立法會
Legislative Council

LC Paper No. CB(1)1642/03-04
(These minutes have been seen by the Administration)

Ref: CB1/PL/HG/1

Panel on Housing and
Panel on Planning, Lands and Works

Minutes of joint meeting
held on Monday, 8 March 2004, at 5:15 pm
in the Chamber of the Legislative Council Building

Members present : Members of the Panel on Housing

Hon Albert HO Chun-yan (Chairman)
Hon CHAN Kam-lam, JP (Deputy Chairman)
Hon LEE Cheuk-yan
Hon Fred LI Wah-ming, JP
* Hon James TO Kun-sun
Hon CHAN Yuen-han, JP
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum
* Hon Abraham SHEK Lai-him, JP
Hon Tommy CHEUNG Yu-yan, JP
* Hon Albert CHAN Wai-yip
Dr Hon LO Wing-lok, JP
* Hon WONG Sing-chi
Hon Frederick FUNG Kin-kee

Members of the Panel on Planning, Lands and Works

Dr Hon TANG Siu-tong, JP (Chairman)
\# Hon LAU Ping-cheung (Deputy Chairman)
Ir Dr Hon Raymond HO Chung-tai, JP
Hon TAM Yiu-chung, GBS, JP

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

Members absent	**:**	Members of the Panel on Housing
		* Dr Hon David CHU Yu-lin, JP Hon NG Leung-sing, JP Hon LEUNG Yiu-chung Hon Andrew WONG Wang-fat, JP Hon YEUNG Yiu-chung, BBS Hon SZETO Wah * Hon IP Kwok-him, JP
		Members of the Panel on Planning, Lands and Works
		Hon James TIEN Pei-chun, GBS, JP Hon WONG Yung-kan Hon LAU Wong-fat, GBS, JP Hon Timothy FOK Tsun-ting, SBS, JP
		(* Also members of the Panel on Planning, Lands and Works)
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)
		Mr Vincent TONG, JP Deputy Director of Housing (Business Development & Construction)
		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

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

II. Disposal of the Hunghom Peninsula Private Sector Participation Scheme flats

(LC Paper No. CB(1)1238/03-04(01)	--	Information paper provided by the Administration entitled "Possible options in the disposal of Kingsford Terrace Private Sector Participation Scheme flats"
LC Paper No. CB(1)1212/03-04(01)	--	Administration's response to letter from the Clerk to the Panel on Housing dated 2 March 2004 seeking comment on an anonymous letter (LC Paper No. CB(1)1212/03-04(02))
LC Paper No. CB(1)1212/03-04(02)	--	An anonymous letter dated 23 February 2004 to the Chairman of the Panel on Housing
LC Paper No. CB(1)1160/03-04(01)	--	Information paper provided by the Administration on "Hunghom Peninsula Private Sector Participation Scheme Flats: Lease Modification Premium"
LC Paper No. CB(1)1223/03-04	--	Draft minutes of the joint meeting of the Panel on Housing and the Panel on Planning, Lands and Works held on 17 February 2004
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, Kowloon
LC Paper No. CB(1)1000/03-04(03)	--	List of documents and information which Hon Albert HO Chun-yan has requested the Administration to provide
LC Paper No. LS44/03-04	--	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. LS46/03-04	--	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
LC Paper No. CB(1)1026/03-04(01)	--	Information paper provided by the Administration on "Private Sector Participation Scheme Projects Transferred to Public Rental Housing"
LC Paper No. CB(1)1026/03-04(02)	--	An anonymous letter referred to the Panels by Hon Emily LAU Wai-hing
LC Paper No. CB(1)1026/03-04(03)	--	Email message to the Chairman from a group of former Housing Department staff on the disposal of flats in the Hunghom Peninsula Private

Sector Participation Scheme project)

2. The Chairman drew members' attention to the following papers issued before the meeting -

(a) An anonymous letter dated 23 February 2004 to him alleging that the Housing, Planning and Lands Bureau (HPLB) had received a letter from a developer proposing the sale of the Hunghom Peninsula Private Sector Participation Scheme (PSPS) flats (the Hunghom flats) in the open market through auction (LC Paper No. CB(1)1212/03-04(02)); and

(b) the Administration's response (LC Paper No. CB(1)1212/03-04(01)) to the letter from the Clerk to the Panel on Housing dated 2 March 2004 seeking comment on the letter in paragraph 2(a) above.

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

(a) Chinese version of the information paper provided by the Administration entitled "Possible options in the disposal of Kingsford Terrace Private Sector Participation Scheme flats" (LC Paper No. CB(1)1238/03-04(01)); and

(b) Letter from the Administration dated 8 March 2004 attaching a supplementary table on the comparison between the Government and the relevant developer's estimates of the lease modification premium for the Hunghom flats (the comparison table).

(*Post-meeting note:* The above papers were circulated to members vide LC Paper No. CB(1)1248/03-04 on 9 March 2004.)

The amount of the lease modification premium

4. The Secretary for Housing, Planning and Lands (SHPL) and the Deputy Director of Housing (Business Development & Construction) (DD of H(BD&C)) briefed members on the comparison table. DD of H(BD&C) explained in response to the Chairman that the sum under the item "allowance for Bulk 'Purchase' of all 2,470 flats concerned in one go by a single developer" was the estimated profit to the developer concerned for disposal of all the flats.

5. Referring to the comparison table, Mr LEE Cheuk-yan and the Chairman asked for the range of premium estimated by the Government for the negotiation. Mr LEE also enquired about the reasons for the Administration to accept $864 million as the premium while its baseline was $1,310 million.

6. In reply, DD of H(BD&C) replied that the Government had made testing bids at $1,700 million and $1,500 million at the start of the negotiation. SHPL then explained that the baseline had been worked out scientifically according to market figures although there still remained a considerable difference with the other side in terms of some of the assumptions as to, for example, estimated sale price, developer's profit, bulk discount. SHPL said that in deciding to accept $864 million as the agreed settlement sum, the Administration had assessed the pros and cons which were detailed in paragraphs 10 and 11 of its paper (LC Paper No. CB(1)1160/03-04(01)). In particular, due regard had to be given to the challenging market conditions as existed then and might prevail thereafter, and the need to uphold the Government's re-positioned housing policy to stabilize the property market by terminating the Home Ownership Scheme (HOS) and PSPS.

7. Mr LEE Cheuk-yan was unconvinced. He was gravely concerned that for the sake of upholding the re-positioned housing policy, the Administration readily accepted a premium less than its baseline estimate by as much as $400 million. In response, SHPL emphasized that the agreed premium had been negotiated through formal mediation with the developer before an independent mediator who was accredited by the Hong Kong International Arbitration Centre. DD of H(BD&C) referred members to the details of the mediation in the Annex to the paper on lease modification premium (LC Paper No. CB(1)1160/03-04(01)). He explained that the variance between the Government and the developer's estimates of the premium was largely due to the estimated sale price of the Hunghom flats after upgrading works. The Administration's position was vigorously challenged by the developer. The developer adopted a comparatively lower estimated sale price of the Hunghom flats than the Administration ($2,800/sq. ft. (gross) against $3,021/sq.ft. (gross)). Since the Hunghom project involved a saleable floor area of 1 550 000 sq. ft., the difference in the estimated sale price alone had accounted for a difference of over $340 million between the two parties' estimates of the premium. Together with the estimated differences in cost of upgrading, marketing cost and bulk purchase discount, the cumulative difference therefore exceeded $400 million.

8. Mr Albert CHAN Wai-yip pointed out that quite a few retired Government officials from the Lands Department (Lands D) were presently working for large developers or indirectly serving them through providing consultancy services. He considered this phenomenon undesirable and stressed the importance of integrity of the civil service. He expressed grave concern about the tilt of interests towards the developer in the negotiation regarding the Hunghom project. He considered the agreed premium pathetically low that had led to loss of public money. He demanded the Administration to explain the reasons for such a poor deal. He also questioned why the Government's estimated sale price was $3,021/sq. ft. (gross) only.

9. In response, SHPL emphasized that the Administration decided to accept $864 million as the agreed premium after taking into account all relevant legal, contractual and financial considerations highlighted at the joint meeting of the Panels on 17 February 2004. He also pointed out that the decision could discharge HA's obligation of having to purchase the Hunghom flats at about $1,914 million in the present financial constraints. Settling the dispute with the developer was the best way to resolve the issue. Explaining the Government's estimated sale price, he highlighted that as compared with private residential flats, the provision standards of the Hunghom flats, which were PSPS flats, were lower. Hence the Hunghom flats could not fetch a price as high as private residential flats in the same area.

10. On Mr CHAN's allegation that many former staff of Lands D worked for developers, the Director of Lands clarified that no former officials of Lands D were involved in the negotiation. Moreover, former staff of Lands D at certain ranks were required under the established procedures to seek approval from HPLB, Lands D and the Civil Service Bureau for taking up employment in any work related to Lands D's purview.

11. Mr Albert CHAN maintained that it was a fact that quite a few former staff of Lands D were presently directly or indirectly working for developers. He opined that notwithstanding the lower provision standards, the developer could sell the Hunghom flats as private flats at market prices. For the purpose of safeguarding public interests, he urged the Government to rescind the agreement notwithstanding the need to compensate the developer or the possibility of going into litigation. The Chairman also pointed out that the Government's estimate of the premium, at $1,310 million, should have factored in the upgrading costs, marketing costs and estimated profits. As such, the Administration should have upheld its estimated premium.

12. In reply to Mr CHAN on whether the agreement could be rescinded, the Deputy Law Officer (Civil Law), Department of Justice emphasized the need to honour agreements. He said that the developer had already paid the agreed premium according to the agreement. Mr CHAN remarked that there were precedents that the Government did not honour its promises.

Sale of the Hunghom flats in the open market through auction

13. Some members believed that if the Hunghom project had been disposed of through auction, the Government would have been able to secure a better price. In this regard, Mr LEE Cheuk-yan noted that in the Administration's response listed in paragraph 2(b) above, the Administration had only clarified that HPLB had not received "any letter" from any developer proposing the sale of the Hunghom flats in the open market through auction. He sought to ascertain if HPLB had received any such proposal. In response, SHPL said that similar proposals might have been made informally at casual occasions. However, no developer had ever offered any

price to buy the Hunghom flats through auction with undertaking to bear the legal consequences that might arise.

14. Mr LEE Cheuk-yan questioned why the Administration had not followed up the auction proposal even though it was put up informally. SHPL clarified that a whole range of options to dispose of the Hunghom flats had been explored. After taking into account various policy and legal considerations, the Administration had ruled out the auction option.

15. Mr WONG Sing-chi considered that auction was a better option. He asked for sight of the minutes of deliberations, if any, on the auction option which could show if the Administration had been under any pressure to dispose of the Hunghom flats through mediation instead of auction. In reply, SHPL referred members to the paper for the meeting on 17 February 2004 (LC Paper No. CB(1)1000/03-04(01)) for the relevant policy and legal considerations as well as the options explored and their limitations.

16. In this connection, the Chairman enquired whether the auction option had been excluded because the Administration had to handle the Hunghom project according to the decision of the Executive Council. In reply, SHPL explained that while he could not disclose how the Executive Council deliberated the issue, there was consensus in the Government as a whole on how to dispose of the Hunghom flats. The relevant decision was not made by him alone and he had not been under any pressure concerning the disposal options.

The manner in which the agreement on the disposal of the Hunghom flats had been reached

17. Mr Frederick FUNG Kin-kee was dissatisfied with both the amount of the agreed premium and the manner in which the Administration had reached the agreement with the developer on the disposal of the Hunghom flats. In his view, the Administration had made the following two mistakes -

(a) The Administration had let itself be tied down by various policy, legal and contractual considerations, limiting itself with few choices and putting itself in a disadvantaged position in the negotiation. It had not flexibly adjusted its housing policy to facilitate adoption of better disposal options even when facing the consequence of sacrificing public interests; and

(b) It was strategically undesirable and unwise to make known in the open all the restrictions regarding handling of the Hunghom project during the negotiation.

18. Mr Frederick FUNG questioned what had led to the above mistakes, and opined that the Government department(s) concerned should be held accountable.

The Chairman echoed Mr FUNG's views, and said that whatever the cause of the mistakes, more than $400 million of public money had been forgone as a result. Supplementing the points Mr FUNG made in paragraph 17(a) above, he also cast doubt on the Administration's claimed legal, contractual and financial considerations regarding the buyback option as follows -

(a) In relation to the claimed legal considerations, it was doubtful whether the buyback option would really involve lease modifications. It was also questionable that if a single purchaser was nominated to take up all the Hunghom flats from the developer, HA would be considered as providing housing to the general public and could be challenged for acting outside its authority and powers under the Housing Ordinance (Cap. 283). This was because once the HA had bought back the land title of the Hunghom project from the developer, it could surrender the land concerned to the Government. As a result, the Hunghom project would no longer be a PSPS or HA project subject to PSPS or HA restrictions;

(b) As to contractual considerations, it had already been provided in the relevant Conditions of Sale that the HA was obliged to purchase any unsold Hunghom flats at the guaranteed purchase price at the end of the specified period; and

(c) On financial considerations, while to buy back the Hunghom flats might incur a huge cash outlay of $1,914 million, the HA should have the means. Even if it had financial difficulty, the Government could seek LegCo's approval for the necessary funding. In consideration of the need to safeguard public interests, LegCo would support the relevant funding proposal.

19. In response, SHPL emphasized the need to assess the settlement agreement in context with due regard to the relevant timeframe. He reiterated that there was a need to bear in mind all the legal, contractual and financial considerations under the then prevailing circumstances. The approach of initiating negotiation with the developer to sell the Hunghom flats in the open market had also been reported to the LegCo on a number of occasions. He further pointed out that the settlement agreement should not be assessed against the recent upsurge in property prices. In the circumstances prevailing then, it was the best possible deal that could be made.

20. Dr YEUNG Sum expressed disappointment at the settlement agreement and the way it had been made. In his view, it represented an unhealthy development towards tycoonocracy, where large corporations were given many conveniences and advantages, and were even more powerful and influential than legislators. Notwithstanding the many professionals in Lands D, the developer had been able to settle the case with the Government at a pathetic premium. He

compared the Hunghom project to the Cyberport and the West Kowloon Cultural District projects, and considered these stark examples of tycoonocracy, which should not be allowed to come into play in a cosmopolitan city like Hong Kong. In the face of reduction in various kinds of services due to budget deficits, the deal was all the more unacceptable and regrettable to the Democratic Party. To allay public concern, he urged the Administration to provide the following information -

Admin

(a) The Counsel opinion concerning the options in the disposal of the Hunghom flats; and

(b) The valuation report and information compiled by Lands D for the negotiation and mediation.

21. In response, SHPL stressed that the agreement 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 then 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 Hunghom flats and allowing the developer to sell them 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 2003. It was exacerbated by the outbreak of the Severe Acute Respiratory Syndrome in March 2003. 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 property market showed signs of improvement over the past few months. SHPL further stressed that at the time of negotiation no one could have foreseen that the property market would pick up so quickly.

Admin

22. Dr YEUNG Sum was not convinced. He opined that the agreement with the developer to modify the relevant Conditions of Sale to allow the Hunghom flats to be sold in the open market would increase supply and was not conducive to addressing the imbalance between flat demand and supply. To ensure consistency of the housing policy, the Hunghom flats should instead be converted into public rental housing (PRH) as in the case of a project in Tin Shui Wai. In response, SHPL explained that the conversion option had not been adopted because the Hunghom flats were not suitable for conversion into PRH in terms of location, size and provision standards. About 60% of the Hunghom flats were of three-bedroom with gross floor area of above $60m^2$. Converting these flats into PRH would have great implications on the rent level and the median rent-to-income ratio.

23. As to Dr YEUNG Sum's request for information in paragraph 20(a) above, SHPL said that it was the Government's standing practice not to disclose in entirety any legal advice it obtained. However, the relevant legal considerations had already been explained in the paper provided for the meeting on 17 February 2004 (LC Paper No. CB(1)1000/03-04(01)). Regarding the information requested in paragraph 20(b) above, he explained that since the mediation was proceeded on a non-disclosure basis, the process had to be kept confidential and the details could not be disclosed.

24. In response, Dr YEUNG Sum and the Chairman highlighted precedents of full disclosure of legal advice obtained by the Government, such as in the case of the interpretation of the Basic Law by the National People's Congress of the Mainland. Dr YEUNG further indicated that if the Administration refused to provide the requested information, with the support of the two Panels, he might move a motion to seek the Council's authorization for the Panels to exercise the powers under section 9 of the Legislative Council (Powers and Privileges) Ordinance (Cap, 382) to require the Administration to produce the information.

25. Mr LAU Ping-cheung considered that the manner in which the Administration had handled the case was in order. The crux of the issue was whether the agreed premium was close to the market price. To clarify the issue, he agreed that the Administration should provide the information requested in paragraph 20(b) above.

26. Mr Abraham SHEK Lai-him also said that since SHPL was responsible for policy matters, he should abide by the stated housing policy when handling the Hunghom project. The problem was that he had failed to agree on a premium to the public's satisfaction. He therefore urged the Administration to accede to Dr YEUNG Sum's request to provide the valuation information to demonstrate that the agreed premium had been properly negotiated.

27. In response, SHPL agreed to consider members' requests. In this regard, the Chairman sought members' initial views on Dr YEUNG Sum's proposal to move a motion to seek the Council's authorization for the Panels to exercise the powers under section 9 of Cap. 382 to require the Administration to produce the information. He and Messrs Fred LI, Albert CHAN and WONG Sing-chi supported Dr YEUNG's proposal.

The Kingsford Terrace

28. In reply to Mr WONG Sing-chi on the disposal options for the flats in Kingsford Terrace (the Kingsford Terrace flats), SHPL confirmed that the overriding policy considerations as well as the other constraints applicable to the Hunghom project equally applied to the Kingsford Terrace project and would constrain the Administration's freedom of action. However, in the light of the opinions expressed in the community over the disposal of the Hunghom flats and

taking into account the changing property market situation, the Administration was currently reviewing various options as described in the paper entitled "Possible options (the possible options) in the disposal of Kingsford Terrace Private Sector Participation Scheme flats" (LC Paper No. CB(1)1238/03-04(01)), including the auction option but further research was required.

29. Mr LAU Ping-cheung indicated that if other feasible options had been exhausted, he would not oppose to the Administration disposing of the Kingsford Terrace flats in the same way as the Hunghom flats. He however urged Lands D to follow market movements more closely when negotiating the premium. He also enquired whether the Administration would report to LegCo should it decide to buy back the Kingsford Terrace flats at about $1,441 million. In reply, the Permanent Secretary for Housing, Planning and Lands (Housing) reported that an informal meeting was held with HA members on 6 March 2004 to discuss the possible options. The views expressed by the HA members present were that there should be a mechanism for reporting the progress of the negotiation to the HA as well as to the public; that the premium agreed should be at market level; and that the Administration should adopt a firm position in the negotiation. Should a settlement become unlikely in June 2004, the Administration should not rule out the possibility of buying back the Kingsford Terrace flats. This should give the Administration's negotiation team greater freedom of actions. The HA members had also proposed that a HA member should sit in the negotiation team as observer. He stressed that these were informal views of some HA members and welcomed comments and suggestions from members of the Legislative Council.

30. Referring to the perceived mistakes in handling the Hunghom project highlighted in paragraph 17 above, Mr Frederick FUNG cautioned the Administration against repeating those mistakes when dealing with Kingsford Terrace. Likewise, the Chairman also urged the Administration to take note of his views elaborated in paragraph 18 above, and to exercise greater flexibility in handling the Kingsford Terrace project. He further pointed out that while members might in principle support the re-positioned housing policy, they did not necessarily support rigid adherence to the policy at the expense of public interests. In reply, SHPL assured members that with the recovery of the property market, the Administration was better positioned and was more confident of clinching a satisfactory deal for Kingsford Terrace in close consultation with the HA.

31. In this regard, Mr Albert CHAN called upon the Administration to ensure there would be transparency and a level playing field to safeguard public interests when handling the Kingsford Terrace project. He further pointed out that interests of PRH tenants 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 therefore proposed that the Administration should consider selling the Kingsford Terrace flats to PRH tenants, or using the flats for rehousing households affected by urban renewal.

III. Any other business

32. There being no other business, the meeting ended at 6:45 pm.

Council Business Division 1
Legislative Council Secretariat
30 April 2004