

立法會
Legislative Council

LC Paper No. CB(1) 910/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/PL/HG/1

Panel on Housing

Minutes of meeting
held on Monday, 5 December 2011, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex

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 LEUNG Yiu-chung
Hon Abraham SHEK Lai-him, SBS, JP
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon CHAN Hak-kan
Hon WONG Sing-chi
Hon WONG Kwok-kin, BBS
Hon IP Kwok-him, GBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon Tanya CHAN

Members absent : Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Vincent FANG Kang, SBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP

Public officers attending : **For item IV**
Ms Eva CHENG, JP
Secretary for Transport and Housing

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

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

Mrs Hedy CHU
Principal Assistant Secretary for Transport and
Housing (Special Duties)

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

Staff in attendance : Miss Winnie LO
Assistant Legal Adviser 7

Mrs Mary TANG
Senior Council Secretary (1)1

Miss Mandy POON
Legislative Assistant (1)1

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- I. Confirmation of minutes**
(LC Paper No. CB(1) 458/11-12 — Minutes of the special meeting held on 18 October 2011)

The minutes of the special meeting held on 18 October 2011 were confirmed.

II. Information paper issued since last meeting

2. Members noted that the following information paper had been issued since last meeting –

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- LC Paper No. CB(1) 376/11-12 — Referral arising from the meeting between Duty Roster Members and "租置綜援戶權益關注組、基層發展中心、關注綜援檢討聯盟" on 2 August 2011 regarding the buy-back arrangements under the Tenants Purchase Scheme (TPS), and the provision of rental assistance for TPS flat owners who have financial difficulties (Chinese version only)

III. Items for discussion at the next meeting

- (LC Paper No. CB(1) 490/11-12(01) — List of follow-up actions
LC Paper No. CB(1) 490/11-12(02) — List of outstanding items for discussion)

3. Members agreed to discuss the following items at the next regular meeting to be held on Wednesday, 4 January 2012, at 10:45 am –

- (a) Public rental housing development at Kai Tak Site 1A and 1B;
- (b) Development of Choi Hei Road Park – a community park converted from an abandoned quarry; and
- (c) Energy saving measures in existing public rental housing estates

(Post-meeting note: On the instruction of the Chairman, item (a) was subsequently replaced by "My Home Purchase Plan".)

4. The Chairman suggested and members agreed to hold a special meeting on Thursday, 22 December 2011, at 10:45 am to invite public views on the Consultation Document on the Proposed Legislation to Regulate the Sale of First-hand Residential Properties.

(Post-meeting note: On the instruction of the Chairman, the special meeting had been re-scheduled to be held on Thursday, 5 January 2012, at 10:45 am.)

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IV. Public consultation on the proposed legislation to regulate the sale of first-hand residential properties

- (LC Paper No. CB(1) 479/11-12(01) — Administration's paper on public consultation on the proposed legislation to regulate the sale of first-hand residential properties
- LC Paper No. CB(1) 490/11-12(03) — Paper on regulation of sales of first-hand private residential properties prepared by the Legislative Council Secretariat (updated background brief)

5. The Secretary for Transport and Housing (STH) briefed members on the major areas covered under the proposed legislation as set out in the Consultation Document on the Proposed Legislation to Regulate the Sale of First-hand Residential Properties (Consultation Document). The Deputy Secretary for Transport and Housing (Housing) (DSTH(H)) gave a power-point presentation on the Consultation Document.

(Post-meeting note: A set of the power-point presentation materials on the subject was circulated to members vide LC Paper No. CB(1) 563/11-12(01) on 6 December 2011.)

6. While welcoming the proposed legislation with penalty provisions for misrepresentation and dissemination of false or misleading information on the sale of first-hand residential properties, Mr WONG Kwok-hing enquired about the measures to be taken to protect consumers' interest during the interim pending enactment of the proposed legislation which was expected to take a considerable length of time. STH said that the Administration would compile and publish a report on the result of the public consultation exercise. It would also revise the draft legislation as appropriate taking into account the views received, with a view to introducing a bill into the Legislative Council in the first quarter of 2012 and having the bill enacted within the current legislative session. Pending the enactment of the proposed legislation, the existing regulatory measures, including the guidelines issued by the Real Estate Developers Association of Hong Kong (REDA) and the Lands Department (LandsD)'s Consent Scheme (the Consent Scheme), would continue to apply.

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Scope of coverage

7. Referring to the proposed exemption for residential properties where 95% or more of the units of the development or a phase of the development had been leased out for a reasonably long period of time, Mr LEUNG Yiu-chung questioned the propriety for setting the proposed duration of leasing out at 36 months lest vendors could choose to withhold the developments for sale or sign a three-year lease agreement with other companies in order to circumvent legislative control. In fact, some developments had been kept vacant for many years. To deter malpractices, there was a need to ascertain the authenticity of the lease agreements. While not opposing to use 36 months as the duration, Mr LEUNG Kwok-hung said that consideration should be given to imposing a tax on vendors and speculators who deliberately left their flats vacant. STH said that it would be quite unlikely that a vendor would withhold the sale of residential properties for three years in order to circumvent legislative control. Besides, an enforcement authority with statutory powers would be established to administer the proposed legislation and monitor compliance with the provisions therein, including exemptions. The Permanent Secretary for Transport and Housing (Housing) (PSTH(H)) added that the proposed legislation would only apply to first-hand residential properties. As units which had been leased out for a long time would be treated as second-hand flats, these would fall outside the scope of the proposed legislation. For the sake of clarity, clause 4 set out specific exemptions to which the proposed legislation would not apply.

8. Mr WONG Kwok-hing questioned the rationale for exempting the sale of residual and new Home Ownership Scheme (HOS) flats from the application of the proposed legislation. He also enquired if the flats developed by the Hong Kong Housing Society (HKHS) and Urban Renewal Authority (URA) would be exempted as well. STH said that it was proposed in the draft legislation to exempt HOS flats because they were subsidized flats, and that the Housing Authority (HA) had to follow set parameters (in determining the target group, setting the sale price and determining flat selection priorities among eligible applicants etc.) which were completely different from normal market practice when disposing of HOS flats. As regards flats developed by HKHS, STH said that most of them were units for long-term leasing and hence would not be covered under the proposed legislation. No exemption would be granted to residential properties developed by URA. As all first-hand residential properties would be covered under the proposed legislation, Mr WONG said that these should include flats developed by HA and HKHS. Besides, these organizations were expected to play an exemplary role. Mr CHAN Kam-lam echoed that the sale of flats developed by HA and HKHS should not be exempted from the proposed regulatory regime.

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Saleable area

9. STH explained the rationale for the proposal of using "saleable area" as the only basis for quoting the unit area and unit prices of flats under the proposed legislation. She said that a standardized definition of "saleable area" was adopted in the sale of uncompleted residential properties under the Consent Scheme since October 2008. The standardized definition of "saleable area" set out the method to calculate saleable area, which only included the area of the unit and any balcony, utility platform or verandah. She further explained that there was no standardized definition of "gross floor area" (GFA) of a flat. Different vendors might include different items in their calculation of "apportioned share of common area" which formed part of the GFA of a flat, and thus the methodologies adopted to determine unit prices of flats calculated based on GFA were not transparent and not consistent among vendors. In the light of the fact that there was currently no commonly adopted definition of GFA, the Steering Committee on the Regulation of the Sale of First-hand Residential Properties by Legislation (the Steering Committee) proposed to adopt the saleable area which had a standardized definition as the only basis to quote the unit area and unit prices of flats in the sales brochure, price lists and advertisements. This recommendation had been reflected in the proposed legislation, which would enable prospective buyers to better compare flat prices at different new developments calculated on the same basis. The proposed enforcement authority would work with the Consumer Council to carry out public education on the regulatory requirements, including the definition of saleable area, after the enactment of the proposed legislation.

10. Mr Alan LEONG enquired if the definition of saleable area would apply to the sale of properties in the secondary market. STH said that the proposed legislation aimed to regulate the sale of first-hand residential properties. As for flats sold in the secondary market, prospective purchasers were able to view the flats in their existing conditions before making informed decisions. Besides, estate agents were required to provide purchasers with information on saleable areas of properties obtained from the Rating and Valuation Department.

Sales brochure

11. Noting that consumers were often misled by artistic impressions of surrounding environment of developments in sales brochures, the Chairman opined that vendors should be required to provide accurate depiction of the actual situation in sales brochures. He therefore welcomed section 6(2)(b)(iii) of Schedule 1 to the proposed legislation requiring the listing in the location plan of the development of every building, facility or structure the principle use of which was specified in section 6(4) of Schedule 1, if the building, facility or structure was situated within 250 metres from the boundary of the development.

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As the list of uses of building/facility/structure in section 6(4) of Schedule 1 might not be exhaustive, he asked how additional uses could be included in the list. STH said that under the proposed legislation, vendors should make public bilingual sales brochures at least seven calendar days before the sale commenced. Key property information, including a location plan of the development, should be set out in the first part of the sales brochures in a specified order. She said that additional items could be included in the list if necessary. In response to Miss Tanya CHAN's enquiry about the numbering of the list using "za" and so forth after "z", PSTH(H) said that the way of numbering was commonly adopted in other legislation.

12. As sales brochures could be printed in English and/or Chinese which were the official languages used in Hong Kong, Miss Tanya CHAN enquired if the use of simplified Chinese characters was also covered under the proposed legislation, and whether vendors or estates agents could be held liable for dissemination of false or misleading information in sales brochures printed in simplified Chinese. STH said that the use of Chinese should apply to both conventional and simplified Chinese characters.

Price list

13. Miss Tanya CHAN supported the requirement for early provision of price lists to enable purchasers to get a fuller picture of the prices of flats at the outset and make comparison among different developments. This would also allow time for purchasers to seek information on mortgage arrangements before making purchase decisions to avoid forfeiture of deposits in the event of failure to secure mortgages for the properties. STH said that under the proposed legislation, vendors would be required to make public the price list at least three calendar days before the sale commenced.

14. Noting that some vendors would provide concessions (such as second mortgage equivalent to 50% of the property prices or parking spaces sold at \$1) with a view to boosting the sale of properties, Miss Tanya CHAN asked how these could be dealt with under the proposed legislation. STH said that the proposed legislation specified the essential information to be included in the price list. Information on special payment terms, including all kinds of gifts, financial advantages and benefits in connection with the sale of the unit affecting the actual price of the unit should be clearly set out in the price list. While vendors could provide second mortgage for purchasers, banks and financial institutions had to take into account any second mortgage arrangements when granting mortgage loans in compliance with the requirements of the Hong Kong Monetary Authority.

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Show flats for uncompleted development or phase

15. Given that unmodified show flats could facilitate purchasers to make purchase decisions, Mr CHAN Kam-lam questioned the rationale for not mandating the provision of show flats for uncompleted developments in the proposed legislation. STH said that vendors of small-scale developments might have practical difficulties in providing show flats. Hence, the provision of show flats for uncompleted developments was not made mandatory under the proposed legislation. However, if show flats were provided, the proposed legislation specified that an unmodified show flat for any type/size of units should be provided before a modified show flat of the same type/size of units could be shown. In response to Mr CHAN's further enquiry on whether the proposed legislation would regulate the development of inflated flats, STH said that the Development Bureau had issued guidelines to guard against inflated flats.

16. Miss Tanya CHAN questioned how the Administration could ensure unmodified show flats were an accurate depiction of the actual units to be handed over to purchasers. She also asked if visitors were allowed to take photos and videos of unmodified show flats and if so, whether vendors would commit an offence if they restricted visitors to do so. STH said that the specified requirements for unmodified show flats were recommended by the Steering Committee in consultation with professional institutes, including the Hong Kong Institute of Architects and the Hong Kong Institute of Surveyors. DSTH(H) added that under the proposed legislation, the size, dimensions, fittings and finishes of unmodified show flats should conform with that provided in the sales brochures. She added that under the proposed legislation, visitors would be allowed to take measurements, photos and videos in unmodified show flats. For modified show flats, visitors could take measurements.

Conveyancing procedures and related matters

17. Mr CHAN Kam-lam enquired about the consequences if a purchaser decided not to proceed with the transaction after signing of the preliminary sale and purchase agreement (ASP). STH said that under the proposed legislation, a purchaser who did not wish to proceed with the signing of an ASP might do so at a cost which was capped at 5% of the purchase price. DSTH(H) said that the Steering Committee had discussed at length the level of forfeiture. The proposed 5% was considered to be an appropriate level to prevent abuse by speculators and deter hasty purchase decisions by potential purchasers on the one hand, and to enhance protection of consumers on the other.

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Disclosure of information on transactions

18. As prospective purchasers would like to gather as much information (including transaction volume and prices of the units sold) before making a purchase decision, Miss Tanya CHAN supported timely provision of transaction information to purchasers. DSTH(H) said that the proposed legislation required vendors to disclose transaction information in a standard format to be specified by the enforcement authority within 24 hours upon the signing of a preliminary ASP. The vendor must also enter information concerning an ASP on the Register within one working day after he entered into an ASP.

Misrepresentation and dissemination of false or misleading information

19. The Chairman considered that, given the close ties between Hong Kong and the Mainland, and that over 20% of residential properties in Hong Kong were sold to Mainland investors, many vendors would hold promotional activities on sales of local properties in the Mainland. He enquired whether vendors would be held liable for any reports on dissemination of false or misleading information in the Mainland. STH said that as local legislation did not have cross-boundary jurisdiction, there might be difficulties in holding vendors liable for dissemination of false or misleading information in places outside Hong Kong. However, if purchasers considered that they were misled by vendors in the course of transactions of Hong Kong properties and reported that to the enforcement authority, the enforcement authority would look into the cases. Publicity efforts would also be stepped up to advise prospective purchasers of Hong Kong properties to view the properties and sign preliminary ASPs and ASPs in Hong Kong.

Penalties and defence provisions

20. Mr LEUNG Kwok-hung opined that in line with the practice of the Independent Commission Against Corruption, the onerous of proof under the proposed legislation should rest with the offenders. STH said that defence provisions for offences, including that of due diligence, were provided under the proposed legislation as appropriate. PSTH(H) added that the offences under the proposed legislation, such as misrepresentation and dissemination of false or misleading information, were quite different from corruption offences. Clause 57 of the proposed legislation provided that it was a defence for a person charged with an offence to prove that he had taken all reasonable precautions and exercised all due diligence to avoid the commission of the offence. The proposed approach, which was based on existing legislation, would provide a proper balance.

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Liability of company officers for offence committed by company and prosecution time limit

21. The Chairman noted that if a company committed an offence under the proposed legislation and if the commission of the offence was aided, abetted, counseled, procured or induced by an officer of the company or the offence was committed with the consent or connivance of, or was attributable to any recklessness on the part of, an officer of the company, such officer (i.e. director, manager and secretary of the corporation) should also be guilty of the offence and should be liable to be punished accordingly. Given that it was customary for developers to set up new companies to handle the sale of properties of a development, he was concerned that directors of the parent company could shirk their liabilities to directors of the new company (which could be a shell company) for any misrepresentation. STH said that according to section 89 of the Criminal Procedure Ordinance (Cap. 221), "Any person who aids, abets, counsels or procures the commission by another person of any offence shall be guilty of the like offence." Therefore, directors of the parent company might also be held liable if there was evidence that they had aided, abetted, counseled, procured or induced its subsidiary company in the commission of an offence.

Enforcement authority

22. Miss Tanya CHAN enquired about the role and functions of the enforcement authority. PSTH(H) said that the enforcement authority would be tasked to monitor the sales of first-hand residential properties, handle complaints and undertake investigations as appropriate, issue practice guidelines and prescribe forms, maintain data and statistics, and carry out public education. It would be vested with appropriate and necessary investigation powers under the proposed legislation. Noting that the enforcement authority would be established under the Transport and Housing Bureau (THB), Miss CHAN enquired about the timeframe for transforming it to a statutory body. STH said that the enforcement authority was put under THB at the outset to facilitate early implementation of the proposed legislation, and optimize the use of public resources. Taking into account the experience gained, the Administration would not rule out the option of transforming the enforcement authority to a statutory body at an appropriate time.

23. Mr Alan LEONG enquired about the staffing establishment of the enforcement authority, and possible overlapping of duties between the enforcement authority and other government agencies, including LandsD, as the enforcement authority was empowered to take legal actions against vendors. STH said that the two directorate posts to be created under THB would be tasked to oversee the legislative process and set up the enforcement authority. To effectively enforce the proposed legislation, a multi-disciplinary team

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comprising staff with relevant expertise in surveying and investigation etc. would be established under the enforcement authority. PSTH(H) added that the enforcement authority would consist of relevant experts so that it could deal with the wide range of issues associated with the sale of first-hand residential properties. Approval would be sought from the Legislative Council on the creation of directorate posts for running the enforcement authority as necessary. PSTH(H) said that the powers of the enforcement authority were already set out in the proposed legislation. While there would be close cooperation between the enforcement authority and other relevant authorities, efforts would be made to ensure that there would be no overlapping of functions among these organizations.

Legislative timetable

24. Mr Alan LEONG said that Members belonging to the Civic Party welcomed the proposed legislation which was a step in the right direction. Noting that the public consultation would end on 28 January 2012, and that REDA had raised a number of concerns on the proposed regulatory regime, he enquired if the Administration was confident that the Blue Bill could be introduced in the first quarter of 2012 as planned. STH said that THB would endeavour to adhere to the proposed legislative timetable. With the concerted efforts of the Steering Committee and the Department of Justice, the Administration was able to introduce the White Bill in November 2011 as pledged. While the requirements under the proposed legislation were worked out in collaboration with relevant stakeholders, further views were welcomed. The Administration was confident that the Blue Bill could be introduced within the first quarter of 2012.

V. Any other business

25. There being no other business, the meeting ended at 5:15 pm.