

立法會
Legislative Council

LC Paper No. CB(1) 2880/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/PL/HG/1

Panel on Housing

Minutes of meeting
held on Thursday, 19 May 2011, at 8:30 am
in Conference Room A of the Legislative Council Building

Members present : Hon LEE Wing-tat (Chairman)
Hon WONG Kwok-hing, MH (Deputy Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon Fred LI Wah-ming, SBS, JP
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Dr Hon Joseph LEE Kok-long, SBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon Alan LEONG Kah-kit, SC

Members absent : Hon LEUNG Yiu-chung
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon CHAN Hak-kan
Hon WONG Kwok-kin, BBS
Hon LEUNG Kwok-hung

Public officers : **For item IV**
attending

Mr D W PESCOD, JP
Permanent Secretary for Transport and Housing
(Housing)

Ms Annette LEE, JP
Deputy Secretary for Transport and Housing (Housing)

Mr Eugene FUNG
Principal Assistant Secretary for Transport and Housing
(Housing) (Private Housing)

Ms Annie TAM, JP
Director of Lands

Mr Armstrong CHU
Chief Land Conveyancing Officer/ PARD
(Legal Advisory and Conveyancing Office)
Lands Department

For item V

Mr D W PESCOD, JP
Permanent Secretary for Transport and Housing
(Housing)

Mr Albert LEE, JP
Deputy Director (Estate Management)
Housing Department

Mr Tony LIU
Assistant Director (Estate Management)³
Housing Department

For item VI

Mr D W PESCOD, JP
Permanent Secretary for Transport and Housing
(Housing)

Mr Kenneth WONG
Chief Civil Engineer
Housing Department

Mr NG Chi-ho
Assistant Director/New Works
Water Supplies Department

Clerk in attendance : Miss Becky YU
Chief Council Secretary (1)¹

Staff in attendance : Mrs Mary TANG
Senior Council Secretary (1)1

Miss Mandy POON
Legislative Assistant (1)1

I. Confirmation of minutes

- (LC Paper No. CB(1) 1910/10-11 — Minutes of the joint meeting with the Panel on Development held on 10 December 2010
- LC Paper No. CB(1) 2023/10-11 — Minutes of the meeting held on 10 February 2011)

The minutes of the joint meeting with the Panel on Development on 10 December 2010, and the regular meeting on 10 February 2011 were confirmed.

II. Information paper issued since last meeting

2. Members noted that the following information papers had been issued since last meeting-

- LC Paper Nos. CB(1) 1818/10-11(01) — Administration's papers
CB(1) 2111/10-11(01) on Land Registry
Statistics in March and
April 2011

III. Items for discussion at the next meeting

- (LC Paper No. CB(1) 2034/10-11(01) — List of follow-up actions
LC Paper No. CB(1) 2034/10-11(02) — List of outstanding items for
discussion)

3. The Chairman said that the Panel would have to decide on the subjects to be discussed at the two remaining regular meetings before the end of the current session. He considered that subjects such as "Public rental housing for single persons", "Policy on interim housing", "Issues related to the agreement between the Estate Agents Authority and the China Institute of Real Estate Appraisers and Agent" and "My Home Purchase Plan", should be included in the next two meetings. On behalf of Mr WONG Kwok-kin, Mr WONG Kwok-hing requested discussing the subject on "Setting up of the Tenants Purchase Scheme

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Advisory Team" at the next meeting. Mrs Sophie LEUNG also suggested discussing "Enhanced partnering arrangements among Estate Management Advisory Committees and non-governmental organizations to promote neighborliness in public rental housing estates." The Chairman said that he would work out the agenda for the next meeting in consultation with the Administration.

(Post-meeting note: With the concurrence of the Chairman, the following subjects would be discussed at the next regular meeting on Thursday, 9 June 2011, at 8:30 am -

- (a) Restoration of public rental housing (PRH) units to original form by tenants upon moving out;
- (b) Enhanced partnering arrangements among Estate Management Advisory Committees and non-governmental organizations to promote neighborliness in PRH estates; and
- (c) Setting up of the Tenants Purchase Scheme Advisory Team.)

IV. Dissemination of misleading information on sale of residential properties

(LC Paper No. CB(1) 2034/10-11(03) — Correspondences between The Real Estate Developers Association of Hong Kong and the Administration

LC Paper No. CB(1) 2034/10-11(04) — Administration's paper on Dissemination of misleading information on sale of residential properties

LC Paper No. CB(1) 2034/10-11(05) — Paper on regulation of the release of sales information on first-hand private residential properties prepared by the Legislative Council Secretariat (updated background brief)

LC Paper No. CB(1) 2081/10-11(01) — Further letter from The Real Estate Developers Association of Hong Kong dated 27 April 2011 provided by the Administration (English version only)

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- LC Paper No. CB(1) 2081/10-11(02) — Letters to Kowloon-Canton Railway Corporation issued by the Lands Department (English version only)
- LC Paper No. CB(1) 2081/10-11(03) — Letters from Kowloon-Canton Railway Corporation to Lands Department (English version only))

4. The Chairman said that following the last discussion on the subject at the meeting on 10 February 2011, the Panel received further correspondence exchanges between the Lands Department (LandsD) and the Kowloon-Canton Railway Corporation (KCRC) (the grantee of the development in question i.e. Festival City Phase II), as well as those between the Transport and Housing Bureau (THB) and the Real Estate Developers Association of Hong Kong (REDA).

5. The Permanent Secretary for Transport and Housing (Housing) (PSTH(H)) said that the recent incident where a senior executive of a major development company made a statement in his online blog encouraging consumers to purchase the company's uncompleted residential flats shortly after the announcement of the special stamp duty (SSD) had demonstrated the shortcomings of the existing measures to regulate the sale of uncompleted first-hand private residential properties, which relied too much on self-regulation. The Administration believed that it was opportune to enhance the regulation of the sale of first-hand residential properties through legislation. In this connection, THB had established a Steering Committee on the Regulation of the Sale of First-hand Residential Properties by Legislation (the Steering Committee) to discuss specific issues pertaining to the regulation of the sale of first-hand properties. Misrepresentation was one of the key areas which the Steering Committee would discuss. It was expected that the Steering Committee would submit its report with practical recommendations for consideration by the Secretary for Transport and Housing by October 2011. Subsequent public consultation would be conducted in the form of a White Bill in order to expedite the process.

6. The Director of Lands (D of L) said that LandsD was acting in the landlord capacity, and was pursuing the case in accordance with the rights conferred under the land grant conditions. It had exchanged a series of correspondences with KCRC, being the grantee of the lot, on the statement made by a senior executive of the development company concerned in his online blog on 19 November 2010 regarding the applicability of SSD to the property transactions of Festival City Phase II. As at 4 May 2011, it had issued a total of 11 letters to KCRC (c/o MTR Corporation Limited (MTRCL) as agent of KCRC) and received 18 replies from MTRCL. The position taken by LandsD had been

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clearly set out in the correspondence exchanges which had been passed to the Panel.

The recent case

7. Mr Abraham SHEK declared interest as a member of REDA and a non-executive director of MTRCL. He said that there was a need for the Administration to explain the statements made by the Financial Secretary (FS) at the press conference held after the announcement on the introduction of SSD on 19 November 2010, as these statements had prompted the senior executive to express his personal understanding of the applicability of the new SSD in his online blog. PSTH(H) said that the key issue was not what FS had said but what the senior executive had stated in his online blog. THB had made repeated requests to REDA to address the key issue of whether REDA considered it appropriate for a senior executive of a development company involved in the sale of a development to have made a statement which was not qualified in any way, and in a tone and context which clearly intended to encourage people to make a last-minute or rushed decision on flat purchase, upon the announcement by the Administration on 19 November 2010 of the introduction of SSD to curb short-term speculative activities in the private residential property market. It was disappointed that REDA's reply of 11 April 2011 had not addressed the key issue raised. THB considered that the statement made by the senior executive appeared to encourage people to rush on flat purchase without first seeking proper legal advice and to avoid SSD.

8. Mr Abraham SHEK expressed dissatisfaction that the Administration had failed to provide an explanation on the statements made by FS at the press conference on 19 November 2010. He stressed that people in Hong Kong enjoyed freedom of speech. In fact, the Compliance Committee of REDA (which comprised seven independent members from the legal profession and four REDA members) held a meeting on 1 December 2010 to discuss the case. It was concluded that the case represented a difference of opinion between THB and the developer concerned on the legal status of the Preliminary Agreement for Sale and Purchase (PASP) under the new SSD regime, and that there was no breach of REDA guidelines. While REDA had set out its position clearly in the letter dated 8 December 2010, the Administration insisted for a reply from REDA. PSTH(H) said that FS had conveyed a very clear message that the introduction of SSD was meant to curb short-term speculative activities in the private residential property market, and that the public should be cautious in deciding on flat purchase. While freedom of speech was an integral part of Hong Kong, this should come with responsibility. The Administration upheld the view that as a self-regulatory body, REDA should ensure the appropriate behaviour of its member developers. As there were clear views in the community that the existing regulatory arrangements through the Consent Scheme and REDA guidelines might not be sufficient, the best way forward was to regulate the sale of

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first-hand residential properties by legislation.

9. Mr Abraham SHEK remained dissatisfied that despite repeated requests, the Administration had been evasive and declined to provide an explanation on FS's statements. He reiterated that the senior executive's statement that SSD would not be applicable to PASP signed the following day was made in response to FS's statements made at the press conference on 19 November 2010. The public could be able to know the truth of the matter through the correspondence exchanges. Expressing similar views, Ir Dr Raymond HO said that Principal Officials should be held responsible for their statements. FS had clearly stated in his reply to a reporter at the press conference that SSD would only be applicable to PASP signed the following day. He failed to see why the Administration should be pinpointing at the senior executive and not FS, when both of them had made similar statements regarding the applicability of SSD. PSTH(H) said that the press conference on 19 November 2010 covered various issues, and that these should not be taken out of context. FS had made it very clear that the objective of SSD was to curb short-term speculation, and that people should be cautious when making purchase decisions. However, the statement made by the senior executive in his online blog on the same day was not qualified in any way. He stressed that the applicability of SSD was not known until the relevant legislation was passed. Therefore, purchasers should seek proper legal advice when making property purchases.

10. The Chairman recalled that when the same subject was discussed at the last Panel meeting on 10 February 2011, THB upheld its view that the statement made by the senior executive in his online blog on 19 November 2010 was "misleading". However, in its letters to MTRCL, LandsD regarded the statement as "inappropriate". Despite that different bureaux and departments had different responsibilities, the Administration should stand as one entity and have a united stance on important issues. He enquired if LandsD, being the administrator of the Consent Scheme, would stand by the position of THB. D of L reiterated that LandsD was pursuing the matter in the landlord capacity in accordance with the land grant conditions. Its stance or action taken in the case should not prejudice, restrict, limit or prejudice any stance or action taken or to be taken by the Administration acting in a different capacity. LandsD had first written to MTRCL on 30 November 2010. Based on the information gathered from the subsequent correspondence exchanges, LandsD was of the view that it was not appropriate for a senior executive of a development company, being the sales agent of Festival City Phase II, to make the statement in such tone and context. MTRCL had subsequently advised its sales agent to be cautious when making statements on newly announced policies. LandsD had also requested MTRCL to issue proper instructions and guidelines for the acts of its sales agents for future sale of units.

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11. Based on the follow-up actions taken, the Chairman considered that LandsD had been very lenient with MTRCL which was only required to issue proper instructions and guidelines for future sales. Despite that LandsD had clearly stated in its letter dated 21 April 2011 that MTRCL should be responsible for the acts of its sales agents, no penalty or warning had been imposed on the sale agents concerned. Given that the legislation on regulation of sale of first-hand residential property was not expected to be in place before 2012, the public had to rely on the Consent Scheme during the interim. However, the lenient approach adopted by LandsD would encourage misrepresentation on the part of sales agents. D of L stressed that there was no contractual relationship between LandsD and the development company concerned. Therefore, LandsD should communicate with the grantee of the lot, i.e. KCRC, c/o MTRCL, to whom the approval for pre-sale of uncompleted flats at Festival City Phase II was given. Following the statement made by the senior executive on 19 November 2010, LandsD had written to MTRCL seeking its views on the appropriateness of the statement, as well as details of the sales which took place around the time between the publication of the statement and just before midnight of 19 November 2010 ("the Period") to ascertain the effect of the statement. MTRCL was not able to confirm the exact number of sales which took place during the Period. It confirmed that 157 units in Festival City Phase II were sold for the whole day of 19 November 2010, and none of the 157 purchasers had made any enquiries in relation to the statement or had ever requested to cancel the sales. D of L further said that based on the information so far available, it could not be assumed that none of the 157 purchasers were affected by the statement. LandsD would keep a close watch on the development of the case should any aggrieved purchaser make a claim.

12. Mr Abraham SHEK said that LandsD was right in protecting the interest of the buyers of the 157 units of Festival City Phase II sold on 19 November 2010. Buyers would take into account their individual circumstances when making a decision on property purchase, and would not be easily misled by a statement made by a sales agent. He expressed once again his regret that PSTH(H) had failed to explain FS' statements made at the press conference on 19 November 2010. PSTH(H) reiterated that FS had made various statements at the press conference on 19 November 2010, including the proposed implementation of SSD. FS had also reminded the public to be cautious in making property purchase decisions. However, the subsequent statement made by the senior executive in his online blog did not contain any cautionary words, but to encourage purchasers to rush to buy the units before midnight of 19 November 2010 to avoid payment of SSD. The question of misrepresentation should best be dealt with in the context of the new legislation.

Way forward

13. Mr WONG Kwok-hing expressed regret that REDA had declined to take actions and thus no penalty could be imposed despite the many correspondence exchanges between THB and REDA. Referring to the correspondence exchanges between LandsD and MTRCL, it also appeared that no compromise had been reached. To prevent similar recurrences in the future, he considered it necessary for both the Administration and MTRCL to undertake remedial actions. PSTH(H) said that THB had set up a Steering Committee to examine in detail specific issues pertaining to the regulation of the sale of first-hand residential properties by legislation, which would provide for enforcement and penalties for non-compliance. The Steering Committee would indeed look into the issue of misrepresentation. D of L said that as the grantee of the lot, KCRC should be responsible for the acts of its sales agents. To prevent future recurrences, LandsD had requested MTRCL, as agent of KCRC, to issue proper instructions and guidelines for its sales agents in the sales of properties. In its reply to LandsD on 4 May 2011, MTRCL had indicated that that it was prepared to issue guidelines to developers in future sales of property developments to observe and perform the following -

- (a) to fully observe and comply with all the terms and conditions of the pre-sale consent issued by the Government;
- (b) to be cautious when making any statement on newly announced Government policies, and where it was necessary or appropriate, to clarify the policy intent with the Government on any newly announced Government policies which might impact upon the development before making any comments thereon; and
- (c) to avoid any practice which might bring discredit/disrepute to the development concerned.

MTRCL had also agreed to fully comply with applicable rules, regulations and guidelines in the sale of its property developments, and to discharge its obligations in a responsible manner. As LandsD had concluded that the action taken by MTRCL to advise the sales agents afterwards was not satisfactory, Mr WONG opined that LandsD should issue a letter to MTRCL condemning its failure to regulate the acts of its sales agents. It was regretted that LandsD had declined to issue a letter of condemnation to MTRCL.

14. The Chairman also considered that the Administration had been overly lenient in handling the case. To prevent similar recurrences in the future, he considered it necessary for the Administration to provide an undertaking that appropriate actions would be taken to ensure compliance with the Consent Scheme pending the introduction of legislation on regulation of sale of first-hand

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residential properties. D of L said that in its letter dated 21 April 2011, LandsD had pointed out that the steps taken by MTRCL to advise its sales agent afterwards was not satisfactory, and that it should be responsible for the acts of its sales agents. LandsD had reminded MTRCL that it should have issued instructions and guidelines beforehand to ensure that any statements issued by its sales agents in connection with the sale of units were appropriate. These instructions or guidelines should cover all statements made by its sales agents, including statements made by their executives in their private capacity in their personal blog in relation to the sale of units. MTRCL had subsequently agreed to issue proper instructions and guidelines for the acts of sale agents in the light of the experience gained from the case. She further said that the Department of Justice (D of J) had been consulted and confirmed that the follow-up actions taken by LandsD were appropriate. PSTH(H) acknowledged that the existing regulatory arrangements on sale of first-hand residential properties might not be adequate as they did not cover all types of developments. This was the reason why there was a need to regulate the sale of first-hand residential properties by legislation. The Chairman further enquired if the senior executive was a licensed estate agent and if so, his acts and statements should be regulated by the Estate Agents Authority. D of L said that the question was not raised in the correspondence exchanges between LandsD and MTRCL.

15. Given that D of J had confirmed that the follow-up actions taken by LandsD were appropriate, it appeared that no further actions could be taken against the senior executive. Mr WONG Kwok-hing considered that it was time to call an end to the case. Ir Dr Raymond HO echoed that the case should be put to a close as there was no point in discussing it further.

V. Marking Scheme for Estate Management Enforcement in Public Housing Estates

(LC Paper No. CB(1) 2034/10-11(06) — Administration's paper on Marking Scheme for Estate Management Enforcement in Public Housing Estates

LC Paper No. CB(1) 2034/10-11(07) — Paper on Marking Scheme for Estate Management Enforcement in Public Housing Estates prepared by the Legislative Council Secretariat (updated background brief))

16. PSTH(H) briefed members on the latest position of the Marking Scheme for Estate Management Enforcement in Public Housing Estates (the Marking Scheme). The Assistant Director of Housing (Estate Management)³ (ADH(EM)³) gave a power-point presentation on the subject.

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(Post-meeting note: A set of the power-point presentation materials was circulated to members vide LC Paper No. CB(1) 2243/10-11(01) on 20 May 2011.)

17. Noting that 38 households had accrued 16 or more points under the Marking Scheme, Mr Abraham SHEK enquired whether the tenancies of these households had been terminated. He reiterated that it was unfair to hold the entire family liable to a misdeed committed by an individual family member. The Deputy Director of Housing (Estate Management) (DDH(EM)) said that of the 38 households which had accrued 16 or more points, the Housing Department (HD) had issued a total of 27 Notice-to-Quit (NTQs), approved withholding the issuance of NTQs on nine cases on special grounds, and recovered two voluntarily surrendered PRH flats. The question of whether the entire family should be held liable had been discussed when the Marking Scheme was first implemented in 2003. As the allocation of PRH flats was based on a household basis, the entire family should take steps to ensure that all of the family members would abide by tenancy conditions and refrain from committing misdeeds. The Marking Scheme was an effective mechanism to tackle misdeeds related to hygiene and estate management, and had been well received by tenants in general. Besides, the application of NTQ to the individual family member who committed the misdeed might result in separation of family, thereby creating more family and social problems.

Throwing objects from height

18. The Chairman noted with concern that despite the various publicity and enforcement efforts to deter the throwing objects from height, the number of these point-allotment cases had increased significantly from 90 in 2009 to 200 in 2010. ADH(EM)3 said that following the increase in the number of misdeed of throwing objects from heights in late 2009, HD had adopted a three-pronged strategy to tackle the issue. These included intensifying publicity through various channels (such as holding of large-scale residents' forum by Estate Management Advisory Committees (EMACs) to promote the message of anti-throwing objects from height), deploying 10 additional Mobile Digital Closed-Circuit Television sets and five additional Special Operation Teams to detect suspected offenders, as well as strengthening patrols and inspections by estate staff under the monitoring of a Task Force set up at the Headquarters level. The significant increase in point-allotment cases involving the throwing of objects from heights in 2010 demonstrated that HD had been proactive in tackling the misdeed, and promoting tenants' awareness of their civic responsibility.

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Accumulating a large quantity of refuse or waste inside leased premises, creating offensive smell and hygiene nuisance

19. Mr WONG Kwok-hing said that some elderly tenants, particularly those who were unable to take care of themselves, would tend to commit the misdeed. Instead of allotting penalty points under the Marking Scheme, a more humane approach should be adopted to provide the needed assistance to these tenants. DDH(EM) said that the Regional Chief Manager of each estate would decide on the need for allotment of penalty points for the misdeed on a case-by-case basis. Where necessary, assistance from voluntary organizations would be solicited to help elderly tenants clear the accumulated refuse or waste inside their flats.

Smoking or carrying a lighted cigarette in estate common area

20. Mr WONG Kwok-hing asked if consideration could be given to identifying suitable secluded and sheltered area within an estate as smoking area, since some elderly tenants might find it very difficult to quit smoking. DDH(EM) said that the misdeed was one of the most frequently committed offences. Smoking area had been provided within each estate for smokers. The need for more smoking areas would be looked into in consultation with EMACs.

Drying clothes in public areas

21. Mr WONG Kwok-hing enquired if suitable sites within each estate could be identified to allow residents to hang dry their winter clothing and quilts during the change of seasons. DDH(EM) confirmed that public areas (such as playgrounds) had been deployed to facilitate residents in hang-drying their clothing and quilts during the change of seasons, the timing for which would be worked out in consultation with EMACs.

VI. 126WC - Water supply to housing development at Anderson Road

(LC Paper No. CB(1) 2034/10-11(08) — Administration's paper on
126WC - Water supply to
housing development at
Anderson Road

22. PSTH(H) briefed members on the Administration's proposal to upgrade the remaining part of **126WC** "Water supply to housing development at Anderson Road" to Category A at an estimated cost of \$231.5 million in money-of-the-day prices. The Assistant Director of Water Supplies/New Works (ADWS/NW)) explained the scope and timing for completion of the project by highlighting the salient points in the information paper.

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23. The Chairman enquired about the precautionary measures to be taken to prevent breakage of water pipes laid along slopes which was very common during heavy rain and landslides. ADWS/NW said that water pipes in close proximity of slopes would generally be laid within a leakage collection system with a rubber sheet and drainage materials to collect any leakage from the pipes and discharge properly with an aim to minimise the impact on the slopes. In response to the Chairman's further concern on frequent blockage of salt water pipes, the Chief Civil Engineer said that regular inspection and maintenance of the salt water supply system within the public housing estates would be carried out to prevent blockage of salt water pipes.

24. While supporting the project, Mr WONG Kwok-hing enquired if the proposed grassed area within the service reservoir site could be used to provide some sports facilities. Consideration should also be given to providing benches at these areas. The Chairman agreed that the technical feasibility of providing sports facilities, say mini-soccer, at the green areas referred to should be explored in view of the great demand for such facilities. ADWS/NW said that the Leisure and Cultural Services Department (LCSD) had been consulted on the proposed provision of sports facilities at the grassed areas within the service reservoir site. According to LCSD, sports facilities had not been planned in these areas in view of the limited space, and the fact that adequate sports facilities would be provided within the Anderson Road Development Site. In response to the Chairman's enquiry, ADWS/NW advised that it was technically feasible to provide some sports facilities at these grassed areas even though the space was limited. In the light of members' request, PSTH(H) agreed to reconsider the suggestion.

25. In concluding, the Chairman said that members did not raise objection to the proposal being submitted to the Public Works Subcommittee.

VII. Any other business

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