

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1130/05-06  
(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, 24 January 2006 at 2:30 pm**  
**in Conference Room A of the Legislative Council Building**

**Members present** : Hon LAU Wong-fat, GBM, GBS, JP (Chairman)  
Hon Patrick LAU Sau-shing, SBS, JP (Deputy Chairman)  
Hon James TIEN Pei-chun, GBS, JP  
Hon Albert HO Chun-yan  
Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP  
Hon James TO Kun-sun  
Hon WONG Yung-kan, JP  
Hon CHOY So-yuk, JP  
Hon Timothy FOK Tsun-ting, GBS, JP  
Hon Abraham SHEK Lai-him, JP  
Hon LEE Wing-tat  
Hon LI Kwok-ying, MH  
Hon Daniel LAM Wai-keung, BBS, JP  
Hon Alan LEONG Kah-kit, SC  
Dr Hon KWOK Ka-ki  
Hon CHEUNG Hok-ming, SBS, JP

**Member absent** : Hon Albert CHAN Wai-yip

**Public officers attending** : **Agenda item IV**

Mr IP Man-fai, Robin  
Deputy Secretary for Housing, Planning and Lands  
(Planning and Lands)<sup>1</sup>

Miss WONG Yuen-sheung, Ophelia  
Deputy Director of Planning/District

Ms WOO Kit-ching, Jacinta  
Senior Town Planner/Ordinance Review  
Planning Department

**Clerk in attendance :** Ms Anita SIT  
Senior Council Secretary (1)9

**Staff in attendance :** Mr WONG Siu-yee  
Senior Council Secretary (1)7

Ms Christina SHIU  
Legislative Assistant (1)7

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Action

- I Confirmation of minutes**  
(LC Paper No. CB(1)654/05-06 -- Minutes of meeting on  
22 November 2005)

The minutes of the meeting held on 22 November 2005 were confirmed.

- II Information papers issued since last meeting**  
(LC Paper No. CB(1)578/05-06(01) -- Letter dated 19 December 2005  
from the Land Executives  
Association expressing views on  
the Administration's proposal to  
set up a Central Action Team in  
Lands Department
- LC Paper Nos. CB(1)700/05-06(01) and (02) -- Issues raised by Heung Yee Kuk  
Councillors at the meeting with  
Legislative Council Members on  
29 November 2005 relating to  
"Mechanism to check and  
balance the powers of the Town  
Planning Board" and a relevant  
written question raised by  
Hon LAM Wai-keung at the  
Council meeting on 11 January  
2006 and the Administration's  
reply

- LC Paper No. CB(1)701/05-06(01) -- Issues raised by Heung Yee Kuk Councillors at the meeting with Legislative Council Members on 29 November 2005 relating to “Resolving the issue of a huge backlog of small house applications”
- LC Paper Nos. CB(1)733/05-06(01) and (02) -- Memorandum from the Clerk to Bills Committee Building Management (Amendment) Bill 2005 referring to the Panel the issue on “Incorporation of owners in house developments” and the Administration’s response)

2. Members noted the information papers issued since last meeting.

### **III Items for discussion at the next meeting**

- (LC Paper No. CB(1)753/05-06(01) -- List of outstanding items for discussion
- LC Paper No. CB(1)753/05-06(02) -- List of follow-up actions
- LC Paper No. CB(1)753/05-06(03) -- Letter dated 6 January 2006 from Hon CHEUNG Hok-ming)

3. Members agreed that the following items proposed by the Administration would be discussed at the next meeting scheduled for 28 February 2006 –

- (a) Implementation of short-term greening measures associated with greening master plans (GMPs) for Central and Tsim Sha Tsui; and
- (b) PWP item no. 9174WC – Replacement and rehabilitation of water mains, stage 1 phase 2.

4. Members agreed to Mr CHEUNG Hok-ming’s proposal that the item on “Processing of small house applications and review of the small house policy” be discussed at the next meeting scheduled for 28 February 2006, and that an item on “Mechanism to check and balance the powers of the Town Planning Board” be included on the list of outstanding items for discussion.

5. Dr KWOK Ka-ki proposed and members agreed that an item on “Resumption of scheduled land auctions” be tentatively scheduled for discussion on 28 March 2006 and that the Secretary for Housing, Planning and Lands be invited to attend the meeting for discussion of the item.

**IV Fee proposal under the Town Planning (Amendment) Ordinance 2004**

(LC Paper No. CB(1)736/05-06(01) -- Information paper provided by the Administration

LC Paper No. CB(1)753/05-06(04) -- Background brief on “Fee proposal under the Town Planning (Amendment) Ordinance 2004” prepared by the Legislative Council Secretariat)

6. The Deputy Secretary for Housing, Planning and Lands (Planning and Lands)1 (DS/HPL(P&L)1) briefed members on the background to the fee proposal. He said that the Town Planning (Amendment) Ordinance 2004 was passed by the Legislative Council (LegCo) on 7 July 2004 and came into operation on 10 June 2005. Consultation with stakeholder groups on the fee proposal was conducted between September and December 2004 and the outcome of the consultation was reported to the Panel on 22 March 2005. Having considered the views expressed by the stakeholder groups and the Panel, the Administration had prepared a revised fee proposal.

Extent of fee waiver

7. While agreeing that the application fee should be waived for charitable bodies, Dr KWOK Ka-ki stated that he would object to the fee proposal if the prescribed application fee, which would depend on the size of the relevant site, would be waived only if the application was directly and exclusively for charitable purposes and was submitted by a charitable body. He pointed out that many organizations not defined as a charitable body might submit applications for a public cause and not for their own interest. He regretted that these organizations would be denied of the opportunity to submit applications because they could not afford to pay the application fees, which might be as high as \$90,000. He emphasized that the Town Planning Ordinance (TPO) (Cap. 131) empowered the public to give views on town planning issues, especially those related to land-use planning. He considered that the present fee proposal would deprive the right of some organizations to submit applications and asked how the Administration would take the matter forward. He also asked how the Administration could ensure that organizations would not be denied of the opportunity to make barrier-free applications involving public interest because of a lack of financial means.

8. In response, DS/HPL(P&L)1 explained that during the public consultation, there was a view that waiver of application fees should be extended to all applications relating to public causes. The Administration found that there would be difficulties in defining the “public cause” concept in legal terms. Therefore, the Administration proposed that waiver of application fees not be

extended to applications relating to public causes. On the other hand, a charitable body was clearly defined under the Inland Revenue Ordinance (Cap. 112). He clarified that the Administration had no intention to deny the right of any organization to submit applications through implementation of the fee proposal. As regards the way forward for the proposal, he advised that after seeking and considering the views of members, the Administration would submit the relevant subsidiary legislation to LegCo for scrutiny through the negative vetting procedure.

9. Mr James TO opined that the Administration should tackle the issue from another point of view. He considered that the waiver of application fees should be extended to cover applications which did not involve commercial elements and were submitted on grounds of public interest or a public cause. The difficulties in defining the concept of “public causes” should not be an overriding consideration in deciding whether fee waiver should be extended to applications relating to “public causes”.

10. In reply, DS/HPL(P&L)1 reiterated that unlike a charitable body which was well defined, there was no clear definition for “public causes” or “public purposes”. Without clear definitions of these concepts, any fee waiver provision based on these concepts would be difficult to implement and a lot of disputes might arise as a result.

11. Mr James TO opined that the Administration should be able to define “public interest” because the term was present in existing legislation, such as statutory provisions on search and seizure of journalistic material. He requested the Administration to investigate whether there was any definition for “public interest” in law. He further said that technically, applications from organizations which were not charitable bodies could be considered for fee waiver as long as there was a mechanism for vetting the applications. In fact, as the Administration planned to consider applications for fee waiver from charitable bodies on a case-by-case basis to see if commercial elements were involved, the Administration would need to devise a mechanism for vetting such applications any way.

12. Miss CHOY So-yuk considered that fee waiver should be extended to applications involving public interest. She pointed out that some organizations might submit applications because they found that the Administration’s planning was not in the public’s interest, or that some planning of commercial organizations had taken advantage of loopholes in the existing planning guidelines and thus was not in the public’s interest. Under the circumstances, their application fees should be waived. On the other hand, she agreed that commercial organizations should be charged application fees.

13. Mr Albert HO also considered that fee waiver should be extended to applications involving public interest. By way of illustration, he said that in order to ensure the fairness and independence of the town planning process, the

Democratic Party (DP) challenged the two-stage process adopted by the Town Planning Board (TPB) in the planning of the West Kowloon Cultural District, and TPB had to rectify the planning process as a result. He opined that an application fee which could be as high as \$90,000 was non-significant for commercial organizations and estates developers, but was unfair for other organizations, especially non-profit-making organizations. It would deter those organizations from submitting applications relating to public interest. He found it unacceptable for the Administration to use administrative difficulty as an excuse for not granting fee waiver to applications involving public interest. DP would object to the fee waiver arrangement in the current proposal.

14. While Mr Abraham SHEK and Mr CHEUNG Hok-ming supported the views given by Mr James TO and Miss CHOY So-yuk on the need to investigate whether it would be possible to define “public interest” so as to extend fee waiver to applications relating to public interest, Mr James TIEN said that he maintained an open view on the issue.

15. Mr Alan LEONG said that the town planning process had been opened up to allow the public to participate in the process. Pointing out that many organizations had already spent a lot of efforts in making their applications on various planning issues for the benefits of the community, he queried whether it would be appropriate to require them to pay application fees. He supported the suggestion to request the Administration to further investigate whether it was possible to define “public causes”, “public purposes” or “public interest”, and reconsider extension of fee waiver to all applications relating to public causes, public purposes or public interest as a matter of policy.

Admin

16. DS/HPL(P&L)1 undertook to consider the views given by members at the meeting. He reiterated that the Administration had no intention to deter the making of planning applications by charging fees. He agreed to look into existing legislation for any definition for “public interest” and reconsider the extent of applicability of fee waiver including the possibility of extending fee waiver to all applications relating to public causes, public purposes or public interest.

#### Fee levels

17. Noting that the Administration had conducted consultation in preparing the fee proposal, Mr James TIEN said that the Liberal Party had no strong views on the fee levels in the Administration’s proposal. He said that a subcommittee on subsidiary legislation might be formed later to study the fee proposal in detail.

18. While not objecting to fee charging, Mr Abraham SHEK considered that the Administration should clearly explain how it had determined the various fee items under the fee proposal so as to ensure transparency. He requested the Administration to provide in writing the details of the basis for determining the various fee items under the fee proposal.

19. The Deputy Director of Planning/District (DD of Plan) explained that the fee items were determined according to established procedures of the Treasury. The costs incurred in processing each group of applications were worked out by reference to a random selection of sample applications. About 10% of the total applications considered by TPB in a year were selected for calculating the costs. The departments involved were invited to provide input on the time and resources required in processing those applications, and their input was used to calculate the cost of service for each group of applications. All calculations had been vetted by the Treasury. She undertook to provide the details of the basis for determining the various fee items under the fee proposal.

Admin

20. Mr Alan LEONG shared Mr Abraham SHEK's views on the need for the Administration to explain clearly how it had determined the various fee items. He further requested the Administration to provide the estimated costs incurred by the Government in processing various types of planning applications each year. DS/HPL(P&L)<sup>1</sup> agreed to provide the required information.

Admin

21. Mr Albert HO sought clarification on whether the fee proposal would cover making objections under TPO as well and whether there would be any cross subsidy for Government departments. DD of Plan clarified that the fee proposal would only cover planning applications made under sections 16, 16A and 12A of TPO. Submission of views or objections during the publication of the outline zoning plans for public consultation would continue to be free of charge. For the latter question, she assured members that there would be no cross subsidy for applications submitted by Government departments.

#### Small house applications

22. Mr CHEUNG Hok-ming considered that the fee items applicable to small house applications were very unreasonable and expensive. He pointed out that in the past, applications for small houses within the village environs, i.e. within the 300 feet radius of a recognized village, required approval from the Lands Department. Approval from TPB was not required. In the 1990s, the "Village Type Development" ("V") zone was added when TPO was extended to cover the New Territories. Applications for small houses within the village environs or the "V" zone had been free of charge so far. Under the fee proposal, applications involving sites falling outside the "V" zone, even if such sites were within the village environs, would have to be charged. The Government had not explained this implication to indigenous villagers when the "V" zone was added and thus it was unfair to charge fees on the applications for small houses. There would also be double charging because an application fee would be charged upon submission of a planning application and another administration fee would be charged by the Lands Department for small house grant after approval had been given. He asked whether the Administration had fully considered the legitimate rights of the indigenous villagers in the New Territories when proposing the fee items applicable to small house applications and sought explanation on the mechanism for setting the various levels of fees.

23. DD of Plan explained that the fee proposal was prepared based on the users pay and cost recovery principles. In drawing up the boundaries for the “V” zone, the TPB would take into account a number of planning factors such as the landscape, topography, infrastructure and environmental conditions and the small house demand of the particular village. The Administration had no intention to impinge on the rights of indigenous villagers in building small houses. Before designating a “V” zone, sufficient consultation with villagers, relevant organizations and the public would be conducted. The outline zoning plans would also be published for public consultation in accordance with the provisions of the TPO. If the villagers were not satisfied with the “V” zone, they could submit objections to the TPB and their views would be heard by the TPB. She pointed out that only if the small house site fell outside the “V” zone, approval from TPB would be required and application fees would be charged. Sufficient land could be reserved for small house development in the process of preparing the outline zoning plans to eliminate the need for planning approval.

24. In response to the Chairman’s enquiry, DD of Plan said that for applications for small houses involving sites falling outside the “V” zone but within the village environs, TPB would usually give approval if those sites were suitable for small house development and it was evident that there was a shortage of land for small house development within the “V” zone. For applications involving sites falling outside the “V” zone and the village environs, TPB would usually not give approval unless under very special circumstances. TPB had formulated clear guidelines for consideration of applications for small house development. The Chairman cautioned about the possibility of legal challenges to the guidelines on small house applications because he had reservations on the legal basis of the guidelines. DD of Plan noted the Chairman’s comments.

25. On behalf of Heung Yee Kuk and DAB, Mr CHEUNG Hok-ming opined that the proposal to impose a charge on applications for small houses involving sites falling outside the “V” zone might constitute a departure from the established procedures for small house grants. The Administration should provide an explanation to the public on the rationale. He reiterated his objection to the fee items applicable to small house applications and commented that small house applications under different situations could be approved by the Lands Department instead of the Planning Department. He queried why applications for small houses had to be processed by different Government departments under different situations.

26. DD of Plan explained that for small house applications involving sites falling outside the “V” zone, the same principle as applied to urban or other areas would be adopted, i.e. an application for planning permission would be required for uses which were not permitted as of right under the zoning on the statutory plan. A similar situation was found in cases involving residential development in non-residential zones, or vice versa, in urban areas. As a matter of principle, it would be inappropriate if small house applications were free while other



applications were charged. She reiterated that no application for planning permission would be required for small house development on sites falling within the “V” zone. For applications involving sites falling outside the “V” zone but within the village environs, TPB would normally approve the applications if there was a shortage of land within the “V” zone.

Admin

27. The Chairman commented that the receptiveness of the fee proposal by stakeholders should be considered and Heung Yee Kuk should be consulted on the fee proposal with particular regard to the fee items applicable to small house applications. DD of Plan said that further discussion would be held with Heung Yee Kuk.

28. Mr Abraham SHEK considered that the Administration could not answer Mr CHEUNG Hok-ming’s queries adequately. He pointed out that adopting the users pay principle was problematic because it would affect the rights of indigenous villagers. He queried why fees had to be paid to the Lands Department and Planning Department for basic services since the land premium already covered costs incurred by the Government for provision of basic services. The Administration should clarify what constituted basic services and what types of services had to be charged.

29. In reply, DD of Plan explained that the making of outline zoning plans was a responsibility of the Government and the public were welcomed to express their views free of charge in the plan-making process. Only the services involved in the processing of applications for planning permission and rezoning would be subject to fee charges. She further explained that land administration and town planning were different executive functions of the Government. Permission for building small houses within the village environs was a land administration matter whereas setting out the “V” zone was a town planning matter. Without the statutory town plans, there would be no control on what could be erected on a piece of land if no restrictions were specified in the relevant land lease.

30. Mr Abraham SHEK cautioned that indigenous villagers had grandfather rights according to the Basic Law and their rights should not be deprived of. The conditions in the land lease should have included all land use restrictions and the public would only refer to the lease conditions. It would be difficult to explain to the public the rationale behind the fee proposal.

31. The Chairman supported the view that basic services of the Government should be free and considered that small house applications should not be charged. He commented that other than introducing the “V” zone, the Planning Department did not provide other services relating to small house applications. DD of Plan said that the development control under the outline zoning plans and implementation of the fee proposal were two separate issues. Echoing Mr Abraham SHEK’s comments, the Chairman drew the Administration’s attention to the possibility that charging fees for applications relating to small houses might be

in breach of the original intention of the small house policy and the Basic Law.  
The Administration noted the Chairman's views.

**V Any other business**

32. There being no other business, the meeting ended at 3:45 pm.

Council Business Division 1  
Legislative Council Secretariat  
23 March 2006