立法會
Legislative Council

LC Paper No. CB(1)1521/05-06
(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, 28 March 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 Albert CHAN Wai-yip 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 attending	**:**	Hon LEUNG Kwok-hung
Public officers attending	**:**	**<u>Agenda items IV and V</u>** Mr Michael SUEN Secretary for Housing, Planning and Lands Mr Patrick LAU Director of Lands

Mr Robin IP
Deputy Secretary for Housing, Planning and Lands
(Planning & Lands) 1

Clerk in attendance : Ms Anita SIT
Chief Council Secretary (1)4

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

Ms Christina SHIU
Legislative Assistant (1)7

Action

I Confirmation of minutes

(LC Paper No. CB(1)1129/05-06 -- Minutes of special meeting on 17 December 2005

LC Paper No. CB(1)1130/05-06 -- Minutes of meeting on 24 January 2006)

The minutes of the special meeting held on 17 December 2005 and the minutes of the regular meeting held on 24 January 2006 were confirmed.

II Information papers issued since last meeting

(LC Paper No. CB(1)1134/05-06(01) -- Information paper on "118CD – Drainage improvement in Northern New Territories – package B" provided by the Administration

LC Paper No. CB(1)1135/05-06(01) -- Information paper on "PWP Item No. 720CL – Engineering Infrastructure Works for Pak Shek Kok Development, Stage 2C – Road L5 and Adjoining Parking and Loading/ Unloading Areas" provided by the Administration

LC Paper No. CB(1)1136/05-06(01) -- A referral dated 15 March 2006 from the Complaints Division relating to the subject

of mandatory building inspection

LC Paper No. CB(1)1143/05-06(01) -- Information paper on "Transfer of Squatter Control Function from Housing Department to Lands Department and Strengthening of Land Control and Lease Enforcement Work" provided by the Administration)

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

III Items for discussion at the next meeting

(LC Paper No. CB(1)1128/05-06(01) -- List of outstanding items for discussion

LC Paper No. CB(1)1128/05-06(02) -- List of follow-up actions)

3. Members agreed that the following items proposed by the Administration would be discussed at the next meeting scheduled for 25 April 2006 –

(a) Proposals to lower the compulsory sale threshold for specified classes of lots under the Land (Compulsory Sale for Redevelopment) Ordinance;

(b) Tamar development project; and

(c) Revisions to fines provisions in the Waterworks Ordinance and the Waterworks Regulations

In order to allow sufficient time for discussion of the items, members agreed that the meeting would be extended by 30 minutes to 5 pm.

IV Review of lease modification to permit change of use for sites previously granted by private treaty

(LC Paper No. CB(1)1158/05-06(01) -- Information paper provided by the Administration)

4. The Secretary for Housing, Planning and Lands (SHPL) briefed members on the outcome of the review of lease modification to permit change of use for sites previously granted by private treaty.

5. Mr Albert HO was surprised at the justifications given by the Administration for maintaining the current policy on the matter. He queried that the Administration was in effect not enforcing lease conditions if it refrained from

taking action in re-entering the land for non-compliance cases because of the possible protracted legal process involved. This would amount to the undesirable implication that lease conditions did not have to be complied with. The Administration's legal authority in land control would be undermined. He considered that it would be in the public interest for the Administration to exercise its authority in accordance with the lease conditions if the land had ceased to be used for the permitted use under the relevant private treaty grant (PTG). Pointing out that the Administration had terminated the tenancies of some public rental housing residents and resumed some citizens' private properties in the past, he commented that the Administration should treat citizens and developers alike when exercising its authority in land control.

6. SHPL said that what the Administration had done was reviewing an existing policy to see whether there was any need to change the policy. The Administration was not introducing a new policy. As the land involved in PTG cases was held under a lease, the circumstances were different from termination of public rental housing tenancies where the residents were only tenants. In the cases of PTG, while the Administration was entitled to exercise its authority in re-entering the land according to the relevant clause of the lease and the relative merits of the case (e.g. evidence on the breach and allowing opportunities for the grantee to purge the breach), it did not necessarily follow that the Government could successfully re-enter in each and every case. The grantee had the right to apply to the Court of First Instance or petition the Chief Executive for relief against any re-entry. In exercising its authority, the Administration had many constraints. Even for cases with clear evidence, resorting to re-entry action by invoking the cessation or diminution of user clause had potential problems and the process could be protracted, not to mention cases without clear evidence. The Director of Lands (D of L) supplemented that the grantees involved were not limited to developers. For instance, for the Ap Lei Chau school site, the grantee was a school sponsoring organization. He also pointed out that the community might not accept that it was in the public interest for the Administration to resume private land and then put it up for sale afterwards.

7. Mr Albert HO commented that although the land was private property, the Administration should take action if the land was no longer used for the specified purpose under the PTG. The Administration should try to simplify the legal procedures involved in re-entering.

8. Mr LEE Wing-tat pointed out that through lease modification, some large private housing estates were built on sites which were originally designated for non-residential use, such as piers and oil depots. He was worried that the premiums paid by the applicants for changing the use of PTG sites were lower than the market premiums obtainable through public auctions and that lease modification would be used as a backdoor. It might attract allegations of transfer of benefits by the Administration. He considered that the Administration should put a halt to the policy. Otherwise, the bad impression of transfer of benefits would remain. He suggested shortening the term of future leases and adding to the

Conditions of Grant clauses to confer on the Administration unfettered power to regain re-possession, like what had been done for short-term tenancies for container truck parking sites. The Administration should avoid being seen as showing favouritism towards developers.

9. SHPL clarified that most of the sites which had been converted to residential use were not PTG sites previously. Applications for lease modification would be favourably considered only if the three conditions set out in paragraph 7 of the Administration's paper (LC Paper No. 1158/05-06(01)) were met. In circumstances where the grantee might maintain the current use of the land but the land would be under-utilized, consideration would be given to allowing the land to be put into optimal use to improve the surrounding environment taking into account all relevant planning factors. If more stringent conditions were to be imposed, grantees might refrain from making an application for lease modification and the land would continue to be used for purposes not compatible with the surrounding environment. As many of the PTG sites were granted a long time ago, the then circumstances at the time of grant had to be recognized. The Administration could not modify a lease unilaterally. It was not a matter of intention or decisiveness of the Administration because mutual consent would be required. D of L added that the Administration would not hesitate to take action if the evidence for non-compliance with the Conditions of Grant was clear, but the process might still be complicated under such a situation. For new PTGs, the Lands Department (Lands D) had already strengthened the "cessation or diminution of user" clause.

10. Dr KWOK Ka-ki expressed disappointment at the Administration's decision to maintain the current policy and considered it unacceptable for the Administration to refrain from re-entering PTG sites even if there was evidence of non-compliance with Conditions of Grant. He considered that the current policy was beneficial to the developers. He expressed concern on the mechanism for determining premium for lease modification for PTG sites and queried whether the premium so determined was the real market price because the premiums in some past cases were incredibly low. He opined that in the eyes of the public, there was suspicion that officials of Lands D might be facilitating developers and there might be transfer of benefits. He considered that public auction or tendering of the site concerned would be more appropriate because the resulting price would really be the market price of the site. He enquired whether the current complicated process of regaining re-possession could be simplified after strengthening the "cessation or diminution of user" clause.

11. SHPL said that the accusation made by Dr KWOK Ka-ki towards the officials of Lands D was very serious. He requested Dr KWOK to withdraw his remark if there was no supporting evidence. Dr KWOK clarified that he was talking about suspicion only and said that there indeed had been reported cases which had given rise to public suspicion of transfer of benefits. SHPL maintained that there should be evidence even for suspicion, as the remark was grossly unfair to officials of Lands D, who had no opportunity to defend themselves at this

forum. He insisted that Dr KWOK should withdraw the remark. Dr KWOK said that he would not withdraw his remark. SHPL said that he might file a complaint on the matter. D of L said that Dr KWOK's remark that officials of Lands D might be facilitating developers, which implied that the officials expected that so doing would bring about personal benefits after they had left the Government, was purely a conjecture. He represented all staff of Lands D to protest officially because the accusation was unsubstantiated and was very unfair to them. The Chairman said that according to the Clerk's advice, he did not have the power to order Dr KWOK to withdraw his remark. He however had directed the Clerk to put on record the view of the Administration towards Dr KWOK's remark.

12. Mr James TO said that there were officials of Lands D who worked for developers after they had left the Government. There was indeed suspicion in the community that there had been transfer of benefits in cases of lease modification. On the other hand, there had been complaints that the terms and conditions for lease modification put forth by Lands D were too harsh. In relation tore-entry, he commented that the Administration should not use administrative or legal complications as an excuse for not taking action against non-compliance. If a site was no longer used for the specified purpose, the Administration should try every means to gain re-possession and the grantee should not be allowed to retain the land for possible alternative use in the future. He hoped that the Administration would try its best to work out solutions to the legal and administrative complications. He pointed out that although the number of cases of lease modification involving PTG sites might be small, the number of residential flats that could be built on those sites after lease modification could be substantial. Moreover, applications for change of use of PTG sites, such as sites currently used as telephone exchanges, might increase substantially in the future.

13. In reply, SHPL said that the Administration had already explored various possible ways of gaining re-possession of sites. However, the process was often easier said than done. In gaining re-possession of private property without compensation, clear evidence had to be presented to and accepted by the court. If compensation was involved, negotiation with the grantee on gaining re-possession by voluntary surrender would merely substitute the negotiation process for a lease modification premium with another negotiation process concerning the surrender value. There was no substantive difference between the two methods.

14. Mr James TIEN considered that re-entering a site which was no longer used for the specified purpose under the relevant PTG was a reasonable move. The matter of contention was whether the premium paid reflected the market land value. In order to enhance the transparency of the lease modification process, he commented that the Administration should announce the details including the premium for each case of lease modification so that the public could ascertain whether the premium was appropriate. In reply, D of L pointed out that the Lands D published on the department's website information on premium paid for lease modification of all types of land grants, including PTGs, on a monthly basis after registration with the Lands Registry had been completed. The public could also

obtain details of the lease modification from the Lands Registry. Mr TIEN suggested the Administration consider making an official announcement for each case of lease modification as well. D of L said that the Administration would consider this suggestion. D of L also pointed out that a comparison of the premiums obtainable from public auctions and lease modifications would not be appropriate because the former involved Government land while the latter involved private land. In determining the premium, the difference between the land value under the existing lease conditions and the land value under the modified lease conditions would be assessed.

15. Mr Albert CHAN said that over the past two decades, almost one-third of the land supply for private residential flats originated from lease modification. He considered that the arrangement for change of land use of PTG sites through lease modification was biased towards the interest of developers. The phenomenon that developers would prefer negotiating with the Administration on the premium for lease modification to using other methods to obtain land for their developments showed that lease modification was a more beneficial option for them. He considered that the Administration's claim that paying premium for lease modification was a fair arrangement was not substantiated by the facts. He pointed out that there were numerous sites granted for uses as container terminals, dockyards, steel mills, power stations and transport terminals and thus substantial land resources were at stake. Maintaining the current policy would amount to maintaining transfer of benefits legally and perpetually. In relation to the Conditions of Grant for various types of PTGs, he queried why they were stringent for certain types of PTGs and lenient for other types. He opined that for PTG sites no longer used for the specified purpose, it would only be appropriate for the Government to regain re-possession of the sites and put the sites to public auction.

16. SHPL explained that the Administration had considered various methods and decided to maintain the current policy because there were practical difficulties in regaining re-possession of the PTG sites. It was not a matter of whether the Administration had the determination or not. There were many processes, considerations and authorities involved in the scrutiny of lease modification involving PTGs. Lands D would check with the respective Policy Bureau that the original policy justification had been superseded and the original use was already obsolete. A change in the original land use of a PTG site for other better uses must be confirmed through the statutory town planning procedure. Allegations of transfer of benefits or difference in stringency of Conditions of Grant were unsubstantiated conjectures only.

17. The Deputy Chairman opined that a good review should not merely result in a conclusion of maintaining the current policy only. He enquired whether the Administration had sought legal advice and explored possible measures from the legal perspective to plug loopholes involving lease modification of PTGs. He also asked whether offering a lease with a fixed term and a specific use would be a possible solution. In relation to the time required for valuation, he relayed the relevant sector's view that the time should be shortened and asked whether there

could be a statutory period for valuation.

Admin 18. In reply, D of L undertook to provide a comparison of the major clauses, especially the "cessation or diminution of user" clause and the "commence to operate" clause, between old and new PTGs. As regards the issue of whether offering a lease with a fixed term and a specific use could solve the problem, he pointed out that the possibility of legal proceedings would be the same regardless of the duration of the term of the lease. Legal proceedings had also arisen from some short-term tenancies. The situation often involved legal contention and was much more complicated than one would envisage. In relation to the time required for valuation, he explained that the process could involve a lengthy negotiation between the Administration and the grantee. While the Administration would ask for the highest possible premium in the public interest and for the public coffers, the grantee would argue for the lowest. The Administration would not accede to a lower premium in order to expedite the negotiation process. The Administration had explored the possibility of adopting an expert determination mechanism in valuation by engaging a third party, but the idea was not pursued after due consideration as both the Administration and the property sector had reservation over the mechanism.

(*Post-meeting note*: The written response provided by the Administration was issued to members vide LC Paper No. CB(1)1296/05-06 on 12 April 2006.)

19. Miss CHOY So-yuk expressed concern over the current mechanism for change of use of a part of or the whole of a PTG site through lease modification. She considered that it would not be in the public interest if PTG sites could be used for other purposes through lease modification, as the premium obtainable from lease modification of PTG sites would be less favourable than that obtainable from public auction. She queried that if the Administration could not re-enter PTG sites which were no longer used for the specified purpose, how the Administration could take the initiative to put the sites to other better uses. There might even be situations where the grantee just left the site idle and did not apply for lease modification to put the site to other uses. She considered that any change in use of PTG sites granted at nominal or concessionary premium should be decided by the Administration, not by the grantee, and asked how this could be ensured through inclusion of appropriate clauses in the Conditions of Grant.

20. In reply, SHPL pointed out that different categories of PTGs attracted different levels of premium, namely nominal premium, concessionary premium and full market premium, depending on the nature of the use. Sites granted for use as oil depots as mentioned by Miss CHOY So-yuk fell into the last category where full market premium would be required. In granting land, the Administration would specify a term in the lease to allow the grantee to use the land for a specific period of time. D of L supplemented that the Conditions of Grant contained restrictions such as the term and the "cessation or diminution of user" clause. Although the Administration could re-enter if a site was no longer used for the

specified purpose, the grantee had the right to petition for relief against any re-entry.

21. Mr Abraham SHEK commented that there had been no transfer of benefits in lease modification cases and the Administration should clarify this point to the public. On the contrary, Lands D had been very harsh to developers in matters relating to lease modification. Developers were facing a lot of difficulties in this regard and on this account, some of them had withdrawn their investments from Hong Kong. He suggested that the Administration should review the situation to enhance the business environment of Hong Kong. He commented that the premium determined by the Administration in lease modification cases often exceeded market value and developers could have no leeway for disagreement. There should be an arbitration mechanism in this regard.

22. Mr Alan LEONG enquired about the possibility of adding one more clause to the Conditions of Grant, when the Administration approved the change of use of a PTG site in response to an application by the grantee, to empower the Government to put up the site for sale by auction. If the grantee was unsuccessful in bidding for the site, the Administration would make an appropriate compensation to the grantee from the proceeds of the auction. In relation to strengthening the "cessation or diminution of user" clause, he requested more details on the measure and how far the measure had been found effective by Lands D.

23. SHPL pointed out that the consent of the grantee had to be obtained in adding one more clause to the Conditions of Grant to put up the land for sale at an auction. He could not see any incentive for the grantee to do so. D of L said that Lands D had strengthened the "commence to operate" clause and the "cessation or diminution of user" clause. For new PTGs, the opinion of D of L on whether a lot had ceased to be used for its permitted use would be unfettered, conclusive and binding on the grantee. Whether the new measure would be considered as too stringent or could stand legal challenge would remain to be seen.

24. Mr Alan LEONG commented that the grantee should have incentive to agree to the public auction arrangement because making an application for lease modification implied that the site in question had development potential. He considered that the Administration had sufficient grounds to add additional clauses when approving the change of use of a PTG site especially for PTG sites granted at nominal or concessionary premium.

25. Mr Albert HO reiterated that he could not accept that a protracted process in re-entry should be used as a justification for not enforcing the Conditions of Grant. As a matter of principle, the Administration should enforce the Conditions of Grant if there was evidence of non-compliance. In reply, SHPL re-affirmed that the Administration would take action if there was clear evidence of non-compliance. However, even if there was sufficient evidence, the case might still drag on for a very long time.

26. Mr LEE Wing-tat asked whether the Administration had any remedies or solutions to tackle the change of use of sites for facilities such as telephone exchanges through lease modification because there might be many such applications in the future. He alerted that change of use from non-residential to residential use by paying premiums which were lower than market level would be perceived by the public as showing favouritism towards developers by the Administration.

27. SHPL pointed out that there was stringent policy scrutiny for each application and each application would have to be considered for approval by the Executive Council or the Administration, as the case may be, based on justifications, individual merits and public interest. There should not be any misconception that all applications would be approved automatically and indiscriminately.

28. Mr Albert CHAN commented that the Conditions of Grant for different categories of PTG sites should enshrine the same level of vigilance of land control by the Government to ensure fairness to all grantees concerned. He was concerned that without adequate control enshrined in the Conditions of Grant, some sites currently used for public utilities or special industrial purposes would be rezoned for commercial or residential use in the end through applying to the Town Planning Board by the grantees. He commented that for new PTGs granted, the Conditions of Grant should specify that the sites would have to be returned to the Government if they ceased to be used for the specified purposes. He also opined that there should be a transparent mechanism for processing lease modification applications and there should be public consultation on the matter.

29. In view of the importance of the issue, members agreed that it would be discussed again in the future after receiving further information from the Administration.

V Review of the Application List System and the need to resume scheduled land auctions

(LC Paper No. CB(1)1109/05-06 -- The 2006-07 Application List and the relevant press release issued by the Administration

LC Paper No. CB(1)1128/05-06(03) -- Information paper provided by

		the Administration
LC Paper No. IN20/05-06	--	Information note on "Land supply in Hong Kong" prepared by the Research and Library Services Division
LC Paper No. CB(1)1128/05-06(04)	--	Background brief on "Government's land supply strategy with particular reference to the Application List System" prepared by the Legislative Council Secretariat)

30. SHPL briefed members on the Administration's review of the Application List System (ALS) and the Administration's position in response to the suggestion to resume scheduled land auctions.

Supply of land and residential properties

31. Mr LEE Wing-tat commented that the ALS could not be considered as successful; the number of applications made by developers and the number of triggers were small, showing that developers in general only had tepid interest in the ALS. Those developers who had large reserves of land supported the ALS because they did not have to rely on the ALS. They could make applications for changing the land in their reserves from non-residential to residential use. On the other hand, small and medium developers had reservation in making an application under the ALS because there was no guarantee that they would be successful in bidding for the site concerned.

32. In reply, SHPL pointed out that the ALS was market driven. What was most important was for the Government to include in the Application List a suitable mix of sites which would be of interest to developers and able to meet the development needs of the community. In the 2006-07 Application List, there were sites of various sizes in diverse locations for different types of developments. If developers had a need and were interested, they would make an application through a simple process. As such, the market would determine the amount, location and timing of the land needed. He could not see why the ALS was considered inflexible and why developers would find it difficult to trigger sites from the Application List. D of L added that the risk of making an application under the ALS would not be higher than that in bidding a site in a scheduled land auction or tender. Using scheduled land auctions or tenders would not guarantee that small and medium developers would have a higher chance of success.

33. Dr KWOK Ka-ki expressed concern that by relying solely on the ALS for the supply of new land for residential developments, the supply of residential flats would be entirely controlled by developers, bearing also in mind that the Administration had decided that no more Home Ownership Scheme flats would be

produced. He pointed out that land auction had a long history of operation and it could ensure an adequate supply of residential flats with the market determining the land premium. Insufficient supply of residential flats would lead to substantial rise in property prices, making residential flats less affordable to the general public.

34. In reply, SHPL emphasized that according to relevant statistics, there would be an adequate supply of residential flats in the next few years. Starting from 2007, more than 10 000 surplus Home Ownership Scheme flats would be put up for sale by the Housing Authority. Statistics on private housing supply in the primary market were released quarterly by the Housing, Planning and Lands Bureau.

35. With regard to scheduled land auctions, Mr LEE Wing-tat commented that if the Administration was considering resuming scheduled auctions of commercial sites of limited scale, the same could apply to residential sites. He considered that without scheduled land auctions, there would be no updated market price. He queried how the Administration could determine a premium which could reflect the prevailing market price if there had not been any land auction for a long period. In relation to determination of premium, D of L explained that apart from land auctions, there were other market indicators, such as land transactions, property transactions and construction costs, which could be used as references in determining the premium. The same mechanism was used for determining the premium for lease modification and the premium under the ALS.

36. Mr Albert HO suggested that where there was a shortage of land in a certain district, the supply in that district could be regulated through land auctions. He asked whether the Administration would consider using other methods of land sale such as auction or tender to supplement the ALS. In reply, SHPL said that the ALS was market-driven and hence it was up to developers to trigger any site from the Application List for auction any time they considered appropriate. The Administration had received support for maintaining the policy that the supply of new land should be triggered from the Application List. Since the ALS had been operating smoothly, the Administration did not see the need to resort to other methods of land sale to supplement the ALS.

Deposit

37. Mr LEE Wing-tat pointed out that the deposit required for making an application under the ALS would be frozen for two to three months without interest. The arrangement might reduce the interest of developers in making applications. In reply, SHPL explained that the deposit required was only 10% of the bid price of the site and subject to a maximum of $50 million. The amount of deposit was small and nominal when compared with the premium.

38. Mr Albert HO considered that scheduled land auctions had a higher

chance of leading to a successful transaction because there was no need to make an application and pay a deposit. D of L pointed out that a deposit which would be frozen for two to three months was also required in tendering. After introducing improvements measures to the ALS, when a bid reached at least 80% of the assessed Open Market Value of the site, there would be a trigger to initiate an auction or a tender, meaning that the deposit required had been lowered. The processing time had also been shortened to about seven weeks. Some small and medium developers had indicated that the deposit or risk under the ALS was not a major deterrent.

VI Any other business

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

Council Business Division 1
Legislative Council Secretariat
18 May 2006