Mr James TO Kun-sun opined that in regard to reconstitution by application, there should not be a prerequisite that the applicants were holders of interests registered with the LR. He considered that applications for reconstitution should be granted whenever the authenticity of ownership could be proved. He then enquired about who bore the onus to satisfy the Director as to the terms and conditions of a lease to be reconstituted, and whether a mutual discovery approach would be adopted under which both the Government and the owner concerned revealed the information they had for the purpose of reconstitution. He also asked whether a lenient approach would be adopted when reconstituting terms which were illegible, so that a statutory waiver of Government's right as lessor would be provided in respect of pre-existing breaches of the terms and conditions of the reconstituted lease.

15. In response, DS/HPL(P&L)1 elaborated that first of all, ownership of the land concerned should have been registered in LR. The owner then needed to file an application for reconstitution with proofs of his title and proofs of terms (which were in his possession) of the original lease. Such proofs would be checked against those held by the Administration. Should there be discrepancy, objective

comparable references such as similar leases would be used to determine the terms and conditions to be reconstituted. If the owner was aggrieved by the reconstituted terms, he could file an appeal as stated in paragraph 9 above. The reconstituted terms would be taken as the basis for approving development proposals. Before development approval was given, the Administration had to check if there were any restrictions on development in the relevant leases. Moreover, other than lease conditions, development was also subject to planning and building controls. Mr James TO however pointed out that the owner concerned might evade the above controls, for example if his land lay in exempted areas.

Other views and concerns

16. The Chairman and Mr Albert CHAN asked whether and when legislative proposals would be introduced to ensure conveyancing was still possible even if the relevant lease was missing or illegible and there was no record whatsoever of it in LR. Mr CHAN also requested estimates of the number of such cases so as to size up the problem in relation to this type of missing leases. In reply, DS/HPL(P&L)1 advised that these kinds of problems would be tackled at a later stage. He further explained that there was difficulty in providing the requested estimate because of the absence of records of those cases.

17. The Chairman referred to the fire that broke out at the Tai Po District Office many years ago and destroyed many leases, and enquired how owners concerned could prove their ownership. In reply, DS/HPL(P&L)1 pointed out that since the majority of private land in the NT was covered by Block Crown Leases, which were issued by the Government, there should be records of their ownership in LR. Even in the absence of such records, if the owners concerned could produce other proofs, their cases would be properly followed up.

V Any other business

18. There being no other business, the meeting ended at 4:45 pm.