

立法會
Legislative Council

LC Paper No. CB(1) 2873/09-10
(These minutes have been seen
by the Administration)

Ref : CB1/PL/HG/1

Panel on Housing

**Minutes of special meeting
held on Tuesday, 20 July 2010, at 2:30 pm
in the Chamber 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 LEUNG Yiu-chung
Hon Abraham SHEK Lai-him, SBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon LEE Wing-tat
Dr Hon Joseph LEE Kok-long, SBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon WONG Kwok-kin, BBS
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung

Members attending : Dr Hon Philip WONG Yu-hong, GBS
Hon Ronny TONG Ka-wah, SC

Member absent : Hon CHAN Hak-kan

**Public officers
attending** : **For item II**

Ms Eva CHENG, JP
Secretary for Transport and Housing

Mr D W PESCOD, JP
Permanent Secretary for Transport and Housing (Housing)

Ms Annette LEE, JP
Deputy Secretary for Transport and Housing (Housing)

Ms Cora HO
Assistant Director (Strategic Planning)
Housing Department

Mr FUNG Hing-wang, JP
Commissioner for Census & Statistics

For item III

Ms Eva CHENG, JP
Secretary for Transport and Housing

Mr D W PESCOD, JP
Permanent Secretary for Transport and Housing (Housing)

Ms Annette LEE, JP
Deputy Secretary for Transport and Housing (Housing)

Mr Eugene FUNG
Principal Assistant Secretary for Transport and Housing
(Housing)(Private Housing)

Miss Annie TAM, JP
Director of Lands

Mr CHAU Hon-yum
Assistant Director/Legal/PARD & NTE
(Legal Advisory and Conveyancing Office)
Lands Department

Mr Armstrong CHU
Chief Land Conveyancing Officer/PARD
(Legal Advisory and Conveyancing Office)
Lands Department

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

Staff in attendance : Mr Kelvin LEE
Assistant Legal Adviser 1

Mrs Mary TANG
Senior Council Secretary (1)2

Miss Mandy POON
Legislative Assistant (1)4

I. Confirmation of minutes

(LC Paper No. CB(1) 2573/09-10 — Minutes of the special meeting held on 24 May 2010)

The minutes of the meeting held on 24 May 2010 were confirmed.

II. New rent adjustment mechanism for public rental housing

(LC Paper No. CB(1) 2600/09-10(01) — Administration's paper on new rent adjustment mechanism for public rental housing

LC Paper No. CB(1) 2589/09-10(01) — Paper on the new rent adjustment mechanism prepared by the Legislative Council Secretariat (updated background brief))

2. The Secretary for Transport and Housing (STH) briefed members on the outcome of the first rent review under the new rent adjustment mechanism for public rental housing (PRH). By comparing the indices of the first and second periods, the level of adjustment in PRH rent was +4.68% for the first rent review. On 15 July 2010, the Subsidised Housing Committee (SHC) considered the Commissioner for Census and Statistics (C for C&S)'s report and endorsed the outcome of the first rent review exercise under the new rent adjustment mechanism as stipulated in section 16A of the Housing Ordinance (Cap.283). SHC would meet again on 22 July 2010 to decide whether there should be any mitigation measures and if so, the measures to be implemented. Panel members' views and comments would be summarized for SHC's consideration at the next meeting.

3. C for C&S and the Assistant Director of Housing (Strategic Planning) (ADH(SP)) gave a power-point presentation on the methodology of the rent adjustment mechanism and the outcome of the first rent review respectively.

(Post-meeting note: A set of power-point presentation materials was circulated to members vide LC Paper No. CB(1) 2667/09-10(01) on 28 July 2010.)

Data collection and computation for the first rent review

4. Referring to Tables 2 and 3 to Annex E, the Chairman noted that the increases in the mean monthly income of one and two-person households (ranging from 9.7% to 7.2%) between the first period (i.e. 2007) and second period (i.e. 2009) of the first rent review were much greater than those of three-person to five-person or above households (ranging from 4.0% to 4.2%). He also noted from Annexes B1 and B2 that the number of four-person to five-person or above sampled households in the second period was less than that of the first period. He questioned how these differences had affected the outcome of the first rent review. C for C&S explained

that while the increases in mean monthly income of one and two-person households were greater than those of three-person to five-person or above, the income levels of the former were much lower than those of the latter. Specifically, due to the relatively low proportion of one-person households among the PRH tenants, their contribution to the rate of change of the income index was only 0.3%. In fact, the rate of change of the income index of 4.68% was mainly attributable to the increases in monthly income of three-person to five-person or above households.

5. Mr LEE Wing-tat recalled that the survey on rental increase of private flats conducted by the Census and Statistics Department (C&SD) in 2009 was at great variance with that conducted by property agencies because the data used by C&SD were mostly based on existing tenancies rather than new ones. He therefore questioned the reliability of data adopted for the computation of the income index by C&SD. He pointed out that the increase in household income could be due to the increase in salaries of family members and/or the increase in the number of income-earning family members. While the younger generation who newly joined the workforce might have increased the total household income, such increase was just nominal and should not represent the real income increase as they would need to support themselves financially. However, these factors had not been reflected in the computation of the income index. He requested the Administration to provide information on the number of sampled households with increase in household income due to increase in the number of income-earning family members.

6. In response, C for C&S clarified that, to reflect the full picture on the overall rent level of private flats, both existing and new lettings had all along been taken into account in computing the average rent level. The rent review was conducted under an entirely separate mechanism. Under the new rent adjustment mechanism, tenants' affordability, in terms of household income of PRH tenants, was the factor for determining the PRH rent. The income index of PRH tenants was computed based on the changes in mean monthly household income between the first and second periods of the first rent review as declared by PRH tenants, and as pointed out by some members, the increase in number of income-earning family members might attribute to the increase in household income as with other factors. This rate of increase was also not comparable to other indices, such as the wage index and salary index, which did not take into account income from additional jobs by tenants. STH added that it was fairly common that family composition and hence the number of income-earners would change from time to time, such as the departure of grown-up children.

7. Dr Joseph LEE declared interest as a member of SHC. He sought clarification on some media reports alleging that the new rent adjustment mechanism was not able to truly reflect the actual household income of PRH tenants as it failed to take account of inflation. Expressing similar concerns, Mr Frederick FUNG held the view that the new rent adjustment mechanism was flawed not only because of the long lead time for collecting data, but it also failed to into account the fact that household expenditure had significantly increased as a result of the high inflation over the past years. Mr LEUNG Yiu-chung echoed that he was opposed to the

income-based rent adjustment mechanism because it did not take into account expenditure and inflation. He pointed out that the disposable income of households had been reduced over the past two years due to inflation. There was a need to differentiate between nominal household income and real household income. He also concurred with other members that changes in household income as a result of an increase in the number of income-earning household members should be dealt with separately.

8. In reply, STH explained that the rent adjustment mechanism was income-based in order to facilitate an accurate and reliable assessment based on income declared by the sampled households in accordance with the Housing Ordinance. It would be difficult to assess tenants' affordability if the mechanism was expenditure-based because spending patterns of households varied. Besides, the new rent adjustment mechanism was implemented after extensive consultation and discussion. Given that the mechanism could provide a fair and scientific assessment for rent adjustments, it should continue to be applied. C for C&S added that inflation would affect household expenditure and purchasing power while income would affect tenant's affordability. In assessing the impact of rent increase on the inflation, reference would be made to the Consumer Price Index (A) (CPI(A)) which covered households with monthly household expenditures ranging from some \$4,000 to \$16,000 or so, in which most PRH tenants fell in. In the past two years, CPI(A) had increased by 3.95% while the income index change between the first and second periods of the first rent review was 4.68%. As rent comprised an average of 6.18% of household expenditure in CPI(A), the proposed rent increase of 4.68% would be equivalent to an increase of 0.29% in CPI(A), which together with the original increase in CPI(A) of 3.95% would add up to an inflation rate of around 4.24 %, which was still less than the average increase of PRH household income of 4.68% for the past two years. This showed that the purchasing power of PRH households would still increase upon implementation of the upward adjustment in rent.

9. The Chairman however pointed out that the increase in income index of 4.68% did not represent the actual increase in income of most workers. By way of illustration, the percentage of salary increase of civil servants in the middle to lower ranks was only 1.56% this year while that of staff of franchised bus companies and the MTR Corporation Limited were 1.8% and 2.5% respectively. Given that the rent adjustment mechanism had not taken into consideration the effect of inflation, he asked how disposable household income would be affected if inflation had been taken into account. Mr LEUNG Kwok-hung queried the rationale for increasing PRH rent when the Gini Coefficient was already 0.5. The proposed rent increase of 4.68% to be applied across the board might not be fair as not all PRH households had income increases in the past two years. He was concerned that the increase in rent and the consequential increase in CPI(A) would add to inflationary pressure. STH reiterated that the new rent adjustment mechanism was introduced by way of legislation after a thorough scrutiny process.

Provision of mitigation measures

10. Mr CHAN Kam-lam recalled that the controversial new rent adjustment mechanism had been agreed upon after an extensive public consultation and discussion. The first rent review under the new rent adjustment mechanism had indicated the need for an upward rent adjustment by 4.68%. To reduce the impact of rent increase on PRH households, SHC would consider providing mitigation measures in the form of rent waivers. Given that the new rent adjustment mechanism was established to allow for both upward and downward adjustments to take account of changes in PRH household income, there was a need to ensure its applicability and sustainability so that mitigation measures need not be introduced each time to deal with rent increases. The need for mitigation measures had indeed reflected the deficiency of the new rent adjustment mechanism which might need to be further reviewed. STH said that a lot of efforts had been made in scrutinizing the Housing (Amendment) Bill 2007 which formed the basis of the new rent adjustment mechanism. To provide a new starting point for the income-based rent adjustment mechanism, the Hong Kong Housing Authority (HA) had reduced PRH rent by 11.6% starting from August 2007. The first rent review pointed to a rent increase of 4.68%. As Hong Kong had not completely recovered from the financial crisis, it might be necessary to apply mitigation measures to relieve the impact of rent increase on PRH tenants. However, there were divided views among SHC members on the need for mitigation measures and if so, the measures required and whether these should be applied across the board to all PRH households or on a need basis. The Panel's views would provide useful reference for SHC. While respecting the new rent adjustment mechanism, Mr CHAN welcomed the provision of mitigation measures. He suggested that the proposed one-month rent waiver should be applied in September 2010, in tandem with the rent increase on 1 September 2010.

11. Dr Joseph LEE agreed that PRH rent should be adjusted in accordance with the outcome of the first rent review. He added that apart from deciding on the need for mitigation measures and the means through these measures should be applied, HA should also make it clear that the provision of mitigation measures should not set a precedent for future rent increases. The Chairman also sought elaboration on the mitigation measures to be introduced. STH said that mitigation measures were being introduced to reduce the impact of rent adjustment because the local economy had not been fully recovered from the financial crisis. There were different views on whether mitigation measures should be more target specific or applied across the board. SHC would meet again on 22 July 2010 to consider the issue. She also agreed with Dr LEE that the provision of mitigation measures should not set a precedent for future adjustments.

12. Mr Frederick FUNG said that with the proposed one-month rent waiver, the Administration had in effect provided for a rent-freeze. It would appear that the new rent adjustment mechanism was flawed as otherwise mitigation measures would not be required. While supporting the mitigation measures to reduce the impact of rent increase, he considered that there was a need to review the rent adjustment mechanism. Mr LEUNG Yiu-chung held the view that PRH rents should be frozen

given that rate of change of the income index had only exceeded the increase in CPI(A) by 0.73 %. With the proposed rent-freeze, there would not be a need for mitigation measures. STH said that HA would adopt an open mind on the mitigation measures, and welcome any views from members in this respect. These measures, if provided, would be on a one-off basis.

13. The Chairman concurred with other members that there were inadequacies in the new rent adjustment mechanism as otherwise mitigation measures would not be required. There was a need to review the mechanism with a view to improving the data collection and computation process to ensure that the outcome could reflect the actual situation. Factors, such as inflation rates and expenditures, should be taken into account in computing the income index. Besides, the fact that relief measures were provided in the past two years to PRH households had reflected that PRH rent should not be increased. On the provision of mitigation measures, the Chairman said that HA should identify the most cost-effective way to implement these measures. By way of illustration, while both the one-month rent waiver and the rent freeze could achieve similar results, the administrative cost incurred from the former might be higher than the latter. STH said that the new rent adjustment mechanism was formulated after strenuous efforts and it was not considered desirable to have a major overhaul of the mechanism. However, consideration could be given to refining the mechanism taking into account members' views, on the condition that such changes would not affect the integrity and sustainability of the mechanism. The views of SHC would also be taken into consideration.

Comparison between the new and old rent adjustment mechanism

14. Mr Alan LEONG recalled that the Bills Committee on the Housing (Amendment) Bill 2007 had deliberated at length on the need to remove the 10% median rent-to-income ratio (MRIR) cap. Of the 53 members who voted on the amendment, 28 voted for the removal while 25 voted against it, including Members belonging to the Civic Party. He enquired about the rate of rent increase if the 10% MRIR cap had not been removed. While welcoming the provision of mitigation measures to reduce the impact of rent increase on PRH households, he was concerned about the inadequacy of the rent adjustment mechanism to take into account the expenditure of PRH households, since the increase in income might be offset by the increase in household and transport expenses. He urged the Administration to review the new rent adjustment mechanism. He also agreed with other members that a rent freeze was a better alternative than the proposed one-month rent waiver. Expressing similar concerns, Mr LEUNG Kwok-hung supported reverting back to the previous rent adjustment mechanism with a 10% MRIR cap. He also requested the Administration to make a comparison between the new and previous rent adjustment mechanism. The Chairman concurred with the need for a comparison between the new and previous rent adjustment mechanisms to see which could better reflect the actual situation.

15. In response, STH said that HA had to increase PRH rent by the rate of increase of the income in accordance with section 16A(4) of the Housing Ordinance,

and the increase was subject to a cap of 10%. ADH(SP) said that the Ad Hoc Committee on Review of Domestic Rent Policy (CDRP) had exchanged views with the Bills Committee on Housing (Amendment) Bill 2007 on the rent adjustment mechanism. There had been detailed discussion on MRIR and it was agreed that this did not provide for an objective criteria in determining the affordability of PRH households. As there were serious drawbacks in the application of the MRIR cap, CDRP recommended that a clear, objective and flexible rent adjustment mechanism to better reflect tenants' affordability should be developed. It was decided that the MRIR cap should be removed to enable HA to introduce the new income-based rent adjustment mechanism to determine the extent of rent adjustments according to changes in PRH tenants' household income. No computation had been made on MRIR since 2007. The eligibility criteria for the Rent Assistance Scheme had been relaxed in 2007. At members' request, STH agreed to look into whether it was possible to make a meaningful comparison between the new and previous rent adjustment mechanisms.

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16. The Chairman sought members' views on whether the mitigation measures should be applied across the board or only to a certain category of PRH households. Dr Joseph LEE opined that members should not be required to indicate preference on how the mitigation measures should be applied. Mr Frederick FUNG echoed that it would not be fair to require members to state their stance. In concluding, the Chairman said that members generally welcomed the provision of one-month rent waiver for PRH tenants to reduce the impact of rent increase. Consideration should be given to adopting the most cost-effective means to implement the rent adjustment. The views of members should be conveyed to SHC for consideration at its meeting on 22 July 2010.

(Post-meeting note: A letter summarizing members' views expressed at the meeting was issued to the Administration on 21 July 2010.)

III. Issues relating to the transactions involving 24 units of 39 Conduit Road
(LC Paper No. CB(1) 2603/09-10(01) — Administration's response to members' request on information in relation to payment of stamp duty for the 24 concerned transactions of 39 Conduit Road)

Relevant papers

(LC Paper No. CB(1) 2461/09-10(01) — Letters to Henderson Land Development Company Limited (Henderson) issued by the Lands Department regarding the transactions involving 24 units of 39 Conduit Road (English version only)

- LC Paper No. CB(1) 2461/09-10(02) — Response from Henderson to CB(1) 2461/09-10(01) (English version only)
- LC Paper No. CB(1) 2518/09-10(01) — Letters to individual Members from Henderson Land Development Company Limited (Chinese version only); Letter from the vendor of 39 Conduit Road to Lands Department (English version only); and Press release on 39 Conduit Road published by Henderson Land Development Company Limited on 8 July 2010 (Chinese version only)
- LC Paper No. CB(1) 2534/09-10(01) — Sample of Agreement of Sale and Purchase (ASP) in relation to 24 units of 39 Conduit Road (English version only)
- LC Paper No. CB(1) 2534/09-10(02) — Administration's paper on 39 Conduit Road and the regulation of sales of private residential properties
- LC Paper No. CB(1) 2554/09-10(01) — Full set of the exchange of correspondence between the Lands Department and the Henderson Land Development Company Limited regarding the transactions involving 24 units of 39 Conduit Road (English version only))

17. Before commencing discussion, the Chairman reminded members that in accordance with rule 83A of the Rules of Procedure, a Member should not move any motion or amendment relating to a matter which he/she had a pecuniary interest, whether direct or indirect, or speak on any such matter, except where he/she had disclosed the nature of that interest. Therefore, if any member had a pecuniary interest in the subject under discussion, he/she should declare the nature of the pecuniary interest.

18. STH said that the Administration passed to the Legislative Council (LegCo) all the eight letters issued by the Lands Department (LandsD) to the Henderson Land Development Company Limited (Henderson) regarding 39 Conduit Road so far and in their entirety on 5 July 2010, after Henderson passed to LegCo their replies earlier that day. The ninth letter subsequently issued by LandsD to Henderson on 5 July 2010 was also passed to members on 9 July 2010. As relevant Government

agencies, including the Police, were investigating the case, the Administration was not in a position to comment on the details or progress of investigations lest this might prejudice ongoing investigations or undermine any future actions which the Government might take upon completion of investigations.

19. Given the complexity and far-reaching implications of the case, and the fact that various departments/organizations, such as the Police, were investigating the case, Mr LEUNG Kwok-hung opined that the Chief Secretary for the Administration rather than STH should attend the meeting to explain the case to members. Otherwise, there might be a need to set up a committee to investigate the case. STH emphasized that the Administration was dealing with the case seriously. It would not tolerate deceptive transactions and release of misleading and incomplete information on property sales. At present, the case was being investigated by relevant Government agencies, including the Police. The views expressed by members at the meeting of the Panel on Financial Affairs would be noted by the Financial Services and Treasury Bureau and Securities and Futures Commission (SFC). Likewise, the views expressed by members at this meeting would also be noted by the Administration.

20. Noting that the Police had carried out site searches in relation to the transactions of 39 Conduit Road, Mr James TO enquired if LandsD was aware of the progress of Police investigations and whether parallel actions were being taken by SFC. Mr LEE Wing-tat also enquired if the Police would disclose details of investigation even if prosecution would not be taken against Henderson. STH said that it was not a normal practice for SFC to comment on individual cases, including whether or not investigation was being conducted. She would liaise with the Police regarding their established practice on the disclosure of the outcome upon completion of an investigation. While acknowledging that SFC would not normally disclose whether investigation would be conducted, Mr TO said that there were precedents where SFC had confirmed investigation on cases of major public interest. Given the impact which 39 Conduit Road might have on both the property and stock exchange markets, there was increased call for intervention in the case by SFC. He therefore requested STH to confirm with SFC on its action to deal with 39 Conduit Road, as in the case where the Secretary for Financial Services and the Treasury had enquired about the investigations on Lehman Brothers. The Chairman drew members' attention to SFC's reply to the Panel on Financial Affairs (LC Paper No. CB(1) 2597/09-10) which confirmed that, in accordance with normal practice and policy, SFC would not comment on individual cases. STH said that she had received the same reply from SFC stating that it would not comment on individual cases.

Regulation of property sales

21. As investigations were being carried out by relevant Government agencies, Mr CHAN Kam-lam said that members should respect the existing mechanism and should not judge on the case until investigations had been completed. He also enquired about the lessons which the Administration had learnt from the 39 Conduit Road case, and the measures to be introduced to improve the transparency and fairness of the sale and purchase of uncompleted properties. STH said that in view

of the public concern on large-scale omission of floor numbers in 39 Conduit Road, the Buildings Department had promulgated a new floor numbering system through the Practice Note for Authorized Persons, Registered Structural Engineers and Registered Geotechnical Engineers to require developers to number the floors in a reasonable way to avoid unreasonable floor numbering. The Deputy Secretary for Transport and Housing (Housing) (DSTH(H)) added that further to the nine new enhancement measures to strengthen the regulation of the sales of first hand private residential properties and the 12 new requirements on show flats (the nine measures and 12 requirements), the Transport and Housing Bureau (THB) was liaising with the Real Estate Developers Association of Hong Kong (REDA) to further require developers to make public the estimated date of completion of Assignment of individual transactions when making public transaction information within five working days, and to make public cancelled transactions soon after the cancellation had taken place.

22. Mr LEE Wing-tat noted that there were allegations on collusion between developers and purchasers to manipulate the property market. Many developers had set high sales prices for their uncompleted properties which were way above the neighboring properties. The new requirement for developers to make public the estimated date of completion of Assignment of individual transactions when making public transaction information within five working days would not serve a useful purpose as the date for completion of sale could be extended for over a year. He remained of the view that legislation was the most effective tool in regulating property sales. Mr James TO echoed that the existing arrangement for extension of completion date through verbal agreement should be revamped to require all extensions to be registered. Mr Alan LEONG recalled that at the last Question and Answer Session, the Chief Executive had stated that the Administration would not rule out the possibility of introducing legislation to regulate the sales of private properties if the nine measures and 12 requirements were not effective. He enquired if there were any objective criteria in assessing the effectiveness of these measures/requirements, particularly in preventing developers from disseminating false property information. Expressing similar concerns, Mr LEUNG Yiu-chung was disappointed at the Administration's reluctance in introducing legislation to regulate the sales of private residential properties. Given the long lead time of the legislative process, he questioned how the Administration could ensure proper operation of the residential properties during the interim.

23. In response, STH said that the nine measures and 12 requirements had brought about various fundamental changes to the sales of private residential properties. These measures/requirements aimed to enhance the transparency of property and sales information so that purchasers were able to make informed decisions. The Administration would closely monitor the property market to assess the effectiveness of the measures/requirements in enhancing the transparency and fairness of transactions. Should these measures/requirements prove to be ineffective, consideration would be given to introducing legislation. When considering the need for legislation, it was necessary to ensure the availability of an adequate supporting mechanism. So far, these measures/requirements had achieved good progress and were well received by the public. Meanwhile, relevant departments would follow up

fraudulent acts in the property market.

24. The Chairman was dissatisfied with the Administration's response. He held the view that Administration was trying to procrastinate the introduction of legislation to regulate sales of private residential properties. He pointed out that LandsD could only require Henderson to provide further information on the transactions of 39 Conduit Road without taking any legal actions because of the lack of legal basis for such actions. The nine measures and 12 requirements were merely administrative guidelines with no legislative effect. He asked how and when the Administration could decide whether the nine measures and 12 requirements were effective in achieving the intended purposes. Mr LEE Wing-tat echoed that with the introduction of legislation, LandsD would be empowered to take effective enforcement against developers for non-compliance. STH said that as the nine measures and 12 requirements had just been implemented, it would take some time for the effect to be seen. Should these measures/requirements prove to be ineffective, consideration would be given to introducing legislation which would take considerable time. The Chairman was disappointed that the Administration had not provided a definite timeframe within which legislation to regulate property sales would be introduced. He requested STH to relay members' views on the need for legislation to regulate property sales to the Chief Executive for consideration in the upcoming Policy Address in October 2010.

Forfeiture of deposit and recovery of deficiency in prices upon default of purchasers

25. Mr CHAN Kam-lam asked whether it was considered proper for vendors to forfeit 5% deposit upon cancellation of Agreement for Sale and Purchase (ASP). Referring to the LandsD's letter dated 22 June 2010 to Henderson, the Director of Lands (D of L) said that LandsD had indicated that it appeared "rather unusual" that Henderson had chosen to use clause 11(3) instead of clause 16 of ASP to deal with all the 20 uncompleted transactions. She said that clause 11(3) entitled the vendor to retain the sum of 5% of the total purchase price of each unit while clause 16 entitled the vendor to recover any deficiency in price and expenses for resale from the purchasers as damages. Mr CHAN further enquired about the application of clause 11(3) if both vendor and purchaser had agreed to extend the completion date and subsequently cancel the transaction as in the case of the 20 uncompleted transactions of 39 Conduit Road. Given that all the cancelled transactions were signed using standard ASPs, there might be a need to clarify the terms of standard ASP which applied to all transactions. D of L said that the terms of ASP had catered for different scenarios. Where the vendor and purchaser had mutually agreed to cancel a transaction before completion of sale, the vendor could choose to apply clause 11(3). Where there was a default of payment on the part of the purchaser, the vendor could choose to apply clause 16. The application of clause 11(3) and clause 16 would depend on the circumstances of the case. Mr CHAN was disappointed that, despite numerous exchanges between LandsD and Henderson, LandsD still seemed to be unable to figure out the 20 uncompleted transactions of 39 Conduit Road. D of L said that the LandsD had raised five major issues in its correspondence with Henderson. The correspondence was now in public domain. LandsD had reserved

the right to seek further information from Henderson, and she declined to comment further on the case.

(At this juncture, Mr James TO proposed to extend the meeting by 15 minutes to allow more time for discussion. The Chairman put Mr TO's proposal to a vote. Of the members present, three voted for the proposal and two voted against it. The Chairman declared that the meeting would be extended by 15 minutes until 5:45 pm.)

26. Mr LEE Wing-tat enquired whether it was the established practice of Henderson not to recover the deficiency in prices from shell companies for cancelled transactions. He also enquired if LandsD had raised all questions in relation to compliance with land grant conditions and the Consent Scheme in its correspondence with Henderson, and whether LandsD was constrained in asking questions beyond its jurisdiction. D of L said that Henderson had more than one time questioned the legal bases and powers of LandsD in pursuing the line of questioning. In its reply to Henderson, LandsD had explained its responsibility for ensuring compliance with the Conditions of Exchange and the terms of the Presale Consent Letter, and had asserted its rights to make enquiries and clarifications as necessary. The five major issues concerning the transactions of 39 Conduit Road raised in the correspondences between LandsD and Henderson since 25 March 2010 were all within the purview of LandsD. In its letters to Henderson, LandsD did not raise questions on Henderson's policy in respect of recovery of deficiency in prices for cancelled transactions by shell companies.

27. Mr James TO considered a need to review the non-requirement for payment of stamp duty in respect of cancelled transactions. Without the need for payment of stamp duty, speculators would only risk losing 5% deposit in the event of cancellation of transactions if the properties turned out to be non-profitable. STH said that there were existing policies governing the payment of stamp duty. Consideration would be given to enhancing the arrangements for payment of stamp duty as necessary. DSTH(H) said that the Stamp Duty Ordinance (Cap. 117) was amended in 1992 to require the payment of stamp duty within 30 days after the signing of ASP in order to curb speculative activities. However, as a result of the amendment, buyers who could not complete the transactions due to various reasons (such as problems in land title, change in financial circumstances, etc) still had to pay the stamp duty. To ensure fairness, the Ordinance was further amended in 1999 to allow buyers who could not complete the transactions not to pay stamp duty upon cancellation of the transactions. Mr TO held the view that stamp duty should be charged for every property transaction as this would increase the cost of speculation. Consideration could be given for a refund on special circumstances.

Way forward

28. Mr James TO enquired whether the ongoing investigations by relevant Government agencies, including the Police, would affect the actions to be taken by LandsD. D of L reiterated that LandsD had reserved the right to seek further

information from Henderson as and when appropriate. She would not go further to disclose whether there would be further exchange of correspondences with Henderson. STH added that apart from the Police, concerted efforts were being made by relevant Government agencies to investigate the case. Mr LEUNG Kwok-hung supported that legislation should be introduced to regulate property sales and to curb speculative activities. Given that the Police would unlikely disclose details of investigations on the transactions of 39 Conduit Road, he would support the conduct of an inquiry on these transactions. He also enquired if the Secretary for Justice had been consulted on the case. STH confirmed that relevant bureaux/departments had been consulted and the Department of Justice would be consulted when necessary. Mr TO said that according to his understanding, relevant information would only be disclosed if a case was brought to court. Hence, it was most likely that members might have to invoke the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to order the production of all information in relation to the transactions of 39 Conduit Road to examine the non-criminal aspects of the case.

IV. Any other business

29. There being no other business, the meeting ended at 5:45 pm.