

立法會
Legislative Council

LC Paper No. CB(1)861/07-08
(These minutes have been seen
by the Administration)

Ref : CB1/PL/DEV/1

Panel on Development

Minutes of meeting
held on Tuesday, 22 January 2008, at 2:30 pm
in Conference Room A of the Legislative Council Building

Members present : Hon LAU Wong-fat, GBM, GBS, JP (Chairman)
Prof 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, SBS, S.B.St.J., JP
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Miriam LAU Kin-yea, GBS, JP
Hon CHOY So-yuk, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Albert CHAN Wai-yip
Hon LEE Wing-tat
Hon Daniel LAM Wai-keung, SBS, JP
Hon Alan LEONG Kah-kit, SC
Dr Hon KWOK Ka-ki
Hon CHEUNG Hok-ming, SBS, JP

Members absent : Hon Timothy FOK Tsun-ting, GBS, JP

Members attending : Hon CHAN Yuen-han, SBS, JP
Hon CHIM Pui-chung

Public officers attending : Agenda item IV

Mr Raymond YOUNG
Permanent Secretary for Development
(Planning & Lands)

Ms Ivy LAW
Principal Assistant Secretary for Development
(Planning & Lands) 4

Mr Paul PANG
Assistant Director of Buildings/Existing Buildings 1

Agenda item V

Mr Raymond YOUNG
Permanent Secretary for Development
(Planning & Lands)

Mrs NG TSE Suk-ying, Ava
Director of Planning

Mr Jeff LAM Yun-tong
Assistant Director of Lands
(Headquarters)

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

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

Miss Clara LO
Legislative Assistant (1)3

Action

I Confirmation of minutes
(LC Paper No. CB(1)606/07-08 -- Minutes of meeting on
27 November 2007)

The minutes of the meeting held on 27 November 2007 were confirmed.

II Information papers issued since last meeting

(LC Paper No. CB(1)515/07-08(01) -- Submission dated 21 December 2007 from 重建聯區(業主/租客)聯會 relating to the property acquisition policy of the Urban Renewal Authority

LC Paper Nos. -- Administration's response dated 17 December 2007 to issues raised at the meeting between Legislative Council Members and Heung Yee Kuk Councillors on 8 November 2007 on "Land development strategy of the frontier closed area" and "Planning for rural areas and review of land uses in the New Territories (agricultural land, green belt and recreational land)"

LC Paper No. CB(1)569/07-08(01) -- Response dated 4 January 2008 from the Urban Renewal Authority to the letter dated 30 August 2007 from Designing Hong Kong Harbour District regarding conservation of the street market at Graham Street, Peel Street and Gage Street

LC Paper No. CB(1)580/07-08 -- Report of the Subcommittee to Review the Planning for the Central Waterfront (including the Tamar Site)

LC Paper No. CB(1)593/07-08(01) -- Information paper on "104CD -- Drainage improvement in Northern Hong Kong Island -- western lower catchment works" provided by the Administration)

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

III Items for discussion at the next meeting

(LC Paper No. CB(1)605/07-08(01) -- List of outstanding items for discussion

LC Paper No. CB(1)605/07-08(02) -- List of follow-up actions)

3. Members agreed that the following items would be discussed at the next regular meeting scheduled for 26 February 2008 --

- (a) New Development Areas;
- (b) Enhancement of continuity of the pedestrian links along the northern shore of the Hong Kong Island and the accessibility and environment of the harbourfront areas of the Island; and
- (c) Tamar Development Project.

The meeting would be extended for one hour to end at 5:30 pm.

IV Proposal to facilitate private redevelopment

(LC Paper No. CB(1)605/07-08(03) -- Information paper provided by the Administration

LC Paper No. CB(1)637/07-08(01) -- Referral from the Complaints Division on issues relating to the Land (Compulsory Sale for Redevelopment) Ordinance)

4. The Permanent Secretary for Development (Planning & Lands) (PSPL) highlighted the main points of the Administration's paper (LC Paper No. CB(1)605/07-08(03)), including --

- (a) the public consultation on the proposal to lower the compulsory land sale application threshold under the Land (Compulsory Sale for Redevelopment) Ordinance (LCSRO) for three specified classes of lots;
- (b) in the light of the results of the public consultation, the Administration's latest proposal of designating two classes of lots for a lower application threshold of not less than 80%, namely (i) a lot with "all units but one" acquired; or (ii) a lot with all building(s) aged 40 or above;
- (c) given that there were diverse views on the relaxation in respect of "missing or untraceable owners" and the difficulty in introducing a safe mechanism to protect private property rights under the proposed requirement, the Administration dropped this class of lots from the current proposal; and

- (d) subject to members' views, the Administration would introduce the relevant Gazette notice, which was subsidiary legislation, into the Legislative Council.

A lot with "all units but one" acquired

5. Mr James TIEN said that under the existing legislation, redevelopment of certain buildings, such as shophouses with six units, would come to a deadlock when only one remaining owner refused to sell the property. In this regard, he supported the proposal. He sought an explanation for the Administration's intention not to regard car parking spaces, roof-top areas, external walls and basements as a "unit" even if they were allotted with undivided shares and did not fall within the common parts.

6. Mr James TO considered that rentals from car parking spaces, advertisements on external walls and shops in basements might be substantially higher than the values of residential properties upstairs. He wondered how the Administration would strike a balance between protecting rights to residential properties and rights to other revenue-generating areas in defining what constituted a "unit". The Administration would require further thoughts in this regard.

7. In response, PSPL said that the under the proposal, certain areas would not be regarded as a "unit" so as to ensure that the applicability of this class of lot would not be unnecessarily constrained. The Administration would address concerns on how to define what constituted a "unit" when drafting the relevant subsidiary legislation.

A lot with all building(s) aged 40 or above

8. Mr James TIEN said that he had some reservations on lowering the threshold for a lot with all building(s) aged 40 or above. Although there were views that lowering the threshold for this class of lots would benefit developers, he considered that whether the threshold was 80% or 90% would not make too much difference for developers. Rather, it would facilitate those owners who would otherwise not be able to redevelop their aged buildings. He considered that the Administration's justifications set out in paragraphs 10 and 11 of its paper not strong enough. He was also worried that some buildings which had historic value would be demolished if the threshold for this class of lots was lowered.

9. In response, PSPL said that the Administration proposed to lower the threshold for this class of lots because some sectors of the community had views that redevelopment was often affected by a few owners who were unwilling to sell their properties. The Administration had conducted public consultations and many of those consulted generally supported the direction of the proposal. Heritage buildings would not be affected by the proposal because the Administration had a

comprehensive conservation policy and the Antiquities and Monuments Office would assess and grade aged buildings which had historic value.

10. Dr KWOK Ka-ki said that there were already a lot of disputes arising from redevelopment under the current 90% threshold. Lowering the threshold to 80% would further increase discontent. While he could accept the proposal in relation to a lot with "all units but one" acquired, he objected to lowering the threshold for a lot with all building(s) aged 40 or above because it would have a great impact. He highlighted that the results of the public consultation showed that 55% of the respondents were against the proposal in relation to the second class of lots. If the acquisition offers were reasonable, he believed that most owners would be willing to sell their properties. There could be other ways to expedite redevelopment. The Administration should not force through the proposal for the second class of lots if it respected public views. Otherwise, it would aggravate the public's impression that the Administration was favouring the developers.

11. In response, PSPL said that the view that the proposal was in the interests of the developers was unfounded because the property owners would also benefit. Results of the telephone poll survey showed that more than 60% of the respondents supported lowering the threshold for a lot with all building(s) aged 40 or above. For the public consultation, the main reason for those respondents who had reservations on the proposal was that buildings aged 40 or above could still be well-maintained. Their concern could be addressed because falling into this class of lots was only a prerequisite in applying for compulsory land sale. The Lands Tribunal would only issue an order for compulsory land sale after having considered various factors including the age and the state of repair of the building. In one case, the Lands Tribunal had rejected an application in relation to a building of 47 years old on grounds that the building was still well-maintained.

12. Ir Dr Raymond HO said that some buildings aged 40 or above were well-maintained and structurally safe and residents and their families had been living there for generations. Under such circumstances, he wondered whether it was the best idea to facilitate the redevelopment of those buildings. Rehabilitation could be a better alternative. The Administration should demonstrate that redevelopment would be seriously affected if the proposal was not implemented.

13. In response, PSPL said that for well-maintained aged buildings, it was unlikely that the Lands Tribunal would approve applications for compulsory land sale. Upon implementation of the proposed Mandatory Building Inspection Scheme, the state of repair of aged buildings would be enhanced, and the likelihood that residents would be forced to move out from well-maintained aged buildings because of compulsory land sale was very small.

14. In reply to Ms Miriam LAU's question, PSPL confirmed that the existing 90% threshold would continue to be applicable to classes of lots other than the two proposed for a lower threshold of 80%.

15. Ms Miriam LAU said that while she understood the concerns of some property owners, she considered that a compulsory land sale mechanism might be necessary to avoid deadlocks in redevelopment. Whether the threshold should be set at 80% or 90% was a matter of opinion. In relation to a lot with all building(s) aged 40 or above, the Administration could consider specifying clearly in the relevant legislation the conditions under which a compulsory land sale order would be issued, because a single case of rejecting an application by the Lands Tribunal on the grounds that the building was well-maintained was insufficient to set a binding precedent for consistent judgments under similar circumstances in future.

16. In response, PSPL said that all applications for compulsory land sale would be handled by the Lands Tribunal. The Lands Tribunal had only considered 20-odd cases for compulsory land sale since the enactment of the LCSRO. Although the said case of the Lands Tribunal having rejected an application might not be a binding precedent, it would serve as a useful reference.

Balance of interests

17. Mr Alan LEONG referred to the complaint case (LC Paper No. CB(1)637/07-08(01)) referred to the Panel from the Complaints Division and said that the complaint case demonstrated that the LCSRO ran contrary to protecting private property rights. It was important to strike the right balance, which was not easy to achieve. He asked whether the Administration had considered how to strike a balance and protect the rights of small property owners in proposing to lower the threshold.

18. In response, PSPL said that the proposal was a prudent one and the Administration would strike a delicate balance between facilitating redevelopment and protecting private property rights. He believed that the small property owners in the referral case mentioned above were dissatisfied with the Lands Tribunal's judgment and the fact that the lot concerned was sold at the reserve price at an auction held according to the order of the Lands Tribunal. He said that the reserve price was determined by the Lands Tribunal in a fair manner after having consulted professional surveyors. The proceeds from auctions would be distributed to each majority owner and each minority owner on a pro rata basis.

19. Mr Albert CHAN said that he would firmly object to the proposal of lowering the threshold from 90% to 80%. Although it was he and Mr James TO who originally proposed to set the threshold at 90%, he considered that lowering the threshold to 80% would be a qualitative change rather than a quantitative change. The Administration should not become a tool to acquire properties for unscrupulous developers. Further lowering the threshold would substantially speed up the pace of acquisition of aged buildings by developers. Some owners might not wish to sell their properties for sentimental reasons. He was worried that the proposal would eventually eliminate the special characters of old areas and collective memories would be destroyed. He considered that majority property

owners could request the Urban Renewal Authority (URA) to cooperate in carrying out redevelopment. Rather than allowing developers to do whatever they liked, redevelopment should be carried out under the existing statutory urban renewal mechanism. When compared with developers, URA was more attentive to the rights of small property owners. The Administration had not assessed the impact of the proposal on the society and it should be cautious in handling the matter. Otherwise, the result would be catastrophic.

20. In response, PSPL said that the Administration accorded great importance to the rights of small property owners. The current proposal had struck a balance between facilitating redevelopment and protecting private property rights. The proposal would not only benefit developers, and the interests of developers might not necessarily be at odds with the interests of small property owners. Although some owners might be unwilling to sell their properties because of sentimental or other reasons, there were many others who were willing to do so to improve their living environment. Affected owners would also receive a reasonable compensation. This was a choice that the society had to make. He did not consider that the proposal would bring a catastrophic result because its scope was limited to two classes of lots only and there were adequate safeguards for the interests of small owners.

21. Mr James TO said that at the time when he and Mr Albert CHAN proposed the 90% threshold, their main objective was to tackle cases involving missing or untraceable owners. Private property rights should be protected as far as possible and the existing legislation had struck an appropriate balance between facilitating redevelopment and protecting private property rights. Lowering the threshold to 80% would create a vulnerable situation. The 90% threshold was determined by making reference to the provisions of the Companies Ordinance in relation to compulsory acquisition of shares. He also pointed out that even if 90% of the owners wished to amend deeds of mutual covenant, they could not do so. Although he agreed that the benefits of the proposal would not be limited to developers and joint applications by developers and small property owners were possible, the reality was that such redevelopment projects were often initiated and led by developers. Supporting and opposing views from the public should both be taken into account and the details of the proposal still required further refinement. He commented that the wording of some of the questions asked in the telephone poll survey was biased. He further said that some elderly wanted to live out their lives at their existing properties and it would be harsh to force them to move out by paying compensation. As such, he had reservations and would not support the Administration's proposal at this stage.

22. In response, PSPL said that he did not envisage that the present proposal, given its very confined scope of application, would create a vulnerable situation in protecting private property rights. The LCSRO already had provisions for designating a lower threshold of not less than 80% for specified classes of lots. The present proposal would not require amendment to the principal ordinance and would not alter the legislative intent of the ordinance.

23. Ir Dr Raymond HO said that facilitating redevelopment and protecting private property rights were both important and it was not easy to strike a balance. He welcomed that the Administration had dropped the class of lots in respect of missing or untraceable owners. While he would not object to the current proposal, he still had some reservations. There were media reports on estates agents luring owners to sell their properties and people acquiring properties for profit from redevelopment. Some retired persons wished to stay in their aged properties and with their neighborhood. Monetary compensation alone was not enough and the social and personal needs of affected owners should be given due attention. There should be a mechanism, such as the Lands Tribunal, for handling grievances. The Administration should give careful consideration to the matter because he did not wish to see that some people would be affected unreasonably. He was still waiting to be convinced by the Administration.

24. Miss CHOY So-yuk said that many owners affected by redevelopment had grievances and were forced to move out unwillingly. Some developers used divisive tactics by agreeing to acquire the properties of some of the owners at a high price and then marginalized the rest of the owners, and claimed that they would offer a low acquisition price in future because they could apply for compulsory land sale at a threshold of 80% if the proposal was implemented. She referred to the Lai Sing Court private redevelopment project and said that flat-for-flat compensation was more acceptable to affected owners. As owners affected by redevelopment projects undertaken by URA were often dissatisfied with their compensation, she and affected owners would be more assured if flat-for-flat compensation would be offered when adopting a lower compulsory land sale threshold. She suggested that the Panel should hold another meeting to receive public views on the subject matter.

25. In response, PSPL said that in handling applications for compulsory land sale, the Lands Tribunal had to be satisfied that the applicant had already made every effort to acquire all the shares of the lot. He emphasized that the proposed threshold of 80% was more stringent than that for redevelopment projects undertaken by URA.

Auctions conducted under compulsory land sale

26. Mr Albert HO said that he had read information stating that among the auctions conducted under compulsory land sale, most often there was only one bidder and the transaction was made at the reserve price. He asked whether the Administration had any information on the number of bidders at those auctions, and information on whether the transaction prices were higher than the reserve prices. He also asked whether the unenthusiastic response was due to insufficient publicity, and enquired about the criteria that the Lands Tribunal would use to handle applications for compulsory land sale.

27. Mr Alan LEONG said that small property owners would find it disturbing and difficult to argue their case at the Lands Tribunal because of the high legal fees required. For those owners who were unwilling to sell their properties for various reasons, it was for the developers to persuade them. There was no reason to assist those developers through legislative means. Given that there was so much dissatisfaction on the acquisition offers made by URA, if the transaction price for auctions conducted under compulsory land sale was only the reserve price, there would even be greater dissatisfaction. Developers other than the one making the application for compulsory land sale would unlikely participate in the auction. He had great reservations on the Administration's proposal.

28. Prof Patrick LAU enquired how the reserve price was determined for auctions conducted under compulsory land sale. Ms Miriam LAU asked whether the Administration had any measures to ensure that the determination of the reserve price was acceptable to the public.

29. In response, PSPL said that the acquisition offers made by URA was based on the valuation by independent professional surveyors. The Lands Tribunal also adopted a similar practice. Even if the transaction was made at the reserve price, it was not an issue because the Lands Tribunal had consulted professional surveyors to determine a reasonable market price to be used as the reserve price. The reserve price had already taken into account the redevelopment value of the lot concerned. Therefore, transactions made at the reserve price were fair deals. It was not uncommon that only some parties would be interested in bidding at a particular auction, and he conjectured that the applicant for compulsory land sale would naturally be interested in bidding to make a deal and was often successful in doing so. The Lands Tribunal would conduct auctions according to its established procedures and there would be notices and announcements for such auctions. Legislative requirements would be adhered to. In handling applications for compulsory land sale, the Lands Tribunal would consider, among other factors, the age and the state of repair of the existing development on the lot to determine whether to issue an order for compulsory land sale. It had the role of safeguarding the interests of property owners. The Administration would consider Members' views when introducing the subsidiary legislation. He undertook to try to provide information on the number of bidders at those auctions, information on whether the transaction prices were higher than the reserve prices, and information on how the reserve prices for those auctions were determined.

Admin

Possible effect on building maintenance

30. Mr Albert HO was worried that property owners in the hope of successfully applying for compulsory land sale would be inclined to refrain from maintaining their buildings. Expressing a similar concern, Mr James TO was worried that there would be no incentive for owners to maintain their aged buildings if the threshold was further lowered because well-maintained buildings could not be redeveloped through compulsory land sale. He had heard allegations

that some owners even damaged the concrete of their buildings because redevelopment would bring more benefits than maintaining buildings well.

31. In response, PSPL said that the Building Department would take enforcement actions on owners of dilapidated buildings that lacked proper maintenance. The Administration was considering introducing a Mandatory Building Inspection Scheme to ensure that owners would properly maintain their buildings.

Other comments

32. Mr CHEUNG Hok-ming asked whether the Administration had any information on the number of intended developments which would become eligible for compulsory land sale after lowering the threshold to 80%.

33. Mr James TIEN enquired about the possible increase in the number of eligible buildings among the 9 000 buildings that were aged 40 years or above if the threshold for this class of lots was lowered.

34. In response, PSPL said that the Administration could not have an accurate estimation on the possible increase in the number of eligible buildings because redevelopment was a personal decision made by individuals. As a reference, since the enactment of the LCSRO up to the end of 2007, the Lands Tribunal had received 47 applications for compulsory land sale, out of which 10 had been approved, one had been rejected; 19 had been discontinued and 17 were being handled.

35. Mr CHAN Kam-lam said that many residents in Kwun Tong, Fung Wong Village, Kowloon City, etc. supported the Administration's proposal because it would facilitate redevelopment. At present, the chances of redeveloping their properties were slim and the value of their properties would not appreciate. With opportunities for redevelopment, the value of their properties could appreciate substantially and owners could organize among themselves to redevelop their properties. Therefore, they welcomed the Administration's proposal. The Administration should clearly explain to the public the criteria under which a lower threshold would apply. In relation to the proposed classes of lots, he asked whether they were disjunctive under the proposal. He urged the Administration to implement the proposal as soon as possible.

36. In response, PSPL confirmed that the two proposed classes of lots were disjunctive, and thus under the current proposal, a lower threshold would be applicable to any lot with "all units but one" acquired, as well as to any lot with all building(s) aged 40 or above.

37. Prof Patrick LAU asked whether the Administration would give small property owners a more favourable treatment in applying for compulsory land sale if they wished to cooperate in carrying out redevelopment of their properties. He

further asked whether the proposal would be applicable to buildings aged below 40 with severe structural problems.

38. In response, PSPL said that small property owners and developers would receive the same treatment under the proposal. Under the LCSRO, small property owners could also apply for compulsory land sale. The proposal would not be applicable to a lot with building(s) aged below 40. Nevertheless, application for compulsory land sale could be made for such a lot if the 90% threshold had been reached. The Buildings Department would take enforcement actions if buildings posed a danger to the public.

39. Mr Abraham SHEK supported the Administration's proposal because it would enhance the living environment and expedite redevelopment. It would also help prevent speculators from deliberately acquiring properties and then setting high asking prices in the hope of gaining huge profits. These speculators often deterred the pace of redevelopment. Residents living in dilapidated buildings would be the ones to suffer if the pace of redevelopment was slowed down. The benefit that the developers or initiators would obtain from compulsory land sale was a site for redevelopment, and they still had to pay the premium. The lot for the Lai Sing Court was also acquired through compulsory land sale. Redevelopment should not be undertaken by URA only. Owners would be disadvantaged if all redevelopment was to be carried out by URA, because the proceeds owners would obtain from compulsory land sale would be higher than the acquisition offers made by URA. Members who objected to the Administration proposal would owe an explanation to small property owners. A threshold of 80% was proposed because it represented the consent of the majority of the owners to sell their properties. The URA sometimes adopted an even lower threshold for its redevelopment projects.

40. Mr Albert HO said that no matter at which level the threshold was set, there would still be speculators. The 90% threshold had already taken care of facilitating redevelopment and protecting private property rights. He considered that a fair procedure had to be in place when private property rights would be affected, and redevelopment should be carried out by URA as far as possible rather than private developers or private organizations. As he could see no reason for further lowering the threshold to 80%, he had great reservations on the Administration's proposal.

41. In response, PSPL said that the Lands Tribunal had its criteria in handling applications for compulsory land sale, and the age of the building would certainly be considered.

42. Miss CHAN Yuen-han declared interest that her property had been a target for acquisition by a developer for 10 years. Although she had no intention to sell her property, she had been disturbed for 10 years. Owners often found it difficult to face the pressure from developers. Monetary compensation was not the issue for some owners because they simply wanted to stay where they were. The Administration should respect the private property rights of those owners who

were unwilling to sell their properties and ensure that they could live and work at ease. She objected to the Administration's proposal and said that the Administration should think twice before implementing the proposal. She shared the views that the Panel should receive public views on the subject matter.

43. Ir Dr Raymond HO also shared the view that the Panel should receive public views on and further discuss the subject matter.

44. In response, PSPL said that the interests of all the residents should be considered as a whole and the Administration had to strike a balance. The many owners who were living in unsatisfactory conditions might be subject to even greater distress and they wanted to improve their living environment. The Administration supported the idea to receive further public views before finalizing its proposal.

45. Members agreed that another meeting would be held to further discuss the subject matter and receive public views.

- V Measures to prevent new developments from creating a wall effect**
(LC Paper No. CB(1)605/07-08(04) -- Information paper provided by the Administration
LC Paper No. CB(1)605/07-08(05) -- Background brief on "Wall effect of developments" prepared by the Legislative Council Secretariat)

46. Owing to time constraints, members agreed that the discussion of the item would be postponed to another meeting.

VI Any other business

47. There being no other business, the meeting ended at 4:15 pm.