

**立法會**  
**Legislative Council**

LC Paper No. CB(1)539/09-10  
(These minutes have been seen  
by the Administration)

Ref : CB1/PS/4/08/1

**Panel on Development and  
Panel on Administration of Justice and Legal Services**

**Joint Subcommittee on Amendments to Land Titles Ordinance**

**Minutes of fifth meeting held on  
Wednesday, 7 October 2009, at 2:30 pm  
in Conference Room B of the Legislative Council Building**

- Members present** : Dr Hon Margaret NG (Chairman)  
Hon Albert HO Chun-yan  
Dr Miriam LAU Kin-ye, GBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Alan LEONG Kah-kit, SC  
Prof Hon Patrick LAU Sau-shing, SBS, JP
- Members absent** : Hon Abraham SHEK Lai-him, SBS, JP  
Hon CHEUNG Hok-ming, GBS, JP
- Public officers attending** : Mr Edward TO Wing-hang  
Acting Deputy Secretary for Development  
(Planning and Lands) 2
- Miss Diane WONG Shuk-han  
Principal Assistant Secretary for Development  
(Planning and Lands) 1
- Ms Olivia NIP Sai-lan, JP  
Land Registrar
- Mrs Maria LAM LEUNG Man-wah  
Deputy Principal Solicitor  
Land Registry

Mr MAN Tat-yeung  
Assistant Principal Solicitor  
Land Registry

Mrs Edith TONG CHEUNG Wai-fong  
Title Registration Development Manager  
Land Registry

Mr WONG Chung-hang  
Deputy Director (Survey and Mapping)  
Lands Department

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

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

Mr Simon CHEUNG  
Senior Council Secretary (1)5

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Action

**I Meeting with the Administration**

- (LC Paper No. CB(1)2675/08-09(01) -- Administration's paper on Comparison of Land Titles Ordinance and Conveyancing and Property Ordinance
- LC Paper No. CB(1)2675/08-09(02) -- Administration's paper on Implied Covenants under Section 35 of Conveyancing and Property Ordinance
- LC Paper No. CB(1)2675/08-09(03) -- Administration's paper on Determination of Land Boundaries
- LC Paper No. CB(1)2675/08-09(04) -- Administration's paper on Definition of "deed of mutual covenant" in Section 53 of Land Titles Ordinance

Action

LC Paper No. CB(1)2675/08-09(05) -- Administration's response to concerns and views expressed by deputations at meeting on 19 March 2009 and written submissions received before and after meeting)

2. The Joint Subcommittee deliberated (Index of proceeding at **Annex**) and arrived at the following decisions:

- (a) The Administration would provide a policy paper to set out how it would process determination of land boundaries in practice under the amended Land Survey Ordinance (Cap. 473). The paper should cover likely issues that might be encountered and suggested solutions, projected fees and charges, the exercise of statutory powers and how these powers would be circumscribed;
- (b) The Administration would conduct internal consultation with the Buildings Department (BD) on the processing of redevelopment applications for lots with problematic land boundaries and revert to the Joint Subcommittee on the matter;
- (c) The Administration would brief the Joint Subcommittee on the outcome of its discussions with the Law Society of Hong Kong (the Law Society) on the "Registrar's caution against conversion" as well as exception (iii) to the mandatory rectification rule; and
- (d) The Administration would liaise with the Clerk on the date of next meeting of the Joint Subcommittee.

*(Post-meeting note: The notes for the Powerpoint presentation of the Administration on determination of land boundaries were tabled at the meeting and issued to members vide a Lotus Notes email issued on 15 October 2009.)*

**III Any other business**

3. There being no other business, the meeting ended at 4:30 pm.

**Panel on Development and  
Panel on Administration of Justice and Legal Services**

**Joint Subcommittee on Amendments to Land Titles Ordinance**

**Proceedings of the fifth meeting  
held on Wednesday, 7 October 2009, at 2:30 pm  
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000425 – 000812	Chairman	<p>Suggestion of the Chairman that as the papers CB(1)2675/08-09(01), (02) and (04) provided by the Administration were rather technical and the Administration had been maintaining dialogue with the Assistant Legal Advisor 6 (ALA6) and the Law Society of Hong Kong (Law Society) on the relevant issues, unless the Administration wished to bring up certain matters for consideration by members, members would peruse the papers on their own; the Subcommittee would first consider the paper on determination of land boundaries [LC Paper No. CB(1)2675/08-09(03)], which involved some policy and implementation issues.</p> <p>Remark by the Chairman that as the Administration needed more time to work out the proposal on the "Registrar's caution against conversion" and the financial measures to cope with liabilities arising from automatic conversion mechanism in the Land Titles Ordinance (Cap. 585) (LTO), the Subcommittee would discuss these issues at a later date, though the Administration might update members on the work progress at this meeting.</p>	
000813 – 003108	Administration Chairman	Briefing by Principal Assistant Secretary for Development (Planning and Lands) <sup>1</sup> on the background to the proposed arrangements for determination of land boundaries, and the Administration's plan to repeal section 94 of LTO and introduce new provisions to the Land	

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		<p>Survey Ordinance (Cap. 473) (LSO) which would apply both to existing land registered under the Land Registration Ordinance (Cap. 128) and land to be brought under LTO.</p> <p>Powerpoint presentation on determination of land boundaries under LSO by Deputy Director (Survey and Mapping) (DD(SM)).</p>	
003109 – 004659	Ms Miriam LAU Administration Chairman	<p>Expression of concerns by Ms Miriam LAU that:</p> <ul style="list-style-type: none"> <li>(a) it was not reasonable that public officers could be exempted from legal liability for the mistakes they made, since errors in terms of land boundaries might induce substantial loss to land owners;</li> <li>(b) some stakeholders might have been left out in the consultation exercise carried out by the Administration in 2007 and 2008; and</li> <li>(c) how the Administration could rectify the errors in existing land boundary plans (LBPs) uncovered by improved surveying technology, for instances, in some cases buildings were found to have extended beyond the boundary lines of the lots.</li> </ul> <p>Response of DD(SM) that:</p> <ul style="list-style-type: none"> <li>(a) there was already a “no claim to indemnity” clause under the LTO to mitigate the Government’s liability in respect of the discrepancy in the area or measurement of the land boundaries during a determination of land boundaries exercise. However, the Government might still be liable for discrepancy if the relevant public officers did not perform their duties in accordance with the relevant legislation and approved code of practice; and</li> <li>(b) consultation conducted by the Lands</li> </ul>	

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		<p>Department (LD) covered major professional bodies and organizations of the sector which did not raise any objection to the proposed changes presented to them.</p> <p>Request by the Chairman that the Administration should provide a policy paper to clearly set out how the amended LSO would process determination of land boundaries in practice. The paper should cover likely issues that might be encountered and the suggested solutions, fees and charges and the exercise of statutory powers and how these powers would be circumscribed.</p> <p>Response of the Land Registrar (LR) that it was not the intention of the Administration to go for a mandatory registration of the LBPs for each and every lot.</p>	Administration
004700 – 005514	Prof Patrick LAU Administration Chairman Administration	<p>Expression of views by Prof Patrick Lau that building architects were experiencing considerable difficulties due to the Buildings Department's (BD) refusal to approve redevelopment plans if there was discrepancy over lot size between the original lot plan and the findings of a new survey undertaken by an authorized land surveyor. Such surveys were mandated by BD.</p> <p>Response of DD(SM) that according to his understanding, BD would follow the new LBP, if the area of the lot was found to be smaller than that laid down in the old lot plan.</p> <p>Query of the Chairman that this appeared to be unfair to the land owner, given that the sale of the lot was based on the area laid down in the lot document at the time i.e. the old lot plan. She anticipated that the Administration would have to deal with a lot of cases arising from changes in LBPs, and disputes between owners of adjoining lots.</p>	

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		Response of Acting Deputy Secretary for Development (Planning and Lands)2 (Acting DSDEV) that the Administration would have further discussion with BD and revert to the Joint Subcommittee regarding the enquiry raised by Prof Patrick LAU.	Administration
005515 – 011608	Prof Patrick LAU Administration Chairman	<p>Expression of view by Prof Patrick LAU that the proposed move to authorize the Director of Lands to make "minor changes" to LBPs would be of great importance to the concerned sectors. He sought clarification on the relevant arrangements and whether authorized land surveyors could be engaged to "peg" boundary marks.</p> <p>Response by DD(SM) that:</p> <ul style="list-style-type: none"> <li>(a) with the consent of the owners of the adjoining lots, LBPs showing "minor changes" to the land boundaries could be registered following the verification of the Land Survey Authority;</li> <li>(b) under normal circumstances, after the sale of land, LD would be responsible for "pegging" the boundary marks to the lot. After that, in case any of these marks was removed, displaced or destructed, an authorized land surveyor might be engaged to reinstate these marks;</li> <li>(c) it was the land owner's responsibility to protect the land boundaries, and to maintain the boundary marks on them;</li> <li>(d) "minor changes" to the land boundaries referred to very small adjustments, say 5 cm or so for land in urban area. The adjustment might be greater for land in the New Territories under block Government lease. The changes had to be accepted by owners of the adjoining lots before LBP could be registered;</li> </ul>	

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		<p>(e) LBPs rejected by any of owners of the adjoining lots would not be registered but would be deposited in Land Survey Authority for reference by the public; and</p> <p>(f) the various proposals put forth by the Administration were meant to improve the existing arrangements for determination of land boundaries. They were not designed to solve the wider problems of unclear land boundaries.</p> <p>Response of the Chairman that:</p> <p>(a) the Administration's proposed measures, being mild and minor, would only bring limited improvement to a longstanding problem; and</p> <p>(b) even with the amended LSO, due to the objection of any of the land owners of the adjoining lots, a land owner could still be stuck with a registered old lot plan found to contain erroneous boundary lines and a "correct and yet rejected" LBP kept in the Land Survey Authority.</p>	
011600 – 011950	Chairman Administration	<p>Enquiry of the Chairman as to whether the Administration intended to amend LTO and LSO under two separate bills.</p> <p>Response of Acting DSDEV that the plan of the Administration was to repeal section 94 of the LTO, and to bring amendments to LSO as related amendments in the Land Titles (Amendment) Bill (LT(A)B) at the same time.</p>	
011951 – 013556	Prof Patrick LAU Administration Chairman Administration Chairman	<p>Enquiry of Prof Patrick LAU concerning slide No. 10 of the Powerpoint presentation i.e. whether the LD would register the Setting Out Plan (1993) which was detailed and precise as against the Grant Plan (1924) which was crude and short of accuracy.</p>	



<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
		<p>Further enquiry of the Chairman as to:</p> <ul style="list-style-type: none"><li>(a) what if the area of the new LBP was found to be smaller than the old lot plan; and</li><li>(b) what would be the basis for land transaction in cases involving undetermined land boundaries.</li></ul> <p>Response of DD(SM) that:</p> <ul style="list-style-type: none"><li>(a) subject to a host of factors including the consent of the land owners and the criteria laid down in the code of practice within LSO, the Setting Out Plan (1993) would be accepted by Director of Lands for registration; and</li><li>(b) the proposal was that the Administration would not register any plan without land owners' consent. LBPs which did not get registered would be deposited in Land Survey Authority for reference by the public.</li></ul> <p>Supplement of the Acting DSDEV that:</p> <ul style="list-style-type: none"><li>(a) the Administration had no intention to bring in a new policy for determination of land boundaries to replace the existing mechanism;</li><li>(b) determination of land boundaries would only be made upon application by land owners and would not imposed on the existing lot owners; and</li><li>(c) the intention of the Administration was to deal with the inadequacies of section 94 of LTO by making some improvements through amendments to LSO so that the Director of Lands could perform his duties more effectively.</li></ul>	

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		<p>Response of the Chairman that the problem of undetermined land boundaries was bound to persist in the long run if registered lot plans having problematic boundary lines could not be rectified, while new and accurate lot plans could not get registered.</p>	
013557 – 014321	<p>Prof Patrick LAU Administration Ms Miriam LAU Administration</p>	<p>Enquiry by Prof Patrick LAU that whether the written descriptions concerning the lot size laid down in the old lot plan should prevail over the findings of a new survey undertaken by an authorized land surveyor.</p> <p>Response of DD(SM) that:</p> <ul style="list-style-type: none"> <li>(a) if the new LBP showed that the area was very much larger than what was stated in the old lot plan, LD would make adjustments to premium and Government rent on account of area discrepancy according to the terms and conditions of the Government lease concerned; and</li> <li>(b) for cases where the lot size was found to be smaller, the Administration believed that it was the responsibility of the owner to maintain the boundaries of his own lot.</li> </ul> <p>Expression of view by Ms Miriam LAU that:</p> <ul style="list-style-type: none"> <li>(a) DD(SM)'s response did not sound fair to land owners;</li> <li>(b) many of the lot plans done in early years were not entirely accurate, and rectification of these old lot plans would be an exceptionally complicated and difficult exercise;</li> <li>(c) lots with unregistered LBPs deposited with the Land Survey Authority would bring extra obstacles to land transactions. The Administration was shifting the burden to</li> </ul>	

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		<p>the solicitors who were required to advise their clients during land transactions; and</p> <p>(d) the Administration should consider more thoroughly the land boundary determination arrangements and the related conveyancing issues.</p> <p>Response of Acting DSDEV that the Administration would address members' concerns in the paper for the next meeting.</p>	Administration
014322 – 020131	Chairman Administration Chairman Administration Chairman	<p>Enquiry of the Chairman on the Administration's response to the views expressed by deputations earlier.</p> <p>Response of LR that:</p> <p>(a) the Administration would proceed with the LT(A)B without changing the automatic conversion mechanism enacted in 2004;</p> <p>(b) the Administration had just received views from the Law Society on the proposed "Registrar's caution against conversion" and would discuss with it in a meeting scheduled for 20 October 2009;</p> <p>(c) the Law Society welcomed the Administration's decision to retain the 2004 automatic conversion mechanism and considered it necessary to bring in the "Registrar's caution against conversion". On the basis that the market desired the opportunity to make informed decision, the Law Society suggested that it was also necessary to register the notice of intention to register the caution, which served to invite land owners to provide for the LR's consideration any grounds of objection to the registering of the "Registrar caution against conversion" within a period of 60 days;</p>	

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		<p>(d) on mandatory rectification rule, the Administration had received views from the Law Society on the proposed exception (iii) to the rule i.e. where the bona fide registered owner at the time of discovery of the fraud was not the first person to have been registered as owner since the fraud. While most stakeholders believed that proposed exception (iii) should <u>not</u> be adopted, the Law Society had expressed different views; and</p> <p>(e) the Administration would continue to consult relevant stakeholders such as the Consumer Council and the Hong Kong Bar Association on the LT(A)B and report to the Joint Subcommittee on latest developments.</p> <p>Response of the Chairman that the Administration should include members of the public in its consultation exercise. The District Councils, for instance, could be considered as a channel for gauging public views.</p>	
020132 – 020242	Chairman Administration	Next Meeting	