

**立法會
*Legislative Council***

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Ref : CB1/PL/HG/1

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

**Minutes of joint meeting
held on Tuesday, 17 February 2004, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Members of the Panel on Housing

Hon Albert HO Chun-yan (Chairman)
* Dr Hon David CHU Yu-lin, JP
Hon LEE Cheuk-yan
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 Andrew WONG Wang-fat, JP
Hon YEUNG Yiu-chung, BBS
* Hon Abraham SHEK Lai-him, JP
Hon Tommy CHEUNG Yu-yan, JP
* Hon Albert CHAN Wai-yip
Hon Frederick FUNG Kin-kee
* Hon IP Kwok-him, JP

Members of the Panel on Planning, Lands and Works

Dr Hon TANG Siu-tong, JP (Chairman)
Hon James TIEN Pei-chun, GBS, JP
Hon LAU Wong-fat, GBS, JP
Hon Timothy FOK Tsun-ting, SBS, JP

(* Also members of the Panel on Planning, Lands and Works
Also a member of the Panel on Housing)

Members attending : Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP

Members absent : Members of the Panel on Housing

Hon CHAN Kam-lam, JP (Deputy Chairman)
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum
Hon SZETO Wah
Dr Hon LO Wing-lok, JP
* Hon WONG Sing-chi

Members of the Panel on Planning, Lands and Works

Hon LAU Ping-cheung (Deputy Chairman)
Ir Dr Hon Raymond HO Chung-tai, JP
Hon WONG Yung-kan
Hon TAM Yiu-chung, GBS, JP

(* Also members of the Panel on Planning, Lands and Works
Also a member of the Panel on Housing)

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

Mr C M LEUNG, JP
Permanent Secretary for Housing, Planning and Lands
(Housing)

Ms Mable CHAN
Administrative Assistant to Secretary for Housing,
Planning and Lands

Mr Vincent TONG, JP
Deputy Director of Housing
(Business Development)

Mr Anthony WONG
Assistant Director of Housing
(Legal Advice)

Mr Patrick LAU, JP
Director of Lands

Mr Simon LEE
Deputy Law Officer (Civil Law)
Department of Justice

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

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

Ms Sarah YUEN
Senior Council Secretary (1)6

Ms Christina SHIU
Legislative Assistant

Action

I. Election of Chairman

1. Mr Albert HO Chun-yan was elected Chairman of the joint meeting.

II. Disposal of surplus Home Ownership Scheme and Private Sector Participation Scheme flats

(LC Paper No. CB(1)990/03-04(01) -- The land lease provided by the Administration in respect of Kowloon Inland Lot No. 11076, Hung Hom Bay Reclamation Area, Kowloon (including clauses 25 to 26 of the General Conditions of Sale of the Lot)

LC Paper No. CB(1)995/03-04(01) -- The lease modification provided by the Administration in respect of Kowloon Inland Lot No. 11076, Hung Hom Bay Reclamation Area, Kowloon

LC Paper No. CB(1)1000/03-04(01) -- Information paper provided by the Administration

LC Paper No. CB(1)1000/03-04(02) -- Clause 27 of the General Conditions of Sale of Kowloon Inland Lot No. 11076, Hung Hom Bay Reclamation Area,

LC Paper No. LS44/03-04	Kowloon
LC Paper No. LS46/03-04	-- Paper on "Powers of the Legislative Council to require the Administration to produce records and documents" prepared by the Legal Service Division
LC Paper No. CB(1)1000/03-04(03)	-- Paper on "Observations on the Conditions of Sale of Kowloon Inland Lot No. 11076 in relation to restrictions on disposal of units purchased by the Housing Authority" prepared by the Legal Service Division
	-- List of documents and information which Mr Albert HO Chun-yan has requested the Administration to provide)

2. The Chairman drew members' attention to the following papers tabled at the meeting -

- (a) Chinese version of the paper on "Powers of the Legislative Council to require the Administration to produce records and documents" prepared by the Legal Service Division;
- (b) Chinese version of the paper on "Observations on the Conditions of Sale of Kowloon Inland Lot No. 11076 in relation to restrictions on disposal of units purchased by the Housing Authority" prepared by the Legal Service Division;
- (c) Information paper provided by the Administration on "Private Sector Participation Scheme Projects Transferred to Public Rental Housing";
- (d) An anonymous letter referred to the Panels by Ms Emily LAU Wai-hing; and
- (e) An e-mail from a group of former Housing Department staff to the Chairman of the Panel on Housing on disposal of Private Sector Participation Scheme (PSPS) flats.

(Post-meeting note: The above papers were circulated to members vide LC Paper No. CB(1)1026/03-04 on 18 February 2004.)

3. On the letter listed in paragraph 2(d) above, the Secretary for Housing, Planning and Lands (SHPL) clarified that the press article referred to was neither written nor issued by the Information Services Department or his Press Secretary. He thanked the two Panels for holding the joint meeting expeditiously to enable the Administration to brief members on the negotiation between the Government and the developer of the Hunghom Peninsula PSPS project (the Project) over the disposal of the flats concerned. The Deputy Law Officer (Civil Law), Department of Justice (DLO(CL)/D of J) said that as the developer had initiated legal action against the Government and the Housing Authority (HA), it would not be appropriate to disclose details which might affect the legal proceedings. He also stated that he was attending the meeting as a representative of the Government and not of the HA which had appointed its own legal team to defend the legal action.

4. In response to the Chairman, SHPL and DLO(CL)/D of J made the following clarifications -

- (a) The term "Government" in the chronology of events relating to the Project (Annex A to LC Paper No. CB(1)1000/03-04(01)) should be understood in a broader sense of the word and did not mean the Housing, Planning and Lands Bureau (HPLB) alone; and
- (b) The developer initiated legal action on 25 July 2003 against the HA and the Government, alleging breaches of the Land Grant and claiming damages (case number HCA 2761/2003). The amount of claim had not been specified by the developer.

5. The Chairman also requested the Administration to explain the following -

- (a) The basis on which the Administration claimed that modification of the lease and Conditions of Sale would require the agreement of the developer; and
- (b) The reasons why the HA would be challenged for acting outside its authority and powers under the Housing Ordinance (Cap. 283) if it nominated a single purchaser to take up all the flats from the developer and the single purchaser in turn disposed of them in the private market. Should this be the case, the HA would be similarly challenged if it converted the unsold Home Ownership Scheme (HOS) and PSPS developments to guesthouses.

6. DLO(CL)/D of J remarked that it was inappropriate to comment on the above queries because this would involve issues to be determined in the pending litigation and might affect the HA's interests.

7. Members in general expressed grave concern about the agreement reached by the Administration with the developer on the disposal of flats in the Project. Their major concerns were as follows -

- (a) It was inappropriate that the Government should have negotiated with the developer only behind closed doors. The flats could be sold through open tender or auction to enable other developers to participate. The approach the Government had adopted benefitted the developer at the expense of public interests;
- (b) The agreement with the developer to modify the relevant Conditions of Sale to allow the 2,470 flats in the Project to be sold in the open market was against the Government's stated housing policy of ceasing the production and sale of HOS and PSPS flats;
- (c) The agreed premium of \$864 million for the lease modification to allow the developer to dispose of the flats in the open market was pathetically low, especially as the amount was agreed at a time when the property market was picking up, and amidst talks of service reduction because of budget deficits; and
- (d) the Agreement had not settled the issue once and for all and there was still pending litigation from the developer to claim damages.

The pending litigation

8. Accounting for the failure to settle all claims, DLO(CL)/D of J explained that despite efforts to resolve all claims during the mediation, the Government and the HA held a very different view from the developer in respect of liability for damages arising from the alleged delay in nomination of purchasers, and the quantum of damages. All parties concerned had left the door open for further negotiation on these claims and would continue to attempt to reach an agreement.

The housing policy

9. In response to members' query about whether the agreement had violated the Government's stated policy of ceasing production and sale of HOS and PSPS flats, SHPL explained that when the Government announced its housing policy statement in November 2002, it had stated clearly that individual unsold and returned flats in various HOS developments which had previously been offered for sale would not be covered by the cessation. It had also stated that the Government would dispose of the surplus HOS and PSPS flats by market-friendly means. Following the re-positioning of the housing policy by the Government, the HA explored and endorsed a number of possible options to dispose of the surplus flats, including Government's negotiating with the developers of the Project and Kingsford Terrace PSPS project for lease modification to enable the developers to

sell the flats in the open market. The progress of such negotiation had also been reported to the Legislative Council (LegCo) on a number of occasions.

10. Mr LEE Cheuk-yan questioned why the Administration had to be tied by the re-positioned housing policy, limiting itself with few choices and putting itself in a disadvantaged position in the negotiation. In reply, SHPL said that the decision to negotiate with the developer on a lease modification to allow him to dispose of his flats in the open market should not be viewed in isolation, but should be considered as part and parcel of the re-positioned housing policy announced in November 2002 amidst the then unstable property market which was hard hit by the serious imbalance between flat demand and supply and the negative equity problem. There was a widespread demand that the Government should withdraw from its role as property developer and minimize its intervention into the market. It was against such background that the Government came to the view that it should negotiate with the developer on lease modification discharging the HA's obligations in nominating purchasers to buy the PSPS flats concerned and allowing the developer to sell the flats in the open market. During the period from November 2002 to early 2003, the property market was in the doldrums. Property prices continued to fall for the greater part of last year. It was exacerbated by the outbreak of the Severe Acute Respiratory Syndrome (SARS) in March 2003. The property market only showed signs of improvement over the past few months. The Government considered that it was necessary to send a clear message to the market that the Government was determined to implement and consolidate its re-positioned housing policy. As shown by the recent recovery of the market, the re-positioned policy had proved useful in enabling the healthy development of the property market.

The agreed premium

The amount

11. On the amount of the agreed premium, SHPL made the following points -

- (a) During the negotiation, there was no clear sign that the market would pick up so quickly. On the contrary, there was apprehension of a new slump because of SARS. Moreover, the market was determined by market forces and the Government was not in a position to predict the market trend; and
- (b) If the deal was not clinched, the Government would forego \$864 million, the HA would have to pay \$1,914 million and be left with 2,470 flats which simply could not be disposed of in a rational manner given the overriding policy considerations.

12. Mr LEE Cheuk-yan was not convinced. Referring to paragraph 11(a) above, he pointed out that the market had significantly improved in late 2003,

before the agreement was reached. Ms Emily LAU shared his view and further pointed out that the market was already on an upward trend since mid-2003. Moreover, the mediation started on 8 December 2003, and the premium should still be further negotiated before the preliminary agreement was formalized on 26 January 2004. She enquired if any valuation had been made to facilitate assessment of the financial implications of the agreement, and requested figures on the market trend during the relevant period.

13. In response, SHPL explained that since the average market price over the past months was taken as the basis for the negotiation, the price then was very much on the down side. Moreover, the market only started to pick up in October 2003, and even so the signs of recovery were not entirely clear. He and DLO(CL)/D of J also advised that the contents of the agreement including the premium were settled when the mediation completed on 23 December 2003. Details to effect the lease modification were then further worked out by the Lands Department (Lands D).

14. The Chairman pointed out that as reported in the press, according to certain staff of the Lands D, the price of land per square foot (sq. ft) in the area concerned already exceeded \$2,300 in December 2003. The agreed premium, representing a price of \$1,888 per sq. ft., fell far short of the market rate, resulting in a loss of public money amounting to more than \$0.6 billion. If the developer redeveloped the Project, the developer would have a potential profit of over a billion. In response, SHPL said that the quoted media report was not true because only very few staff in the Lands D had access to information about the negotiation. In response to Dr TANG Siu-tong, he further explained that the Conditions of Sale restricted the development on the lot to a residential gross floor area of 144,300 m². The agreed lease modification did not change this. Any redevelopment would need to be in accordance with the Master Layout Plans approved for development of the lot as a PSPS development. This would be subject to the normal application procedures and payment of a premium.

How the premium had been worked out and agreed upon

15. In reply to Mr YEUNG Yiu-chung on whether external professional advice had been sought when determining the premium, SHPL stressed that in deciding to go for mediation to resolve the matter, the Government had taken into account the re-positioned housing policy, the then prevailing market situation and the legal action initiated by the developer. External professional advice on the premium had not been sought. Mr YEUNG expressed regret that no attempt had been made to solicit external professional views on such an important deal.

16. The Chairman enquired about the basis for accepting the agreed premium of \$864 million as a reasonable sum, and who had worked out the basis. In reply, SHPL advised that the Administration had taken into account a host of factors in

the mediation. However, it was not at liberty to disclose the relevant details at this stage because of the pending litigation.

17. Mr LEE Cheuk-yan asked whether the Lands D had provided HPLB with any market figures for reference. In response, the Director of Lands (D of Lands) explained that in negotiating the premium, the relationship between the Lands D and the developer concerned was contractual in nature. It was a long-standing practice of the Lands D in processing applications for lease modification not to disclose the price offers exchanged by both sides during the premium negotiation process. The agreed premium would be published when the lease modification had been formally executed and registered with the Land Registry.

18. Mr LEE Cheuk-yan further sought to know the difference, if any, between the terms of the agreement and those proposed by the Government at the outset. In reply, SHPL said that the Government commenced negotiation with the developer on the basis of premium equating to the increase in value conferred to the lot as a result of the lease modification. However, agreement could not be reached due to a huge gap between the Government's position and that of the developer.

19. On Mr LEE Cheuk-yan's request for details of the relevant price offers and counter-offers, DLO(CL)/D of J explained that they could not be provided because the mediation and subsequent settlement were subject to the non-disclosure conditions. The developer's consent was necessary for disclosure of the relevant information, which was yet to be obtained. Moreover, disclosure of the information might not be desirable in consideration of the pending litigation.

Reasons for accepting the agreed premium

20. Referring to paragraph 18 above, Mr LEE Cheuk-yan asked when and why the Government decided not to insist on demanding payment of the premium at full market value. In reply, SHPL elaborated that the developer had initiated legal action against the Government and the HA, alleging breaches of terms of the Land Grant and claiming damages arising from the alleged delay in nomination of the purchasers by the HA at an early stage. Any damages successfully claimed would continue to accrue unless a settlement was reached. Hence the decision to settle the matter by way of mediation.

21. Pointing out that the deadline for the HA to nominate purchasers would only be due in July 2004, Ms Emily LAU was not convinced of the claimed urgency of the matter. In response, SHPL pointed out that the legal action was initiated in July 2003. With only one year to settle the matter before the deadline, a proactive approach was needed to try and reach an amicable out-of-court settlement to discharge HA's contractual obligations in purchasing the flats and set a "time ceiling" on possible damages claimed by the developer.

The manner in which the agreement was reached

22. Addressing members' concern in paragraph 7(a) above about the manner in which the agreement was reached, SHPL stressed that every effort had already been made to reach the best possible deal in the circumstances. He emphasized that the agreement was made after taking into account the various policy, legal and financial considerations and considering the pros and cons of various options.

23. While agreeing that it was difficult to dispose of the flats in the Project in a way agreeable to all, Mr LAU Wong-fat pointed out that the timing of the agreement was very bad. He attributed this to inefficiency of the Government departments concerned, and urged the Administration to improve in future. SHPL thanked him for his views.

24. Highlighting the various restrictions on the disposal of PSPS flats, namely, the need to sell the flats to eligible purchasers only, the deadline for nominating purchasers and the announced cessation of production and sale of HOS and PSPS flats, Mr Frederick FUNG Kin-kee opined that if such restrictions were not lifted, the Administration would have little leeway in negotiating with PSPS developers. He also considered it strategically undesirable to make known in the open all the above restrictions during the negotiation. In his view, the Administration should have been aware of the above restrictions and problems, and excluded PSPS flats from the cessation of sale. If the Administration had failed to foresee the problems, this amounted to negligence. If the Administration foresaw such problems but still went ahead, its motive was highly dubious. Mr LEUNG Yiu-chung shared his views and said that consideration should be given to all possible implications before deciding to stop sale of PSPS flats, in particular on how to resolve the relevant contractual issues with the developers of PSPS projects. Mr LEUNG's views were shared by Dr TANG Siu-tong and Mr LAU Wong-fat who opined that administrative measures should be taken to handle PSPS projects.

25. In response, DLO(CL)/D of J highlighted the pending litigation and considered it inappropriate to go into details of the relevant Conditions of Sale and the interpretation of Cap. 283 to observe the sub judice principle. He also stressed that the points made by members above only represented their views. SHPL said that it was the intention of the Government and the HA to resolve the contractual issues with PSPS developers quickly. The legal implications of ceasing sale of PSPS flats had been considered. However, for the purpose of sending a clear message of the Government's re-positioned housing policy to the market, it was decided that sale of PSPS projects should also be ceased. The need to stabilize the property market was then the overriding consideration.

26. Mr LEUNG Yiu-chung expressed dissatisfaction that the Administration should have sacrificed other interests for the sake of boosting the property market. He considered that SHPL should be held accountable for the decision to cease sale of PSPS flats. Mr Frederick FUNG also remarked that some members had all along expressed queries about the decision. In response, SHPL pointed out that as

shown in the chronology of events in Annex A to LC Paper No. CB(1)1000/03-04(01), the Administration had on various occasions reported to LegCo on how the PSPS projects would be disposed of.

Why the buyback option was not selected

27. Mr LEE Cheuk-yan queried the reasons put forward by the Administration in paragraphs 12 and 13 of LC Paper No. CB(1)1000/03-04(01) for deciding against purchasing all the flats concerned from the developer (the buyback option). His doubts were shared by Mr YEUNG Yiu-chung, who considered that the buyback option was better and could minimize market intervention. Mr Abraham SHEK Lai-him also pointed out that to address public concern, the Administration should properly explain why it had not taken the buyback option. He suspected that the decision might have been made by the Executive Council (ExCo) and the Administration had only acted accordingly.

28. In reply, SHPL stressed that although he did not make the decision on his own, he was nonetheless accountable for it. He did not comment on ExCo's role in the decision on the grounds that all its deliberations should be kept confidential. As to the viability of the option of the HA nominating a single purchaser to buy all the flats from the developer, he explained that the legal advice from the solicitors and external Senior Counsel instructed to advise the HA then was that this option could be considered as providing housing to the general public and as such the HA could be challenged for acting outside its authority and powers under Cap. 283. Besides, the option was also outside the terms of the Conditions of Sale and might be subject to claims by the developer. Moreover, it could be perceived as market intervention and ran contrary to the Government's re-positioned housing policy. DLO(CL)/D of J supplemented that the HA might face allegation of breaches of terms of Conditions of Sale if the flats were not sold to eligible purchasers. For example, special condition clause 31 imposed restriction on sale of the flats with reference to the Housing Ordinance (Cap. 283).

29. Mr Tommy CHEUNG Yu-yan opined that the Government and not the HA could buy back the whole Project including the car parking spaces and shopping facilities, then demolish the structures, and put up the land for auction. According to market assessment, the Government could fetch up to \$7,000 per square foot. Alternatively, it could buy back the residential units only and then dispose of them through auction. In response to him on whether the above proposals were feasible, SHPL and DLO(CL)/D OF J said that though legally feasible, the option had not been adopted because of other considerations as elaborated in the paper (LC Paper No. CB(1)1000/03-04(01)). It should also be recognized that the developer was a party to the relevant contract and his agreement to any arrangement was necessary.

30. Ms Audrey EU Yuet-mee opined that the legal advice of senior counsel quoted in paragraph 13 of the paper (LC Paper No. CB(1)1000/03-04(01)) only applied to the situation described therein and should not be used to support the

view that the flats could only be sold to eligible purchasers. Under the Land Grant of the Project, the HA was only required to nominate eligible purchasers to purchase the flats within a period of 20 months from the date of the Consent to Sell. Highlighting section 4 of Cap. 283, which stated that the HA should provide housing for "such kinds or classes of persons as the Authority may, subject to the approval of the Chief Executive, determine", Ms EU also pointed out that by adjusting HA's policy, the flats could be sold in the open market. Hence it was the policy of the HA or the Government and not the relevant legislation that imposed restrictions on the buyback option. Mr Tommy CHEUNG's proposal for the Government to buy back the Project would overcome the above hurdle. In response, SHPL thanked her for her views and said that, as explained earlier, the Government had other policy considerations to take into account when deciding not to adopt the buyback option.

31. Mr Abraham SHEK was also not convinced that the relevant Conditions of Sale would restrict the Government and the HA to buy back the flats, pointing out that it was already provided in the Conditions of Sale that in the event that flats were unsold at the end of the specified period, the HA was obliged to purchase the flats at the guaranteed purchase price. In his view, the reluctance to pursue the buyback option was a policy decision and not out of legal considerations. In fact, there was other legal advice that supported the buyback option. The Chairman also pointed out that three PSPS projects had actually been bought back and the flats concerned were converted to PRH. In response, DLO(CL)/D of J explained that such cases all involved lease modifications with the agreement of the developers concerned.

32. Mr Abraham SHEK further enquired whether the main reason for not pursuing the buyback option was that the HA simply could not afford to pay an upfront cash amounting to about \$1,914 million. In reply, SHPL said that apart from financial considerations, it was also not desirable to buy back 2,470 flats which could not be disposed of in a rational manner given the overriding policy considerations.

33. The Chairman enquired how unsold HOS/PSPS developments could be converted to guesthouses or used for re-provisioning the existing quarters for the disciplined services if the buyback option was outside the terms of the Conditions of Sale as claimed. In reply, SHPL advised that there was a possibility that the above proposals might be challenged. Hence the need to work out how they could be rationalized under section 4 of Cap. 283.

Other possible options

34. Mr Andrew WONG Wang-fat shared the Administration's views on the imminence of the deadline for nominating purchasers and the pressure from the litigation. He accepted the present outcome. He however said that consideration might be given to resuming the land concerned under the Lands Resumption

Ordinance (Cap. 124) for public purpose of implementing the Government's re-positioned housing policy by paying sufficient compensation to the developer covering the construction cost, loss of interest, etc. The land could then be sold to facilitate development as private housing. To guard against challenge of what constituted public purpose, the Administration could alternatively introduce other legislative proposals to facilitate implementation of his proposal. In response, SHPL thanked him for his proposal.

35. Mr Albert CHAN opined that interests of the tenants of public rental housing (PRH) had been sacrificed as a result of the cessation of sale of HOS and PSPS flats because their opportunities to improve their living conditions through removal to these flats were taken away. He proposed that the HA should purchase surplus HOS and PSPS flats for conversion into PRH for sale to PRH tenants. Mr Frederick FUNG shared his views.

Involvement of HA

36. Miss CHAN Yuen-han noted that at one of its meetings, the Strategic Policy Committee (SPC) of HA approved the disposal arrangement of the surplus HOS/PSPS flats and was informed about the negotiation. However, the outcome of the negotiation had not been reported back to SPC. She queried if such manner of handling the negotiation was appropriate. In response, Permanent Secretary for Housing, Planning and Lands (Housing) (PSH) explained that HA had endorsed at a relevant meeting a number of options to deal with surplus HOS and PSPS flats including Government negotiating with the developers concerned for lease modification to enable the developers to sell the flats in the open market. He further clarified that in a PSPS project, the HA was only responsible for nominating purchasers. It was the Lands D which was responsible for liaising with the developer regarding lease matters. Since the negotiation was proceeded on a contractual basis, the process had to be kept confidential and the details were not reported to the SPC. It was originally the HA's intention to report the outcome of the negotiation to the SPC after the technical details of the agreement had been sorted out. However, the outcome was announced to the public because of a deal made by Sun Hung Kai Properties with Wai Kee Holdings for taking over the latter's 50% share in the project. The HA had already promptly followed up by furnishing an account of the negotiation to the SPC and to all members of HA.

37. Miss CHAN Yuen-han found the answer unsatisfactory. She opined that any twists and turns in the negotiation should be reported back to the SPC as public money was involved. In response, PSH said that the SPC had already endorsed the way to deal with the Project. Unless there was a change to it, it was not necessary to report back during the interim. Miss CHAN was still unconvinced. Referring to the considerations elaborated in paragraphs 12 and 13 of the paper (LC Paper No. CB(1)1000/03-04(01)), she maintained that the SPC should be approached for advice in the process.

The Kingsford Terrace

38. In response to Messrs Albert CHAN and Frederick FUNG's call to better handle the remaining Kingsford Terrace PSPS Project in Ngau Chi Wan, SHPL confirmed that all the restrictions described above remained valid and would constrain the Administration's freedom of action. In the light of the opinions expressed in the community over the disposal of the flats of the Project, the Administration would revisit the overall approach as well as take into account the latest property market situation and any other new proposals made by the public and members. In reply to the Chairman and Dr TANG Siu-tong, SHPL undertook to consider both the auctioning option and the buyback option when exploring available options for this project.

The way forward

39. Mr Albert CHAN enquired if the Government could rescind the agreement and if so, the estimated damages possibly claimed by the developer. He said that by not nominating purchasers for the flats, the Government had already acted not in accordance with the Conditions of Sale. As such, it did not matter if there was other breach of agreement. In response, SHPL opined that the Government did not consider the member's suggestion feasible. The deadline for nominating purchasers had not expired and the Government had not breached the Conditions of Sale. He also said there was no estimate of the amount of possible damages if the agreement was not honoured by the Government.

40. Mr LEE Cheuk-yan opined that many questions remained unanswered. These included how the Agreement had been reached and how the basis for the agreed premium was worked out. In consideration of the Administration's reluctance to disclose such crucial information, he said that there might be a need to set up a select committee to exercise powers of LegCo to require the Administration to produce records and documents. He sought Assistant Legal Adviser 6(ALA6)'s advice on whether the Panel could exercise such power.

41. In response, the Chairman and ALA6 confirmed that if any committee of the LegCo wished to exercise the power, it had to be authorized by the LegCo by resolution in respect of any matter or question specified in the resolution. A report to the House Committee seeking its support for the authorization was necessary.

42. SHPL emphasized that he had already provided to the Panel an account of the relevant events and considerations taken into account in reaching the agreement. To decide on the way forward, the Chairman requested the Administration to provide details in writing of the basis for accepting the agreed premium as a reasonable sum. He said that the Panel on Housing would further consider the matter at its next regular meeting scheduled for 1 March 2004.

(*Post-meeting note:* the Administration provided the requested information which was circulated vide LC Paper No. CB(1)1160/03-04 on 28 February 2004. A joint meeting was scheduled for 8 March 2004)

III. Any other business

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

Council Business Division 1
Legislative Council Secretariat
1 April 2004