

**立法會**  
**Legislative Council**

LC Paper No. CB(1)2323/07-08  
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by the Administration)

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**Panel on Development**

**Minutes of special meeting  
held on Friday, 18 July 2008, at 3:15 pm  
in the Chamber of the Legislative Council Building**

- Members present** : Hon LAU Wong-fat, GBM, GBS, JP (Chairman)  
Prof Hon Patrick LAU Sau-shing, SBS, JP (Deputy Chairman)  
Hon James TIEN Pei-chun, GBS, JP  
Hon Albert HO Chun-yan  
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP  
Hon James TO Kun-sun  
Hon CHAN Kam-lam, SBS, JP  
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP  
Dr Hon Philip WONG Yu-hong, GBS  
Hon Miriam LAU Kin-ye, GBS, JP  
Hon CHOY So-yuk, JP  
Hon Timothy FOK Tsun-ting, GBS, JP  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon Albert CHAN Wai-yip  
Hon LEE Wing-tat  
Hon Daniel LAM Wai-keung, SBS, JP  
Hon Alan LEONG Kah-kit, SC  
Dr Hon KWOK Ka-ki
- Members attending** : Hon CHAN Yuen-han, SBS, JP  
Dr Hon YEUNG Sum, JP  
Hon LEUNG Kwok-hung
- Member absent** : Hon CHEUNG Hok-ming, SBS, JP

**Public officers attending : Agenda item I**

Mrs Carrie LAM  
Secretary for Development

Mrs Susan MAK  
Deputy Secretary for Development  
(Planning & Lands) 1

Mrs Ava NG  
Director of Planning

Miss Annie TAM  
Director of Lands

Mr CHEUNG Hau-wai  
Director of Buildings

**Clerk in attendance :** Ms Anita SIT  
Chief Council Secretary (1)4

**Staff in attendance :** Mr WONG Siu-yee  
Senior Council Secretary (1)7

Ms Christina SHIU  
Legislative Assistant (1)7

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Action

**I Issues relating to lease modification, land exchange and Comprehensive Development Areas**

(LC Paper No. CB(1)1371/07-08(01) -- Letter dated 22 April 2008 from Hon LEE Wing-tat on "Planning and land lease arrangements regarding the private residential development and the provision of a theme park on Ma Wan"

LC Paper No. CB(1)1668/07-08(01) -- Administration's response to the letter dated 22 April 2008 from Hon LEE Wing-tat (LC Paper No. CB(1)1371/07-08(01)) on "Planning and land lease

- arrangements regarding the private residential development and the provision of a theme park on Ma Wan"
- LC Paper No. CB(1)1650/07-08(01) -- Letter dated 23 May 2008 from Hon Albert HO Chun-yan, Hon LEE Wing-tat and Dr Hon YEUNG Sum in relation to the Mega Tower Hotel project
- LC Paper No. CB(1)1985/07-08(01) -- Letter dated 19 June 2008 from Hon LEE Wing-tat
- LC Paper No. CB(1)2165/07-08(01) -- Information paper provided by the Administration
- LC Paper No. CB(1)2195/07-08(01) -- Press release dated 17 July 2008 on Ma Wan Park)

The Secretary for Development (SDEV) said that at Members' request, the Administration had provided information on the land exchange cases at Ma Wan Island, Kennedy Road in Wan Chai and Garden Road in Central in the annexes to its paper (LC Paper No. CB(1)2165/07-08(01)). The Administration had also issued a press release on 17 July 2008 in relation to the agreement reached by the Administration and the developer on the future arrangements for the Ma Wan Park (MWP).

2. Dr YEUNG Sum said that the Administration had no legal or moral obligation to grant approval for the land exchange application submitted by developer of the Mega Tower Hotel Development (the MTHD). The Administration should not only consider the revenue from land exchange, but also the social costs. As the public's aspirations on environmental quality had completely changed, the Administration should respond to changing circumstances and demands and seriously review the necessity of granting land exchange for the MTHD. The MTHD would increase development density, affect traffic flow, block the view to the ridgeline on Hong Kong Island and could become a time bomb in society. While he supported the land exchange in the case of King Yin Lei on account of heritage conservation, he and the Democratic Party objected to the land exchange application for the MTHD because the land exchange would enable the developer to build a 93-storey hotel development. He was not opposed to a hotel development per se, but opposed to a 93-storey hotel development.

3. SDEV responded that the Administration was aware of the public's aspirations on better living environment. Government policies would be amended to meet those aspirations even if so doing would meet with oppositions, as could be witnessed by measures such as conducting a review of the existing Outline Zoning Plans to impose building height restrictions. For individual development projects approved based on the then prevailing policy, the Administration should

respect the rights and honour the legitimate expectation of the developer concerned even though the Administration had no contractual obligation to grant land exchange. Some members of the public had expressed support for the development because it would bring vibrancy to Wan Chai. The MTHD had to meet requirements relating to road enhancement works and the land exchange application had to be considered in this context.

4. Mr Albert HO said that court cases had demonstrated that applicants for land exchange would not be granted leave for judicial review against the Government for its decisions on land exchange. In lease modification and land exchange cases, the Government was acting in the role as a private landlord and thus no judicial review would be allowed. If a development scheme had been approved for over 10 years without being implemented, the developer concerned, even if its acts might have relied on a certain Government policy, should not have grievances against the Government because the aspirations of society and the circumstances had changed substantially.

5. In response, SDEV said that although the courts had reaffirmed the Government's role as a private landlord in cases relating to lease modification or land exchange, the developer concerned had indeed relied on an understanding of the Government's policy. Whether or not the understanding could constitute a cause for legal action remained to be seen. It was her responsibility to inform Members of the possibility that the Government could be challenged legally.

6. Mr LEUNG Kwok-hung said that the issues before the Administration were whether the benefits of the developer or the nearby residents were more important and where the balance should be struck. He further pointed out that the problems of the Town Planning Board (TPB) reflected the inadequacy of the Administration because TPB's chairman was a civil servant and thus the Administration could exert much influence on TPB.

7. In response, SDEV said that the Administration had to be perseverant in the implementation of its policy and honour past cases handled in accordance with its policies. The land exchange policy would keep up with the times and the highest possible level of transparency would be maintained. In response to TPB's concern about traffic flow and road enhancement works relating to the MHTD, which had been approved by TPB in 1994, the Administration had consulted the Wan Chai District Council during the past two months on whether to gazette the road enhancement works and provided further information to facilitate its consideration of the matter.

8. Mr Abraham SHEK expressed support for the land exchange concept and said that the developer of the MTHD had been making efforts to take forward the project for more than 20 years. Developments in Wan Chai would create employment opportunities, economic benefits and development potentials. "Black-box" operation was impossible because the Administration was monitored

by developers and the public. The Administration should respect the contractual spirit and strike a balance between development and conservation.

9. From the procedural, economic and policy perspectives, Mr Albert CHAN considered that the Cheung Kong Center project was most unacceptable because for such a prime site in the central business district, it was unreasonable for the Administration to grant land exchange to the developer concerned without going through an open tender process. It might also be *ultra vires* for the developer to manage the pavement and vehicular access near the site. Although the developer had paid a premium for the land exchange, the premium based on the valuation conducted by the Lands Department was much lower than that for open tender. He pointed out that changing the use of agricultural lots in the New Territories in areas such as Tin Shui Wai was important for development and creation of job opportunities, but there should be objective criteria and proof of public interest in granting land exchange. He asked whether the Administration would review the land exchange policy to make it more transparent and acceptable to the public.

10. In response, SDEV explained that the land exchange policy was necessary, otherwise conservation of private heritage buildings and nature conservation would have been much more difficult. The land exchange arrangement for King Yin Lei was a good example. Though the arrangement had yet to be approved by the Executive Council, response from the community so far had been very supportive. She hoped that Members would not consider throwing away a rational policy because of the circumstances arising from a few individual cases in the past. She said that the crux was for the Administration to further enhance transparency in implementing the land exchange policy. As regards the Cheung Kong Center project, the Administration's reply to a Legislative Council question in 1996 and documents submitted to the relevant Panel had explained why the land exchange had been granted on account of public interest.

11. Expressing disagreement, Mr LEUNG Kwok-hung said that he could not see how public interest was served in the Cheung Kong Center project. Although land exchange might be necessary in some cases, the crux was that the process lacked transparency and the premium paid by the developer concerned was on the low side. There was no way to ensure protection of public interest in the process.

12. The Director of Lands (D of L) responded that for any land transaction, professional staff of the Lands Department would conduct valuation by applying established professional practices. Valuation meetings would be held and the premium assessed would be compared with the premiums of comparable lots. The developer concerned could also request to review the appropriateness of the valuation. In general, professionals in the market did not consider that the valuations conducted by the Lands Department were lower than those expected by the market. The premiums paid by the developers were made public.

13. Mr Abraham SHEK pointed out that the developer of the Cheung Kong Center had paid a market value premium of more than \$3 billion, which was very substantial at that time, and a large park was provided at the development for public use.

14. For the Ma Wan Island development, Mr CHAN Kam-lam said that the media gave the public an impression that the developer concerned was prompt in completing its profitable residential developments but slack in implementing the MWP for public use. Noting that Phase 1 of the MWP was in progress but Phase 2 and the necessary land resumption had not yet commenced, he considered it undesirable and requested the Administration to elaborate on the progress of implementing the MWP. As the land owner of a very large site near the MWP planned to develop facilities such as a hotel at that site, he urged the Administration to coordinate with all parties concerned so as to achieve the best outcome.

15. In response, SDEV explained that the Master Layout Plan for the Ma Wan Island development was approved in 1994 and the Administration signed the Heads of Agreement with the developer concerned in 1997. The developer subsequently proposed and TPB approved changes to the theme of the MWP because its original concept was similar to that of the Hong Kong Disneyland project announced in 1999. The progress of the MWP was thus slower than as originally envisaged. For Phase 1 of the MWP, "Nature Garden" had been completed and "Noah's Ark" was expected to be completed by the end of 2008. The completion date for "Solar Tower" would be within two years after the gazetting of the revised road scheme. Phase 2 of the MWP was more complicated because resumption of private land was required. Although the Heads of Agreement did not specify a pre-determined timetable for completion, the Administration would work closely with the developer in taking the project forward. In doing so, the developer would consult the local community, including the Tsuen Wan District Council, on Phase 2 of the MWP. As regards the coordination of various developments on Ma Wan Island, the Administration would not intervene in private dealings between different parties. Nevertheless, if other land owners had development projects approved by the TPB, the Administration would coordinate the processing of land matters.

16. As the Hong Kong Disneyland project was announced in 1999, Mr Alan LEONG commented that it should not have much effect on the implementation of the MWP. He sought further explanation on the delay in completing Phase 1 of the MWP, and on the execution of the clauses of the Heads of Agreement, in particular Clause 5.04. He further said that the Administration should as far as possible make public the criteria used by various departments in handling land administration matters.

17. In response, SDEV explained that the revision of the theme of the MWP to minimize the overlap in the concept with the Hong Kong Disneyland and to conserve nature and the need to go through statutory town planning procedures

necessitated the extension of the completion date of Phase 1. Throughout the process, the Lands Department had enforced the clauses of the Heads of Agreement and discussed with the developer concerned whenever required. The criteria used by various departments were laid down in practice notes which had been made public.

18. Mr LEE Wing-tat commented that profitable residential items on Ma Wan Island were completed swiftly but many other facilities for public use remained uncompleted. He queried why it was possible for the developer to obtain additional land by exchanging agricultural lots with building lots and whether it was in the public interest to gazette a revised road scheme. He had an impression that whether the required road works would be carried out was manipulated by the Administration and the developer rather than based on public interest. He was worried that the completion date for "Solar Tower" would remain uncertain because it could take many years before the Administration gazetted the revised road scheme. Although land exchange might have merits, he found it hard to accept such an arrangement for providing public facilities unless the Legislative Council had a higher degree of participation. As regards the \$400 million interest accrued on the unexpended balance of the MWP construction cost, he asked how it would be disposed of.

19. In response, SDEV explained that the developer had returned 95 062 square metres of land to the Government in exchange for 126 500 square metres. The change of land use and the area difference involved in the land exchange had been reflected in the market value premium paid by the developer. If the change of land use by paying premium was disallowed, worthy developments including revitalization of old industrial areas would not proceed. Gazetting of road works and revision of road schemes were based on whether there was a transport need. The timing for completion of the "Solar Tower" would be affected by the revised road scheme and the developer expected that "Solar Tower" would be completed within two years following the authorization of the revised road scheme. The non-governmental organization for managing the "Solar Tower" had already been selected. The \$400 million interest would not be credited into the sinking fund for the maintenance, repair and improvement of the MWP. The amount to be credited into the Treasury would depend on the amount of funds required for Phase 2 of the MWP.

20. Mr Albert HO said that the deduction of some \$2 billion construction costs for the MWP from the premium paid by the developer concerned had the *de facto* effect of bypassing the procedure of seeking funding approval from the Legislative Council. There were no vetting of the details of the proposal by the Legislative Council and no monitoring by the Administration to ensure that the developer would not reap huge profits by awarding works contracts to its subsidiary companies. Similarly, the Administration had forfeited some \$800 million dividend for the MTR Corporation Limited to construct the Disneyland Resort Line. Such arrangements circumvented the Legislative Council's power to approve public expenditure and thus were in breach of the Basic Law. The

Administration should ensure that it would not act *ultra vires*. Otherwise, the Democratic Party would take the matter to the courts. He urged the Administration to make public the accounts relating to the MWP.

21. SDEV said that the Lands Department had been monitoring the MWP project in accordance with the Heads of Agreement. She would bring to the Administration's attention Mr Albert HO's views on issues relating to public finances and the funding of public facilities in private developments. D of L added that according to Clause 5.07 of the Heads of Agreement, the developer concerned had to submit its accounts on costs and expenditure on the MWP project to the Government. A firm of certified public accounts (CPA) of international reputation had been appointed to audit the accounts. To assist the CPA to verify the reasonableness of the construction costs, an independent Quantity Surveyor (QS) had been engaged to carry out Valuation Reports on construction costs. The CPA's report was prepared solely to assist the developer to comply with the clause 5.07 of the Heads of Agreement. The Administration had to seek the consent of the CPA if the accounts were to be made public. The accounts would contain detailed information such as expenditures and awarding of works contracts.

22. Ms Miriam LAU said that after having read the Administration's documents, she found the land exchange arrangements for the Ma Wan Island development acceptable. Using private resources for public works projects was a common practice before 1997 and the provision of public facilities by developers in exchange for deduction in premium followed a similar line of reasoning. As agricultural lots and building lots would attract different premiums, land exchange with a market value premium was a fair deal and she found the concept and the relevant criteria acceptable. She believed that the public would not object to the provision of public facilities by private developers. The MWP, with facilities based on a theme of nature, was much sought after by the public. She expressed support for such a theme to avoid duplication with that of the Hong Kong Disneyland. The approach in implementing the MWP was quite innovative because there would be public involvement in the management of the MWP and a sinking fund. Noting that the construction of the "Solar Tower" would depend on the authorization of the revised road scheme, she enquired about the Administration's work plan. For the sinking fund, she asked whether there would be any start-up seed money. She further enquired about the scope of responsibilities of the Advisory Committee and asked whether the community members on the Advisory Committee could decide on how the sinking fund would be used.

23. In response, SDEV said that there would be a two-tiered system. The Advisory Committee was an innovative idea and the community members sitting on it could sound out their views on issues such as the opening hours and regulations of the facilities of the MWP. The 10-member Board of Directors of the management company, comprising up to five Government-nominated directors, would manage the finances of the MWP. Any deficit of the MWP would be borne by the developer and surplus would be credited into the sinking fund. The



arrangement would be beneficial to reducing commitment of public funds. The Administration would relay to the developer the suggestion of providing start-up seed money for the sinking fund. As regards the revised road scheme, D of L said that it was based on the transport arrangements considered suitable for the Master Layout Plan submitted to the Town Planning Board by the developer in 2003 and subsequently approved by the Town Planning Board with necessary modifications. Subject to confirmation with the Transport and Housing Bureau and the Department of Justice, the revised road scheme would be gazetted shortly.

24. Mr Abraham SHEK commented that if the developer concerned had not initiated the Ma Wan Island development, Ma Wan Island would have remained the same as it was without the economic benefits at present. The MWP had contributed a lot to residents of Ma Wan Island as well as New Territories West, especially for the youth. It was a misconception that there was a serious delay in the construction of the MWP because the "Nature Park" was already completed for public use free of charge.

25. Mr LEE Wing-tat, Mr Albert HO and Mr James TO expressed concern about whether the tender process for awarding the works contracts for the MWP was fair, and whether subsidiary companies of the developer were awarded any works contracts for the project. Mr Albert HO considered that there should be public monitoring to ensure that the tender prices were reasonable and the tender process was fair. Mr James TO asked whether there was any precedent in allowing a developer to use public funds amounting to some \$800 million for constructing a park to be operated on a commercial basis without going through a tender process.

26. SDEV said that the MWP was a public-private partnership project initiated by the developer concerned before 1997 under a private agreement between that developer and the Government. The project was made possible through land exchange. The MWP was considered to be an innovative project to complement the comprehensive development of North Lantau at that time. As it could not be certain whether all the required land would be acquired, the Heads of Agreement contained clauses which specified that variations could be made. She clarified that although the MWP would be operated on a commercial basis, any net profit after deduction of reasonable operating costs would be credited into the sinking fund for sustainable operation of the MWP so that no public funds would be required for its recurrent expenditure. The MWP was part and parcel of the comprehensive development on Ma Wan Island and it was in the public interest for the developer concerned to construct the MWP without the need for Government participation. The works contracts for the MWP were awarded through tendering. D of L added that subsidiary companies of the developer concerned could also bid for the works contracts for the MWP. Except for some works management contracts, most of the works contracts for the MWP were not awarded to the subsidiary companies of the developer concerned. The procurement arrangement was considered to be acceptable by the independent QS.

27. Dr KWOK Ka-ki shared the view that profitable private residential developments on Ma Wan Island had been completed quickly while the construction of public facilities was delayed. He queried why there were no completion dates for facilities of the MWP and no penalty provisions for delay. The Administration should be more vigilant in striving for early completion of the MWP. As a few large developers possessed a lot of agricultural lots, land exchange provided a convenient avenue for them to reap huge profits. He queried why no auction was required for land exchange to arrive at a market value premium as in the case of bidding for land lots on the Application List. He also cast doubt on the valuation made by the Lands Department for land exchange, and asked when the Administration would review the land exchange policy, which was inclined towards developers, to avoid creating a breeding ground for collusion between the Government and developers. An enhanced mechanism in land exchange was needed and a single case of conserving King Yin Lei by way of land exchange could not prove that the current mechanism was adequate.

28. SDEV clarified that only the extension of time had been given so far allowing Phase I of MWP to be completed by the end of 2008. She added that land auction and land exchange were two different concepts. In land exchange, the developer concerned owned some land lots and exchange them with the Government for other land lots. The land exchange policy was needed for Hong Kong's continued development. Otherwise, privately owned land lots designated for agricultural and industrial uses would remain as they were forever. In many individual cases, Members had expressed support for releasing certain land lots for other suitable uses. As land exchange was an important ring in land administration, the Administration did not see any reason to renounce the policy or urgency to amend the policy. She respected Members' views but the discussion had not identified any major problem in using land exchange as one of the means to facilitate development in Hong Kong. The Administration would continue to strive for higher transparency in the land exchange process.

29. On Comprehensive Development Areas (CDAs), Prof Patrick LAU expressed concern about the slow progress in the implementation of CDA sites. The architectural sector was concerned about how to improve the consultation process and whether the views of TPB on CDA developments would remain consistent with changes in its membership from time to time. CDA developments should be reviewed and consideration should be given to designating land lots in CDA sites for specific uses rather than developing those lots in the form of CDAs. He made reference to Amsterdam where development was planning-led and pointed out that clear planning intentions would be conducive to smooth and efficient development.

30. SDEV responded that diverse land titles and failure of the owners concerned to cooperate were some of the major difficulties that had hindered the implementation of CDA developments. TPB would review CDA sites and might reduce the area of the sites so that comprehensive development on a smaller scale could still proceed. The Director of Planning further explained that each CDA site

would be reviewed at the end of three years after its designation and subsequent reviews would be made on an annual basis thereafter. She said that during the review in the current year, 11 CDA sites were found to have been implemented and the lots in those CDA sites could be reverted to specific land uses. The annual review might also result in a revision to the planning and development parameters or the size of CDA sites to suit new circumstances.

31. Mr Abraham SHEK said that although planning in the form of CDAs might not be a perfect arrangement, it had brought great benefits to the planning and development of Hong Kong. Public-private partnership developments and CDA developments should be encouraged because they were beneficial to society and the economy. Without CDAs, many old districts could not be redeveloped. As long as fairness, openness, justice and high transparency were present, CDAs could serve the public interest using the least resources. It would not be in the public interest if the sites were too small because community facilities such as parks could not be provided. While public consultation was important, the process should be efficient.

32. Mr Alan LEONG asked how the Administration would ensure that CDA developments were implemented as planned according to the master layout plans. Although he considered that it would be best to specify all the requirements in the land lease conditions, he understood that the Administration might want to leave some flexibility in the land lease conditions so as to attract a higher premium.

33. In response, SDEV said that if a CDA development was implemented, it would proceed according to the master layout plan. There were practical difficulties in implementing some CDA developments because many CDA sites were not greenfield sites, and they were not owned by the Government. Whether a CDA development could materialize would depend on the acquisition of a sufficient proportion of the land titles. TPB would review CDAs on a regular basis to see if improvements were required.

## **II Any other business**

34. As this was the last meeting in the 2007-2008 legislative session, the Chairman thanked SDEV for her frequent attendance at the meetings of the Panel and the cooperation of the Development Bureau in providing detailed information to facilitate the Panel's discussions. He also thanked Panel members for their active participation in the Panel's work.

35. There being no other business, the meeting ended at 5:00 pm.

Council Business Division 1  
Legislative Council Secretariat  
26 September 2008