

立法會
Legislative Council

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Panel on Housing

**Minutes of special meeting
held on Monday, 28 September 2009, at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon WONG Kwok-hing, MH (Chairman)
Hon Frederick FUNG Kin-kee, SBS, JP (Deputy Chairman)
Hon Fred LI Wah-ming, SBS, JP
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LEUNG Kwok-hung
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KAM Nai-wai, MH
- Members attending** : Hon LEE Cheuk-yan
Hon Vincent FANG Kang, SBS, JP
Hon Tanya CHAN
Hon IP Wai-ming, MH
- Members absent** : Hon LEUNG Yiu-chung
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon LEE Wing-tat
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon CHAN Hak-kan
Hon WONG Sing-chi
Hon WONG Kwok-kin, BBS
- Public officers attending** : Ms Annette LEE, JP
Acting Director of Housing
- Miss Rosaline WONG
Chief Estate Surveyor/Land Administration
Housing Department

Mr CHIU Kin-chee
Chief Manager/Management (Support Services 1)
Housing Department

Attendance by invitation : The Link Management Limited

Mr Ian ROBINS
Executive Director and Chief Executive Officer

Mr George HONGCHOY
Executive Director and Chief Financial Officer

Mr Ross O'TOOLE
Chief Operating Officer

Ms L K LAM
Director (Corporate Communications and Strategy)

Clerk in attendance : Miss Becky YU
Chief Council Secretary (1)1

Staff in attendance : Mrs Mary TANG
Senior Council Secretary (1)2

Miss Mandy POON
Legislative Assistant (1)4

Action

- I. Policy on management fees of common areas shared between the Housing Authority and the Link Management Limited (The Link), as well as the progress of preparation of relevant land leases and transfer of the legal titles of the divested retail and car parking facilities to The Link**
- (LC Paper No. CB(1) 2661/08-09(01) — Submission from The Link Management Limited
- LC Paper No. CB(1) 2661/08-09(02) — Administration's paper on policy on management fees of common areas shared between the Hong Kong Housing Authority and The Link Real Estate Investment Trust, as well as the progress of transfer of the legal titles of the divested commercial and car parking facilities

- LC Paper No. CB(1) 2661/08-09(03) — Paper on divestment of Housing Authority's retail and car-parking facilities prepared by the Legislative Council Secretariat (updated background brief)
- LC Paper No. CB(1) 2661/08-09(04) — Submission from The Incorporated Owners of Hing Tin Estate (Chinese version only)
- LC Paper No. CB(1) 2661/08-09(05) — Submission from Mr TANG Ka-piu, Islands District Council member (Chinese version only)

The Chairman said that the special meeting was held in the light of an allegation on arrears of management fees by the Link Real Estate Investment Trust (The Link REIT) in respect of the estate common areas (ECAs) within public rental housing estates shared between the Hong Kong Housing Authority (HA) and The Link REIT. Apart from the case, opportunity was also taken to discuss the progress of transfer of the legal titles of the divested retail and car parking (RC) facilities to The Link REIT.

2. Mr Fred LI and Professor Patrick LAU declared interest as a member of HA.
3. The Executive Director and Chief Executive Officer, The Link Management Limited (ED/CEO, The Link) gave a power-point presentation on The Link REIT, the asset enhancement initiatives, as well as issues related to the land lease and legal titles of RC facilities and ECA management fees.

(Post-meeting note: Copies of the power-point presentation materials were circulated to members vide LC Paper No. CB(1) 2686/08-09(01).)

4. Mr CHAN Kam-lam welcomed the attendance of senior management of The Link, and hoped that there would be more similar exchanges to facilitate communication in future. He considered that representatives of The Link should also meet with retailers and district representatives to resolve any conflicts in respect of management of divested RC facilities. ED/CEO, The Link said that The Link was moving towards direct management, and was striving to improve the services to the community. A dedicated corporate communication team had been set up for the purpose and there would be more exchanges with members.

Apportionment of management fees of estate common areas

5. The Chairman sought the Administration's clarification on the allegation on arrears of ECA management fees by The Link REIT. The Acting Director of Housing (Atg D of H) explained that HA and The Link REIT shared the ECA

management fees in proportion to their allotted management shares in accordance with the terms of Deeds of Mutual Covenant (DMCs). The management fees collected would be put into the management fund of ECAs, which were jointly owned by all owners (i.e. HA and The Link REIT) and administered by the DMC manager (i.e HA). The management fees did not form part of HA's income. The DMC manager issued demand notes to the owners every month to request the payment of management fees under the DMCs. Although the owners should pay the monthly management fees on the first day of the month, settlement within 30 days after the due date was not normally considered a default in payment to allow time to arrange payment. However, it was found that The Link, which managed The Link REIT, had failed to effect payment of the management fees of the majority of the housing estates for July and August 2009. Since not effecting payment was a serious matter, HA issued a letter through its legal representative to The Link on 9 September 2009 to recover the outstanding amount of around \$8 million. The Link paid off all the management fees in arrears in mid-September 2009. Regarding the management fees for September, since the 30-day settlement period had not expired, it had not been considered as a case of default in payment. HA would closely monitor the payment by The Link, and would take immediate action to effect full recovery if there was any outstanding payment after the due date. To streamline the procedure and facilitate payment of management fees, HA as DMC manager would issue demand notes to owners at an earlier date, and The Link would consider paying the management fees by way of autopay. The Chief Manager/Management (Support Services 1) (CM/M(SS1)) added that HA was still waiting for The Link's confirmation as to when to effect payment through autopay as The Link claimed that some adjustments to its computer systems were needed.

6. ED/CEO, The Link said that there were complications leading to the delay in payment of ECA management fees, such as the time to prepare cheques for payment since The Link had to process about 45 000 invoices and issue approximately 9 000 cheques annually. The situation would be further aggravated if the audit of ECA accounts was not fully up to date, and the surpluses in ECA accounts had not been verified. The Executive Director and Chief Financial Officer, The Link (ED/CFO, The Link) supplemented that as some estates had surpluses in their management funds which could be used for the payment of staff salary and relevant expenses, no further contribution from both The Link and HA would be needed. However, it would take time for the accounts to be audited to decide the amount of management fees to be paid by HA and The Link. Advance payment of management fees, irrespective of the surpluses, might lead to greater surpluses.

7. To avoid recurrences of delay, ED/CEO, The Link said that The Link had requested the DMC manager to issue next month's demand notes to owners at least five working days before the due day (i.e. first day of each month). Meanwhile, The Link would pay on the first day of each month despite that there was a 30-day grace period as specified in the DMC, and make direct payment into the respective ECA management fund accounts. He also affirmed that all payments owed to the ECA management fund up to September 2009 had been settled and all cheques for October 2009 issued. ED/CFO, The Link added that while there was usually a lead time between the issue of demand notes by the contractors of individual estates and

the payment The Link, The Link had decided that, in the light of public concerns about arrears of management fees, it would pay the contractors in advance starting October 2009. In response to the Chairman on the timeframe for payment through autopay, ED/CEO said that the direct payment system was expected to be put in place by 1 November 2009.

8. Mr Abraham SHEK enquired if interests could be charged on The Link for the management fees in arrears. Miss Tanya CHAN and Mr KAM Nai-wai supported that interests should be charged on the management fees in arrears. Atg D of H said that while DMC did provide for interests to be charged on the management fees in arrears, such provision had never been invoked as there was an arrangement between HA and The Link not to exercise this provision pending building up of practical experience in managing ECAs. In view of the failure of The Link to effect payment of management fees for July and August 2009, HA had informed The Link that interests would be charged on any management fees in arrears starting October 2009. However, management fees in arrears should unlikely recur with the implementation of direct payment in November 2009. On the role of HA as DMC manager, Atg D of H said that DMC manager would take actions against non-compliance with DMC. As regards Mr KAM's request for information on management fees in arrears by The Link over the past three years, CM/M(SS1) said that HA did not have the required information as the management fees were not part of HA's income. Nevertheless, such information was recorded in the management fund accounts of individual estates.

Progress of transfer of legal titles

9. Noting that the legal titles of 40 divested properties had yet to be assigned to The Link REIT, Mr Fred LI enquired whether the delay in the transfer of legal titles would have cost implications on the part of the Government. Atg D of H said that HA originally planned to complete the transfer of the remaining legal titles by mid-2008. In the course of the exercise, it was found that the work involved was much more complicated and onerous than previously anticipated. This situation could not have been envisaged when the original programme for procurement of the land leases/DMCs for the divested properties was set. One major task encountered was the need to comply with the new requirements which took effect from August 2006 onwards, for addressing public concerns and safeguarding the mutual interests of all parties concerned. Moreover, the procurement of land leases/DMCs was further complicated by some unforeseen complexities, including the presence of structures with historical values within the divested properties, transplantation of vegetation over drainage reserve areas and reservation of land stratum for new railway lines to pass through etc. In view of the unforeseen new requirements and complications, HA re-scheduled the completion date for the whole exercise to July 2010, while striving to complete the exercise in early 2010 at the earliest if possible.

10. Given that the RC facilities were divested to The Link REIT at a very low price and without going through a public tender, Mr Abraham SHEK considered that The Link was obliged to ensure provision of adequate services to estate residents. He

queried if The Link REIT had lived up to the promises made by the former Director of Housing upon the divestment of RC facilities. He was also concerned that The Link REIT might sell some of the less profitable divested properties if it was allowed to sell the properties upon legal transfer of titles. To this end, the Administration might need to audit the accounts of The Link REIT. Atg D of H said that the lease restrictions disallowed the change in land use without proper authorization, and ensured the continued provision of commercial and car parking facilities in public housing estates.

11. Mr LEUNG Kwok-hung said that he was opposed to the divestment of RC facilities to The Link REIT from the start, which indeed meant privatization of public assets. He remained of the view that the Government should buy back the divested properties from The Link REIT for the benefit of the community.

Asset enhancement initiatives

12. Noting that The Link would be spending a lot in refurbishing the divested RC facilities, Mr Vincent FANG opined that rent concession should be offered to the affected retailers during the period when the facilities were under renovation. This was in line with the practices in the private sector. ED/CEO, The Link said that The Link had been spending a lot of efforts in getting the right trade mix for its shopping centres. It was prepared to look into individual requests from retailers during the renovation of shopping centres.

13. Mr Frederick FUNG pointed out that apart from refurbishing the shopping centres, The Link had demanded retailers to furnish their own shops up to a certain standard in compatible with the refurbished environment. Besides, unlike the earlier days when the rents charged by HA were inclusive of all costs, retailers under the management of The Link had to pay maintenance fees and electricity charges separately. The retailers would have no choice but to transfer all the additional costs, including the increase in rents after refurbishment, to the consumers. Some retailers might even be forced out of business and their premises would be replaced by chain stores. With the moving out of these traditional retailers, the estate residents were deprived of the services which they were accustomed to. The Chief Operating Officer, The Link (COO, The Link) said that there were ongoing efforts by The Link to align retailers' interests with sales turnover. Retailers were incentivized to upgrade their fittings in an attempt to increase sales turnover, thereby achieving a win-win situation. ED/CEO, The Link said that The Link was committed to providing good services to the public as well as improving the quality of retailers.

14. Mr KAM Nai-wai and Professor Patrick LAU enquired if The Link had consulted retailers/estate residents before introducing any changes to or upgrading the RC facilities. ED/CEO, The Link said that independent interviews had been conducted within the community to gauge the views of stakeholders. There was general acceptance of the need to upgrade RC facilities as evidenced by the increase in foot traffic and sales turnover of the shopping centres. Similar surveys would be conducted again. Professor LAU indicated interest in the outcome of the survey as this would show whether retailers and customers were satisfied with the services. To

facilitate understanding, The Link agreed to provide the survey results for members' reference. Mr LEUNG Kwok-hung said that to his understanding, the foot traffic of the divested shopping facilities had not increased and hence the Link should uphold its undertaking not to increase the rents.

Rent policy

15. Mr LEE Cheuk-yan held the view that the divestment of RC facilities to The Link REIT had given rise to an anomaly. The Link REIT, being held accountable to its investors, had to increase the rents of the divested RC facilities despite that the main clientele of these facilities were estate residents who were mostly low-income families, and that commercial rents were on the decrease amid the financial crisis. Ironically, the Administration had no control over the situation after the divestment. Mr KAM Nai-wai echoed that as a result, the senior management of The Link had been able to receive generous salary packages and bonuses. Mr LEUNG Kwok-hung enquired about the remuneration of the senior management of The Link. ED/CEO said that such information would be disclosed in the accounts of The Link REIT. He added that a human resource committee had been set up to review the remuneration packages of the senior management of The Link.

16. Mr Fred LI noted that a lot of problems had surfaced since the change in the management of The Link. These included the hefty increase in rents of the divested RC facilities. The rents were so high that even the Housing Department's estate offices had to move out of the premises managed by The Link. He concurred with other members that The Link was trying to increase its profits through rent increase and staff reduction so that its senior management could enjoy high salaries and bonuses. ED/CEO, The Link said that The Link REIT was unique in such way that it had to serve estate residents on the one hand and to ensure commercial viability on the other as The Link REIT received no subsidies from the Government. The rents had to be set taking into account the performance of retailers and the market trend. The Link REIT would try to keep the rents at affordable levels and would look into individual cases. The average rent of about \$29 per square feet across its portfolio was considered reasonable and sustainable, and comparable to that in 2000/2001.

17. Mr Fred LI and Mr Vincent FANG asked whether the average rent of \$29 per square feet had taken into account the rent paid by retailers, non-governmental organizations (NGOs) and community services. Mr FANG further enquired if the agreed percentage of rental premises to be leased out to NGOs had since been changed following the asset enhancement initiatives. ED/CEO, The Link confirmed that the average rent had taken into account rents paid by all rental premises, and that the comparison with the rent levels in 2000/2001 was made on a like to like basis. He added that about 8% of The Link REIT's portfolio, or about 800 000 square feet, had been currently leased to NGOs, and that consideration would be given to increasing the percentage.

18. Mr Frederick FUNG stressed that The Link REIT was obliged to provide services to cater for the needs of estate residents. He held the view that the high vacancy rates of some estate shopping centres were attributable to the high rents

charged by The Link REIT. He enquired if The Link REIT would follow the practice of HA to put up retail premises which had been left vacant for a certain length of time for public tender to ensure the optimal use of these premises for the estate community. ED/CEO, The Link said that given the demand for retail spaces, it was expected that there was competition for premises within the Link REIT's shopping centres, and that the overall vacancy rate would go down. The Link REIT would submit the rental data for September 2009 and a return on its investments was expected.

19. While acknowledging the intention of The Link REIT to run its business according to commercial principles as in the case of other listed companies like Sun Hung Kai Properties Limited, Mr Vincent FANG pointed out the RC facilities were divested to The Link REIT at a very low price on the understanding that it had its unique responsibility to provide services to cater for the needs of estate residents. From what it appeared, The Link REIT seemed to have forgotten its role. Mr FANG said that he had discussed with the management of The Link on the possibility of rent reductions but no follow-up actions had been taken on the part of The Link.

Management and maintenance of the divested RC facilities

20. On *car parking facilities*, Mr Fred LI noted that car park spaces should only be leased out to estate residents under the terms of the Government lease. Applications for exemptions should be made and waiver fees should be paid if these car parks were to be leased out to non-residents. However, he was aware that The Link REIT had leased out about 8 000 car park spaces to non-residents, without applying for exemptions nor paying waiver fees. His concern was shared by Miss Tanya CHAN. Atg D of H said that according to her understanding, The Link REIT had applied for exemption in respect of about 20 car parks. The Lands Department would follow up with The Link REIT on the leasing out of estate car parks to non-residents.

21. Mr LEE Cheuk-yan enquired about the amount of waiver fees to be incurred for leasing out of some 8 000 car park spaces to non-residents, and whether this had been included in The Link REIT's financial budgets for the coming year. ED/CFO, The Link said that the waiver fees for car parking facilities would be set out in the accounts of The Link REIT to be published in November 2009. The Link REIT was prepared to pay the waiver fees if required to do so. ED/CEO, The Link said that The Link maintained close liaison with the Lands Department on matters relating to the waiver fees for car parks.

22. Mr CHAN Kam-lam noted with concern that the 30-minute free parking for loading/unloading had been reduced to 15 minutes. The reduction in free parking time had caused undue inconvenience to drivers, as they would have to complete their loading/unloading in great haste within a much shorter time frame. He urged The Link REIT to reinstate the 30-minute free parking to allow sufficient time for the safe loading/unloading of goods. Mr Vincent FANG also supported the reinstatement of the 30-minute free parking for loading/ unloading. ED/CEO, The Link said that he would look into matter and revert to members. COO, The Link pointed out that the reduction in free parking time from 30 minutes to 15 minutes was not intended to

collect additional car parking charges, but to improve the efficiency of the loading/unloading process given that many goods vehicles were awaiting delivery.

23. While acknowledging that The Link had shelved the proposed two shifts and reverted back to three shifts for its car park staff, Mr LEE Cheuk-yan noted with concern that the number of staff engaged by The Link had in fact decreased. The reduction in staff had not only reduced the number of job opportunities but also affected the services provided.

24. On *fire safety installations*, Mr Fred LI noted that as part of the listing requirements, The Link REIT was required to install proper fire safety installations in the divested RC facilities in line with fire safety regulations. According to his understanding, such requirement had not been complied with since the listing of The Link REIT few years ago. Mr CHAN Kam-lam also pointed out that although funds had been set aside for such purpose, The Link REIT had failed to meet the listing requirements to upgrade the fire safety installations in the RC facilities by 2009. He enquired if the Administration and HA would follow up the matter. Their concerns were shared by Mr LEE Cheuk-yan. Atg D of H said that the upgrading of fire safety installations was to be carried out in four phases in accordance with the legislation. HA was responsible for the first two phases, which had primarily been completed prior to the listing of the Link REIT. The third and fourth phases should be undertaken by The Link. ED/CEO, The Link said that The Link had been holding quarterly meetings with the Fire Services Department and Buildings Department on the upgrading of fire safety installations in the RC facilities. A dedicated team had been set up to bring forward and to oversee the fire safety conversion programme. Meanwhile, fire safety certificates had been obtained for all the facilities managed by The Link REIT. Miss Tanya CHAN requested that The Link should provide a time table for the completion of fire safety installations.

25. On *recreational facilities*, Mr Fred LI pointed out that many recreational facilities managed by The Link had become dilapidated due to improper maintenance. This ran contrary to the terms of DMC which required proper maintenance of estate facilities. As the DMC manager, HA could not be absolved from exercising its monitoring role. Atg D of H said that as the DMC manager, HA would monitor whether The Link had observed the DMC provisions and would take action against non-compliance. It had issued a letter to The Link requesting the early re-opening of the recreational facilities concerned. COO, The Link said that of the 208 recreational facilities managed by The Link, 19 were under different stages of resurfacing and repair works while ongoing maintenance were being carried out for other facilities. ED/CEO confirmed that all the recreational facilities would be re-opened in December 2009. Miss Tanya CHAN requested that The Link should provide the completion schedule in respect of the repair works for these recreational facilities.

26. On *provision of lift/escalator services*, Mr LEE Cheuk-yan noted that some lifts/escalators were put out of service at night, causing much inconvenience to tenants, particularly the elderly. Sharing similar concern, Mr Frederick FUNG said that there should be a balance between energy conservation and provision of services. He held the view that lift/escalator services should be provided at all times even on a limited

scale. COO, The Link agreed to look into the matter.

27. On *toilet facilities*, Mr Abraham SHEK pointed out that the toilet facilities at the Lok Fu Shopping Centre were poorly maintained. Atg D of H said this fell under The Link's remit but HA would continue to reflect such concerns to The Link for prompt follow-up.

28. On *provision of clinics*, Mr Vincent FANG said that he had received a number of complaints from estate residents about the reduction in the number of clinics within the divested RC facilities. They were concerned about the inconvenience, in particular to the elderly, if they had to go to clinics outside the vicinity of the estates as a result of the reduction. Some estate doctors had also complained that The Link was trying to force them to move together to a less favorable location with a view to reserving the premises in more favorable locations for new tenants who could afford to pay. COO, The Link explained that The Link was looking into the establishment of a cluster of clinics for better access and improved hygiene, in an attempt to improve the quality of healthcare within the community. ED/CEO, The Link said that The Link had no intention to put clinics in less favorable locations, but was trying to locate the clinics in clusters which were close to car parks for the convenience of patients. The health impact on those visiting the shopping centres would also be taken into account in deciding the locations of clinics.

Estate agent licence

29. Mr Fred LI pointed out that in accordance with the Initial Public Offering (IPO) circular, the management of The Link REIT should hold valid estate agent licences in order to manage the estates. It was to his understanding that none of the senior management staff of The Link were licenced estate agents. This indeed ran contrary to the IPO requirements. ED/CFO, The Link said that since The Link REIT was the beneficial owner of the divested properties upon listing, it was not required to hold estate agent licences in the management of its own properties. Atg D of H said that the Estate Agents Authority (EAA) had been following up with The Link on the issue. She explained that individuals or companies who/which engaged in estate agency work had to apply for licence of the suitable type under the Estate Agents Ordinance (Cap 511) (EAO). However, under EAO, such licence requirement could be exempted if a company was selling or leasing its own properties or those of another company which was a member of the same group of companies.

30. Given that the legal titles of 40 properties were yet to be assigned to The Link REIT, Mr KAM Nai-wai questioned why The Link REIT could be exempted as it was not yet the beneficial owner of all the divested properties. Atg D of H clarified that HA had already transferred the beneficial ownership of all the 180 divested properties to The Link REIT upon its listing in November 2005, and the transfer of legal titles had no direct bearing on the requirement of the estate agent licence. As explained above, the matter was now being examined by EAA. ED/CEO, The Link added that The Link REIT had been exempted from holding an estate agent licence as it was managing its own properties. Besides, the assignment in respect of the legal titles of

the remaining 40 facilities was expected to be completed by early 2010.

Way forward

31. Concluding the discussion, the Chairman said that The Link was requested to -
- (a) ensure completion of the autopay procedure for management fees of ECAs in November 2009 to avoid recurrence of management fees in arrears;
 - (b) advise the locations and time frames for completion of the upgrading of fire installations in public rental estates with divested facilities;
 - (c) restore the 19 dilapidated recreational facilities in various divested facilities for re-opening before end 2009;
 - (d) consider reinstating the free parking time for loading/unloading of goods from 15 minutes to 30 minutes;
 - (e) brief the Panel on the findings of the latest survey on rents of divested facilities with particular reference to NGOs, as well as the efforts made to enable a good trade mix;
 - (f) attend future meetings of the Panel when the subject of management of divested facilities was discussed;

while the Administration to -

- (a) explain the role of HA as DMC manager in monitoring the performance of The Link REIT, and in enforcing DMC provisions; and
- (b) advise on the waiver fee system in leasing car parking facilities to non-residents, and the outstanding waiver fees to be paid by The Link REIT.

II. Any other business

32. There being no other business, the meeting ended at 10:43 am.