

立法會
Legislative Council

LC Paper No. CB(1)1573/03-04
(These minutes have been seen
by the Administration)

Ref : CB1/PL/PLW/1

Panel on Planning, Lands and Works

Minutes of meeting
held on Tuesday, 23 March 2004 at 2:30 pm
in Conference Room A of the Legislative Council Building

Members present : Dr Hon TANG Siu-tong, JP (Chairman)
Hon LAU Ping-cheung (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Dr Hon David CHU Yu-lin, JP
Ir Dr Hon Raymond HO Chung-tai, JP
Hon James TO Kun-sun
Hon Timothy FOK Tsun-ting, SBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Albert CHAN Wai-yip
Hon WONG Sing-chi
Hon IP Kwok-him, JP

Members absent : Hon WONG Yung-kan
Hon LAU Wong-fat, GBS, JP

Public officers attending : **Agenda item IV**

Ms Olivia NIP
Deputy Secretary for Housing, Planning and Lands
(Planning and Lands) 2

Mr K A SALKELD
Land Registrar

Mr Parrish NG
Principal Assistant Secretary for Housing, Planning and
Lands (Planning and Lands) 3

Agenda item V

Mrs Carrie LAM
Permanent Secretary for Housing, Planning and Lands
(Planning and Lands)

Mr Gary YEUNG
Principal Assistant Secretary for Housing, Planning and
Lands (Planning and Lands)¹

Ms Doris CHEUNG
Deputy Secretary for the Environment, Transport and
Works (Environment and Transport) E1

Ms Jessie WONG
Principal Assistant Secretary for the Environment,
Transport and Works (Environment and Transport) E4

Mr Sam WONG
Principal Environmental Protection Officer
(Territory North)
Environmental Protection Department

Mr P C CHAN
Deputy Director of Planning/District

Mr Herbert LEUNG
Deputy Director of Lands (Specialist)
(Lands Administration Office, Headquarters)

Mr CHEUNG Hau-wai
Deputy Director of Buildings

Ms Rhonda LO Yuet-yee
Assistant Director (Operations)³
Food and Environmental Hygiene Department

Mr Patrick CHEUNG
Senior Assistant Director of Public Prosecutions
Department of Justice

Ms Peggy LO
Government Counsel, Prosecution Division
Department of Justice

Clerk in attendance : Ms Anita SIT
Chief Council Secretary (1)6

Staff in attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Ms Rosalind MA
Senior Council Secretary (1)8

Ms Christina SHIU
Legislative Assistant

Action

I. Confirmation of minutes and matters arising

Confirmation of minutes

The minutes of the following meetings were confirmed:

- (a) Minutes of meeting on 27 January 2004 (LC Paper No. CB(1)1313/03-04);
- (b) Minutes of meeting on 24 February 2004 (LC Paper No. CB(1)1314/03-04);
- (c) Minutes of the joint meeting with the Panel on Environmental Affairs on 23 February 2004 (LC Paper No. CB(1)1304/03-04); and
- (d) Minutes of the joint meeting with the Panel on Housing on 2 February 2004 (LC Paper No. CB(1)1337/03-04).

Matters arising from joint meeting with the Panel on Home Affairs on 25 November 2003

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| (LC Paper No. LS47/03-04 | -- Paper on the funding arrangements for West Kowloon Cultural District prepared by the Legal Service Division of the Legislative Council (LegCo) Secretariat |
| LC Paper No. CB(1)1353/03-04(01) | -- Information paper on " Progress Report on Development of the West Kowloon Cultural District" provided by the Administration) |

2. The Chairman informed members that following the joint meeting with the Panel on Home Affairs held on 25 November 2003, the Legal Service Division of

the Legislative Council Secretariat had prepared a paper on the funding arrangements for West Kowloon Cultural District (WKCD) (LC Paper No. LS47/03-04). In addition, the Administration had provided a progress report on the development of WKCD (LC Paper No. CB(1)1353/03-04(01)). He sought members' views on whether the matters should be discussed further at a joint Panel meeting. Members agreed that the matters should be discussed at the next regular meeting of the Panel on Planning, Lands and Works to be held on 27 April 2004 and members of the Panel on Home Affairs should be invited to join the discussion.

II. Information papers issued since last meeting

3. Members noted the following information papers issued since last meeting:

- (a) Suggestions raised by Kwun Tong District Council (KTDC) members at the meeting with LegCo Members held on 24 April 2003 (LC Paper No. CB(1)1114/03-04(01));
- (b) Consultancy report entitled "Change" published by the Working Group on Local Community Economy of KTDC (LC Paper No. CB(1)1114/03-04(02));
- (c) Administration's response to the suggestions raised by KTDC members at the meeting with LegCo Members held on 24 April 2003 (LC Paper No. CB(1)1114/03-04(03));
- (d) Information paper on display of street names and building numbers (LC Paper No. CB(1)1195/03-04(01)); and
- (e) Correspondence between the Panel Clerk and the Secretary for Housing, Planning and Lands relating to the attendance of public officers at Panel meetings (LC Paper No. CB(1)1306/03-04(01) & (02)).

III. Items for discussion at the next meeting

(LC Paper No. CB(1)1311/03-04(01) -- List of outstanding items for discussion

LC Paper No. CB(1)1311/03-04(02) -- List of follow-up actions)

4. Members agreed that the following items be discussed at the next regular Panel meeting to be held on 27 April 2004:

- (a) West Kowloon Cultural District (vide paragraph 2 above); and
- (b) 4110CD - Drainage improvement in Tsuen Wan, Kwai Chung and Tsing Yi.

5. In relation to item (b), Mr Albert CHAN recalled that the Administration had briefed the Panel in early 2002 on the proposed drainage tunnel schemes in urban areas for flood protection, which included the proposed Tsuen Wan Drainage Tunnel. He suggested that the Administration be requested to provide updated information on the proposed drainage tunnel schemes.

IV. Land Registration Ordinance - removal of stopped deeds

(LC Paper No. CB(1)1311/03-04(03) -- Information paper provided by the Administration

LC Paper No. CB(1)1311/03-04(04) -- Background brief on "Land Registration Ordinance - removal of stopped deeds" prepared by the LegCo Secretariat)

6. At the invitation of the Chairman, the Deputy Secretary for Housing, Planning and Lands (Planning and Lands)2 (DSPL2) took members through the information paper. She said that the Administration had undertaken a review on the proposed legislative amendments for the removal of stopped deeds. A detailed study of long outstanding stopped assignments had been undertaken to establish whether there was a real risk of loss to any party if the stopped deeds were simply removed without the consequent need to deal with the question of priority. The study revealed that there might still be risks to parties if stopped deeds were simply removed without any appeal mechanism. The Administration considered that despite the small number of stopped deeds and some existing remedies available, there was still a case to amend the law to provide for the removal of stopped deeds and to safeguard interests of parties affected, and to make provisions for appeal, reinstatement and compensation. She affirmed the Administration's view that to effect the above, amendments to the principal legislation were required.

7. Pointing out that the issue of stopped deeds had been outstanding since the enactment of the Land Registration (Amendment) Bill 2000 in July 2002, Mr Albert CHAN was concerned about the delay in introducing the relevant legislative proposal. DSPL2 explained that in the light of the heavy legislative programme for the remainder of the current LegCo session and the Land Registrar's commitments relating to the Land Titles Bill, it had not been possible for the Administration to accord priority to this legislative proposal. The Administration intended to introduce the legislative proposal in the next (2004-05) legislative session. Mr Albert CHAN said that he could accept the Administration's plan having regard to the heavy commitment of the Land Registrar relating to the Land Titles Bill, but would urge the Administration not to further delay the introduction of the legislative proposal.

V. Land-filling and other activities on private land causing environmental nuisances and/or upsetting the ecology of the land
(LC Paper No. CB(1)1311/03-04(05) -- Information paper provided by the Administration)

8. At the invitation of the Chairman, the Permanent Secretary for Housing, Planning and Lands (Planning and Lands) (PSPL) highlighted salient points in the paper which examined the regulatory regime under existing legislation in dealing with activities on private land causing environmental nuisances and/or upsetting the ecology of the land. She pointed out that the issue was complex and involved various bureaux and departments. Under the present regulatory regime, the Administration tackled the problems caused by the activities through the joint efforts of relevant bureaux and departments and enforcement actions under the relevant legislation. The Administration was aware that with the introduction of the construction waste disposal charging scheme proposed under the Waste Disposal (Amendment) (No.2) Bill, land filling activities on private land might increase as users might try to dump filling materials/waste at a cheaper cost. PSPL then briefed members on the existing controls on activities on private land, including land use planning control, land lease enforcement, as well as pollution control and prevention of environmental nuisances through legislation. She drew members' attention to the follow-up actions undertaken by relevant departments for a recent case of land filling at She Shan Tsuen, Tai Po (the She Shan Tsuen case), which were set out in the Annex of the paper.

Land use planning control

9. Referring to the She Shan Tsuen case, Mr WONG Sing-chi doubted why the Planning Department (PD) considered that there was no sufficient evidence of a breach of the statutory town plan, given the bulk dumping of construction waste at the site, which was zoned "Agriculture" under the relevant Outline Zoning Plan (OZP). He sought information on the definition and the permitted uses of the "Agriculture" zoning in OZP.

10. PSPL pointed out for the "Agriculture" zoning, there was a range of permitted uses compatible with the planning intention. These included agricultural use (market garden, keeping of livestock) and plant nursery. She said that land filling in an "Agriculture" zone did not breach the permitted use under the relevant statutory plan, and unless there was clear evidence that the land filling activity would lead to unauthorized developments (UDs), no legal action could be taken under the Town Planning Ordinance (TPO) (Cap. 131). The Deputy Director of Planning/District added that PD would take necessary enforcement actions under the relevant provisions of TPO. For example, PD had served statutory notices to the respective land owners in relation to the open storages found in the agricultural lots to the north and to the south of the She Shan Tsuen site.

11. In response to Mr WONG Sing-chi's further comment that the Administration lacked determination in taking prosecution action, PSPL explained that in the institution or continuation of criminal proceedings, the sufficiency of evidence and a reasonable prospect of a conviction were two major factors for consideration. The Senior Assistant Director of Public Prosecutions, Department of Justice added that a bare prima facie case was not enough to justify a decision to prosecute. The proper test was whether there was a reasonable prospect of a conviction. He said that from the inspections undertaken by PD to the subject site, there was no sufficient evidence so far of UD's constituting a breach of the statutory town plan. Hence, no prosecution action could be taken under the relevant provisions of TPO. He stressed the importance of adhering to the test of "a reasonable prospect of a conviction" in taking a decision to prosecute or the Administration would take a high risk of losing the case.

12. Mr WONG Sing-chi suggested the Administration consider blacklisting the land owner of the agricultural lot at She Shan Tsuen for reference by the Town Planning Board in considering any future application from the land owner for change of land use of the agricultural lots.

13. In response, PSPL advised that the land owner of the She Shan Tsuen site had submitted a planning application under section 16 of TPO. In considering a planning application, it was the normal practice for the Town Planning Board (TPB) to take into consideration whether any unauthorized activities had taken place at the site in question. As to the suggestion of a clean record system for TPB to make reference to in its consideration of planning applications, PSPL said that similar suggestions had been made by green groups and the feasibility of such a system could be explored in consultation with TPB members.

14. Mr Albert CHAN opined that the Administration should do away with its existing approach in tackling the problem and adopt a new mode of thinking. He said that enforcement actions should be coordinated by one single policy bureau and, where possible, undertaken by one department to improve efficiency and obviate the difficulty of coordination. In view of the decline of agriculture in the territory, the Administration should consider regularizing acceptable activities on agricultural lots through measures such as "planning directives" incorporated in the OZP with a proper appeal mechanism. He also suggested that the Administration should consider purchasing agricultural lots from land owners if the land was found to have conservation value. Mr James TO agreed that the Administration should consider land resumption if the private land was designated as conservation zonings and hence subject to stringent planning control. The Chairman commented that it was not easy to strike a balance between the interest of land owners and the interest of the community at large for nature conservation.

15. While sharing Mr Albert CHAN's view on the present difficulties in enforcement by the relevant departments under different pieces of legislation, PSPL said that putting the enforcement responsibilities under one single bureau

and department would involve complexities in the re-structuring of bureaux and departments and such changes could not be easily introduced. She informed members that TPB would explore means to provide greater flexibility in the permitted uses of agricultural lots in view of the decline of agricultural activities in the territory. She pointed out that the Administration had to be cautious in imposing any additional restriction on the uses of private agricultural lots as this would be prone to objections by land owners.

16. Mr James TO opined that if TPB decided to allow greater flexibility in the permitted uses of agricultural lots, it would only be fair if the land owners concerned would be required to pay a premium. PSPL agreed and pointed out that a similar arrangement had been made in the waiver granted by the Lands Department (Lands D) for temporary permission to relax restrictions under the Government leases, for example, to permit erection of structures on agricultural lots. In response to Mr TO's suggestion of introducing deeming provisions in the TPO for control of the scale and duration of land filling activities on private land, PSPL said that this suggestion could be dealt with under the Stage Two amendments of TPO.

17. Mr TAM Yiu-chung commented that there were technical deficiencies in the existing TPO with provisions susceptible to abuse by land owners to delay the prosecution proceedings against UDs. In response, PSPL said that to strengthen enforcement control against unauthorized developments not permitted under TPO, the Town Planning (Amendment) Bill 2003 proposed amendments to confine the terms requiring compliance under an enforcement notice to those requiring discontinuance of an UD. This new arrangement would stop possible abuse of the existing provisions by submission of a planning application under TPO and instituting the associated review and appeal process to delay the prosecution proceedings.

Lease enforcement

18. Pointing out that at present, trucks transporting waste for dumping at the She Shan Tsuen site were accessing the site through Government land, Mr WONG Sing-chi requested the Administration to take proper enforcement actions against the trespassing of Government land. In reply, PSPL advised that the Administration had explored measures to prohibit access of trucks to the She Shan Tsuen site. However, given that one of the two accesses leading to the site was serving as an access road to other villages and the other access fell on private land, it was not feasible to stop vehicular access to these roads. The Deputy Director of Lands (Specialist) (Lands Administration Office, Headquarters) (DD/Lands D) supplemented that further measures would be explored and while the use of long established access route over Government land under normal circumstances, might not amount to unauthorized entry onto Government land, enforcement action would be taken against any unauthorized use and occupation of Government land. He advised that the District Lands Office/Tai Po was monitoring the site very

closely and would take all appropriate enforcement actions against any breaches of land lease conditions and/or unauthorized use and occupation of Government land, once these were detected.

19. Referring to paragraphs 28 to 30 on the existing statutory controls on pollution caused by commercial activities on private land, Mr IP Kwok-him opined that the controls available under the Air Pollution Control Ordinance (Cap. 311) and the Noise Control Ordinance (Cap. 400) were insufficient for certain activities such as car repairs. He enquired whether the Administration had any plans to strengthen statutory controls of different types of pollution caused by activities on private land.

20. DD/Lands D said that the use of a particular piece of private land was governed by the terms and conditions of the relevant land lease. Some land leases included clauses requiring the lessees to ensure that activities carried out on the land would not cause any environmental nuisance. Where sufficient evidence on breach of the lease conditions was established, Lands D would take lease enforcement actions. He advised that successful lease enforcement actions had been taken by Lands D to rectify breaches of lease conditions that had given rise to environmental nuisances caused by activities carried out on private land.

Control on disposal of construction waste

21. Mr TAM Yiu-chung was concerned that the introduction of the construction waste disposal charging scheme might aggravate the problem of illegal disposal of waste, in particular, on agricultural lots in the New Territories. In reply, PSPL said that in preparation for the introduction of the construction waste disposal charging scheme, an inter-departmental working group had been set up in 1998 to formulate measures against illegal dumping of waste on Government land. However, if the disposal of waste was undertaken on private land with the consent of the owner or occupier of the land, no sanctions could be applied under the existing Waste Disposal Ordinance (WDO) (Cap 354). The Administration therefore sought to strengthen the legal provisions against such activities on private land under the Waste Disposal (Amendment) (No.2) Bill.

22. The Deputy Secretary for the Environment, Transport and Works (Environment and Transport)E1 (DS/ET) supplemented that the Waste Disposal (Amendment) (No.2) Bill proposed that the Director of Environmental Protection (DEP) be empowered to enter any places (after obtaining a warrant from the magistrate if the places were domestic premises and private land for dwelling purpose) to remove the waste deposited illegally in cases where there was an imminent risk of serious environmental impact and immediate remedial actions were required. She pointed out that to further extend DEP's power on private land might risk infringement of private property rights. Nevertheless, the Administration was considering how best to amend the WDO and/or other legislation to tackle the situation.

23. Mr LAU Ping-cheung stressed the importance of respecting private property rights in considering proper measures to deal with activities on private land. He cautioned that it would be risky to take prosecution actions against land owners because of public pressure for environmental protection. In the light of the introduction of the construction waste charging scheme and the likely increase in illegal dumping, Mr LAU suggested that before the legislative amendments were brought in place to strengthen control on construction waste disposal, the Administration should consider the interim measure of issuing guidelines through the construction industry associations for their members to observe.

24. PSPL and DS/ET appreciated Mr LAU's suggestion. They pointed out that while a trip ticket system had been implemented for monitoring wastes from Government construction sites, consideration would be given to extending the system to private construction sites. Mr LAU supported the idea and opined that this could have deterrent effect on the illegal disposal of construction wastes.

Others

25. Mr IP Kwok-him enquired whether prosecution actions could be taken in respect of the She Shan Tsuen case under the Public Health and Municipal Services Ordinance (Cap. 132). PSPL said that there was insufficient evidence in this case for prosecution actions to be taken. Responding to Mr IP's further enquiry, PSPL explained that the Administration held an open attitude towards introducing amendments to legislation to strengthen control over certain activities on private land to enhance the protection of the environment. She however pointed out that in considering the best approach for the regulatory regime, the Administration had to be mindful of striking a proper balance between sustaining economic activities and protecting the environment.

26. Noting that the Task Force (Black Spots) under the Lands D would be disbanded on 1 April 2004 and its duties would be taken up by the District Lands Offices (DLOs), Mr IP Kwok-him was concerned whether DLOs had adequate resources to cope with the additional work and the indicators to be adopted for assessing the efficiency of DLOs in performing the duties.

27. In response, DD/Lands D explained that as from 1 April 2004, one of the core duties of the former Task Force (Black Spots) would be taken over by DLOs concerned. This involved regularization by way of issue of short term waivers in respect of existing industrial undertakings within areas covered by the Development Permission Area Plans etc. and not being subject to planning enforcement actions. PSPL added that when the Task Force (Black Spots) was established in 1994, the commitment of resources for this purpose had a specific time line, which in fact had been extended. Hence, it had to be disbanded on 1 April 2004 in accordance with the planned schedule. She pointed out that under the present stringent financial position, the Administration was exploring means, such

as redeployment of surplus staff, for DLOs to take over the work after the Task Force (Black Spot) was disbanded. Consideration was being made to deploying surplus staff from the Squatter Control Offices of the Housing Department. The feasibility of this arrangement had yet to be sorted out taking into consideration relevant factors such as the matching of work skills.

28. Mr James TO said that as the land filling activities at She Shan Tsuen had caused risk of flooding, the Administration should examine whether any enforcement actions could be taken under the Land Drainage Ordinance (LDO) (Cap. 446). PSPL responded that according to the advice of the Drainage Services Department, enforcement actions could not be taken for the land filling at She Shan Tsuen as there was no drainage system servicing the area. Mr TO recalled that natural watercourses were also subject to control under LDO. PSPL undertook to follow up Mr TO's suggestion and provide a written response to the Panel after the meeting.

(Post-meeting note: The Administration's response was circulated to members vide LC Paper No. CB(1)1552/03-04 on 19 April 2004.)

29. Responding to Mr James TO's enquiry, the Deputy Director of Buildings explained that if land filling or other activities on private land were undertaken for the purpose of building or related works, they would be building works and plans should be submitted to the Building Authority for prior approval under the Buildings Ordinance (BO). In the She Shan Tsuen case, there was no evidence that the land filling activity was associated with building construction. Nevertheless, since some of the slopes formed on the She Shan Tsuen site had been dangerous, , the Buildings Department (BD) had advised the land owner to trim the slopes to a safe angle level. BD would carry out regular site inspection and continue to monitor if there was any dangerous slopes at the site.

IV. Any other business

30. There being no other business, the meeting ended at 4:40 pm.