

立法會
Legislative Council

LC Paper No. CB(1)1078/12-13
(These minutes have been seen
by the Administration)

Ref : CB1/PL/DEV/1

Panel on Development

Minutes of meeting
held on Tuesday, 26 February 2013, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex

Members present : Dr Hon LAU Wong-fat, GBM, GBS, JP (Chairman)
Hon Tony TSE Wai-chuen (Deputy Chairman)
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Cyd HO Sau-lan
Hon CHAN Hak-kan, JP
Hon CHAN Kin-por, BBS, JP
Dr Hon Priscilla LEUNG Mei-fun, JP
Hon IP Kwok-him, GBS, JP
Hon Mrs Regina IP LAU Suk-yeet, GBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon Albert CHAN Wai-yip
Hon Claudia MO
Hon Michael TIEN Puk-sun, BBS, JP
Hon James TIEN Pei-chun, GBS, JP
Hon WU Chi-wai, MH
Hon Gary FAN Kwok-wai
Hon CHAN Chi-chuen
Hon CHAN Han-pan
Dr Hon Kenneth CHAN Ka-lok

Hon CHAN Yuen-han, SBS, JP
Hon Alice MAK Mei-kuen, JP
Dr Hon KWOK Ka-ki
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon CHIANG Lai-wan, JP

Members attending : Dr Hon LAM Tai-fai, SBS, JP
Hon WONG Kwok-kin, BBS
Hon Paul TSE Wai-chun, JP
Hon Dennis KWOK

Members absent : Hon LEUNG Che-cheung, BBS, MH, JP
Hon Kenneth LEUNG
Ir Dr Hon LO Wai-kwok, BBS, MH, JP

Public officers attending : **Agenda item IV**

Mr Tony LI Yeuk-yue
Principal Assistant Secretary (Planning & Lands)²
Development Bureau

Mr Bosco CHAN Bun-pui
Deputy Project Manager (HK Island & Islands)
Civil Engineering and Development Department

Mr David LO Kwok-chung
Chief Engineer/Islands
Civil Engineering and Development Department

Agenda item V

Mr Paul CHAN Mo-po, MH, JP
Secretary for Development

Mr Thomas CHOW Tat-ming, JP
Permanent Secretary for Development
(Planning and Lands)

Mr Thomas CHAN Chung-ching, JP
Deputy Secretary for Development
(Planning and Lands) 1

Ms Bernadette LINN, JP
Director of Lands

Mr Jeff LAM Yun-tong, JP
Deputy Director of Lands (General)

Ms Fiona LEE Kwan-wai
Assistant Director/Legal/HK & TW
(Legal Advisory and Conveyancing Office)
Lands Department

Mr AU Choi-kai, JP
Director of Buildings

Ms Christine TSE Kin-ching
Assistant Director of Planning/Board

Mr Franco KWOK Wai-fan, JP
Acting Deputy Director of Home Affairs (2)

Ms Mildred CHEUNG Mei-yee
Chief Executive Office (4)
Home Affairs Department

Mr WONG Kuen-fai, JP
Deputy Commissioner of Inland Revenue (Operations)

Mr Anthony WONG
Director of Operations of the Estate Agents Authority

Agenda item VI

Mr Paul CHAN Mo-po, MH, JP
Secretary for Development

Ms Grace LUI Kit-yuk, JP
Deputy Secretary for Development (Works)1

Miss Vivian KO
Commissioner for Heritage
Development Bureau

Mr Tom MING Kay-chuen
Executive Secretary (Antiquities and Monuments)
Leisure and Cultural Services Department

Clerk in attendance : Ms Sharon CHUNG
Chief Council Secretary (1)6

Staff in attendance : Mr Anthony CHU
Senior Council Secretary (1)6

Mr Fred PANG
Council Secretary (1)6

Ms Christina SHIU
Legislative Assistant (1)6

Action

- I Confirmation of minutes**
(LC Paper No. CB(1)581/12-13 -- Minutes of meeting on
7 January 2013)

The minutes of the meeting held on 7 January 2013 were confirmed.

- II Information paper issued since the last meeting**
(LC Paper No. CB(1)477/12-13(01) -- Submission on Planning &
Engineering Study on Future
Land use at Ex-Lamma Quarry
Area at Sok Kwu Wan,
Lamma Island from Living
Lamma dated 22 January
2013)

2. Members noted that the above information paper had been issued since the last meeting.

III Items for discussion at the next meeting

(LC Paper No. CB(1)580/12-13(01) -- List of outstanding items for discussion

LC Paper No. CB(1)580/12-13(02) -- List of follow-up actions)

3. Members agreed that "Quality of Dongjiang water and water quality monitoring by the Water Supplies Department", an item proposed by the Administration, would be discussed at the next regular meeting scheduled for Tuesday, 26 March 2013, at 2:30 pm.

(Post-meeting note: Members agreed at the meeting that, due to time constraint, Item VI, i.e. "Planning Study on Future Land Use at Anderson Road Quarry - Final Recommended Outline Development Plan", originally scheduled for discussion at the meeting be deferred to the next regular meeting on 26 March 2013. Separately, in the light of the lift plunging incident causing injuries to seven persons at 480 King's Road, North Point on 2 March 2013, an item on "regulatory control over lift and escalator safety and related issues" has been added to the agenda for the next regular meeting. Members were informed of the above arrangements vide LC Paper Nos. CB(1)646/12-13 and CB(1)666/12-13 issued on 1 and 5 March 2013 respectively.)

IV PWP Item No. 7414RO -- Improvement works at Mui Wo

(LC Paper No. CB(1)580/12-13(06) -- Administration's paper on PWP Item No. 7414RO -- Improvement works at Mui Wo)

4. Principal Assistant Secretary (Planning & Lands)2, Development Bureau ("PAS/DEV(P&L)2") advised that the proposal presented to the meeting was about upgrading part of public works project ("PWP") Item No. 414RO to Category A, at an estimated cost of \$193.1 million in money-of-the-day prices, for the construction of a segregated pedestrian walkway and cycle track, a footbridge, a civic square and ancillary improvement works at Mui Wo. With the aid of a powerpoint presentation, Chief Engineer/Island, Civil Engineering and Development Department

briefed members on the details of the proposal. Subject to the Panel's support, the Administration would seek the endorsement of the Public Works Subcommittee ("PWSC") and funding approval of the Finance Committee for the project in March and May 2013 respectively.

(Post-meeting note: A soft copy of the powerpoint presentation materials (LC Paper No. CB(1)641/12-13(01)) was circulated to members by email on 27 February 2013.)

5. The Chairman reminded members that in accordance with Rule 83A of the Rules of Procedure ("RoP") of the Legislative Council ("LegCo"), they should disclose the nature of any direct or indirect pecuniary interests relating to the subjects under discussion at the meeting before they spoke on the subjects. Under Rule 84 of RoP of LegCo, a member should not vote upon any question in which he had a direct pecuniary interest except under certain circumstances as provided for in Rule 84.

Further development of Mui Wo

6. Dr KWOK Ka-ki supported the early implementation of the proposal. He remarked that residents in Mui Wo had waited for a long time for the commencement of the improvements works since the Lantau Concept Plan was first proposed in 2004. Drawing reference to the Administration's latest proposal of providing Home Ownership Scheme flats at Mui Wo, he asked whether the present proposal had taking into consideration the intake of additional population and thus the need for additional community facilities in future. He also enquired why the proposal did not cover any plans to improve and expand the Mui Wo ferry pier, a major transport interchange for both residents and tourists.

7. PAS/DEV(P&L)2 said that the present proposal was not related to the possible new public housing developments at Mui Wo. He noted Dr KWOK's concern and would ask the relevant department to follow up on community facilities in Mui Wo. On the Mui Wo ferry pier, Deputy Project Manager (HK Islands & Islands), Civil Engineering and Development Department ("DPM(HKI&I)/CEDD") advised that enhancement of the entrance plaza next to the pier and construction of a waterfront promenade at the south waterfront would be included in Phase 2 of 414RO. As some existing facilities would have to be reprovisioned to make way for the improvement works at the pier, the Administration was consulting the views of local residents and organizations, including the Islands District Council and the Mui Wo Rural Committee on the proposal for the Phase 2 works. In

response to Dr KWOK's enquiry about the time table for Phase 2, DPM(HKI&I)/CEDD replied that the Administration would strive to advance the schedule for commencement of the works, subject to the comments of the local community.

8. Mr WU Chi-wai asked whether there was any plan under Phase 2 on property development above the Mui Wo ferry pier for generating non-fare revenue to cross-subsidize the ferry service. DPM(HKI&I)/CEDD advised that while there was no such development plan under 414RO, the Administration was considering a proposal of constructing one and half additional floors at the Central Piers, to be sublet by ferry service operators to retail businesses for increasing non-fare income.

9. Mr CHAN Han-pan suggested that the Administration could develop home-stay lodgings at Mui Wo to attract more visitors. PAS/DEV(P&L)2 said that there were holiday flats at Mui Wo and South Lantau which could provide short-term accommodation for visitors similar to home-stay lodgings. He undertook to convey Mr CHAN's suggestion to the relevant bureau/department.

Cycle track

10. As the proposed cycle track along the waterfront between Mui Wo Cooked Food Market and River Silver was short, Dr KWOK Ka-ki asked if it could be extended to Silver Mine Bay. DPM(HKI&I)/CEDD explained that the cycle track between Mui Wo Cooked Food Market and River Silver under the present proposal aimed to address as soon as possible the safety concern on the shared use arrangement for cyclists and motorists along Ngan Kwong Wan Road. The remaining works of 414RO would comprise, amongst others, provision/improvement of a cycle track network at Mui Wo. The works for providing the cycle track network would, however, involve land resumption.

11. Dr CHIANG Lai-wan noted that the width of the proposed cycle track was 3.5 metres but the standard width of a two-way cycle track should be four metres. She asked if the proposed cycle track could be widened to facilitate the cyclists. In response, DPM(HKI&I)/CEDD said that 3.5 metres was the minimum width requirement for a two-way cycle track. As the proposed cycle track would be provided on a suspended deck along the waterfront, a width of 3.5 metres was considered appropriate having regard to site constraints and structural safety. He added that the Transport Department had been consulted on the width of the cycle track.

12. Mr WU Chi-wai pointed out that some cyclists would use South Lantau Road for connection to Pui O and other places at South Lantau. He asked whether there was any plan to extend the cycle track from Mui Wo to Pui O under the Phase 2 works. He further enquired if the Administration would construct a comprehensive cycle track network on Lantau in the long run to facilitate public enjoyment of Lantau's scenery and promote green tourism.

13. Mr CHAN Han-pan welcomed the Administration's proposal under 414RO, which he considered a positive response to the suggestion of the Islands District Council and the Mui Wo Rural Committee on developing Mui Wo into a leisure historic rural township. With the comment that the scope of the present proposal was rather limited, he urged the Administration to put in more resources for the further development of Mui Wo in future. He said that, with the connectivity between Lantau and other parts of Hong Kong improved by the extension of road networks, the number of visitors to Mui Wo, which was more accessible by ferry, had been in decline. The development of a comprehensive cycle track network connecting Mui Wo and other places on the island would attract more tourists to Mui Wo and promote green tourism on Lantau. Pointing out that the lack of bicycle racks was a prevalent problem in all outlying islands, Mr CHAN asked whether the number of bicycle racks to be provided under the Phase 1 works would be sufficient and if there was any room for further expansion.

14. DPM(HKI&I)/CEDD said that the local community had asked the Administration to expedite the improvement works which did not involve resumption of lands and reprovisioning of existing facilities. Such works had been included under Phase 1. A segregated pedestrian/cycle track would be constructed in Phase 1 to facilitate cyclists, including local residents, to travel between the Mui Wo ferry pier and the new civic square as well as the villages and some scenic spots. After the completion of the Phase 1 works, the old town would be revitalized and become attractive to tourists. Planning for Phase 2 works would start as soon as the consultation with the local community was completed and the issues resolved. The Administration would consider members' suggestion of expanding the cycle track network from Mui Wo to other places on Lantau. On the provision of bicycle racks, he advised that a certain number would be provided under the present proposal and the Administration would closely monitor the demand, with a view to taking follow-up action when necessary.

Tourism in Mui Wo

15. Mr James TIEN asked whether the improvement works at Mui Wo were targeted at attracting more tourists, and if so, whether the increase in the number of visitors to Mui Wo would cause inconvenience to local residents and have an impact on their daily lives. While the Hong Kong Tourism Board could offer assistance in promoting Mui Wo to tourists when the infrastructure was improved, a balance had to be achieved between developing tourism and respecting the views of the local people. DPM(HKI&I)/CEDD replied that the objective of the project was to improve the infrastructure at Mui Wo to facilitate residents and tourists, both from local and overseas. At the proposed civic square, information about the history and local characters of Mui Wo would be displayed, with tourists as the target audience. PAS/DEV(P&L)2 added that under the 2007 Revised Lantau Concept Plan, developments would concentrate at North Lantau, while the rest of Lantau should be reserved for nature conservation, green tourism and amenities. On the positioning of Mui Wo as a tourist attraction, he would convey Mr TIEN's views to the Commerce and Economic Development Bureau.

Submission of the proposal to the Public Works Subcommittee

16. In concluding the discussion on the item, the Chairman said that members supported the Administration's proposal to seek the endorsement of PWSC for part-upgrading 414RO to Category A.

V Policy relating to a recent case of sale of hotel rooms by a developer

(LC Paper No. CB(1)580/12-13(03) -- Administration's paper

LC Paper No. CB(1)580/12-13(04) -- Letter dated 19 February 2013
from Hon Michael TIEN
Puk-sun

LC Paper No. CB(1)580/12-13(05) -- Letter dated 19 February 2013
from Dr Hon Kenneth CHAN
Ka-lok

LC Paper No. CB(1)596/12-13(01) -- Letter dated 20 February 2013
from Dr Hon Kenneth CHAN
Ka-lok

LC Paper No. CB(1)596/12-13(02) -- Letter dated 21 February 2013
from Hon James TO Kun-sun

LC Paper No. CB(1)596/12-13(03) -- Press releases issued by the

Administration and the Consumer Council from 19 to 21 February 2013 on a recent case of sale of hotel rooms by a developer)

17. Secretary for Development ("SDEV") briefed members on the regulatory regimes for the development and operation of hotels in Hong Kong and the follow-up actions taken by the relevant authorities in respect of the sale of hotel room units by the developer of The Apex Horizon ("the Hotel Developer") in Kwai Chung, the details of which were given in the Administration's paper (LC Paper No. CB(1)580/12-13(03)). He highlighted the following salient points:

- (a) After it had come to the attention of the Administration that a developer had announced the sale of individual hotel room units of The Apex Horizon on 18 February 2013, the Administration had been collecting information about the case and matters of regulatory concerns.
- (b) The Administration had informed the public on 19 February 2013 that the lease governing the lot where The Apex Horizon was located was executed before July 2003 and did not prohibit the lessee from selling the units individually. However, the relevant lease conditions would be breached if the units were not used for hotel purposes. In the event of substantiated breach of the lease, the Lands Department ("LandsD") would take appropriate lease enforcement action, including but not limited to re-entering the property.
- (c) The relevant documents and legal liabilities in connection with the sale were complicated. Through a press release issued on 19 February 2013, the Administration had reminded the public to exercise care when considering whether to purchase the units, to take note of the relevant information regarding town planning, lease conditions, approved building plans, the guesthouse licence etc, and to understand the relevant stipulations and statutory requirements including the usage restriction as well as purchasers' rights and obligations. The Chief Executive and various Policy Bureau Secretaries had on different occasions reminded members of the public that the

hotel rooms for sale were permitted for hotel use only and were not residential flats.

- (d) Hotel developments in Hong Kong were subject to control under the Town Planning Ordinance (Cap. 131) ("TPO"), the Buildings Ordinance (Cap. 123) ("BO") as well as the land lease for the site at which a hotel was located. Moreover, the operation of hotels in Hong Kong was regulated by the licensing scheme under the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) ("HAGAO").
- (e) Preliminary reviews showed that most leases and lease modifications granted before July 2003 did not contain a restriction that prohibited the sale of individual units. However, since July 2003, LandsD had required the imposition of restriction on alienation of hotel developments, except as a whole, in lease modifications and land grants that permitted hotel developments.
- (f) Even though a land lease did not contain a restriction on alienation, it might contain provisions requiring the lessee to obtain LandsD's approval to a Deed of Mutual Covenant ("DMC") before the lessee could dispose of the lot or any part thereof. This requirement applied to the developer of The Apex Horizon. While the sale of individual units was not disallowed under the lease, the matter at issue was whether purchasers of the units had been clearly informed about the restrictions on the use of the units and whether the terms of the lease such as the gross floor area ("GFA") requirement and other relevant statutory requirements would be met following the sale.
- (g) In the case of The Apex Horizon, the land lease required that the GFA of the building designated or intended to be used for hotel purposes should not be less than 21 190 square metres. There would be a breach of the lease if the minimum GFA requirement was not met following the disposal of individual units. The lease enforcement actions to be taken by LandsD could include but would not be limited to re-entering the property.

- (h) Under HAGAO, a hotel licence would not be granted if the premises intended to be used as a hotel did not meet the building and fire safety requirements. The operation, keeping and management of the hotel should continue to be in compliance with the requirements specified in the licence and the legislation. The Administration could enforce against any non-compliances found. Any change of the use of the hotel building from hotel to other uses might not only breach the provisions in the lease but also contravene BO. Enforcement actions might be taken by the Buildings Authority by way of prosecution in accordance with the relevant legislation.

18. Director of Lands ("D of L") said that having regard to the terms of the land lease for The Apex Horizon, the lessee was not required to obtain LandsD's approval for the sale of hotel room units. According to recent media reports, there were suggestions that the hotel room units for sale could be used by the purchasers as private residential units. The Administration was concerned about such suggestions and therefore clarified that under the land lease the units should be used for hotel use only. She further advised that the Administration was investigating the intent of the Hotel Developer in the sales exercise as well as the sale plan with a view to ascertaining whether the units were indeed sold as hotel rooms and would continue to be used for hotel purposes. Inspections and spot checks at the Hotel would be conducted.

19. Director of Buildings ("DB") advised that Regulation 23A of the Building (Planning) Regulations ("B(P)R") under BO had specified that a hotel development could be treated as a non-domestic development for a higher plot ratio and site coverage. In addition, certain areas and facilities essential for hotel operation could be disregarded for the GFA calculation. For a hotel granted with hotel concessions, any change of use of the hotel building in whole or in part to a use other than that of a hotel would contravene B(P)R and enforcement actions might be taken by way of prosecution or the issue of an order under B(P)R to discontinue the present use. If a hotel had been issued with an occupation permit but no hotel licence was issued or renewed in respect of the hotel, that would be deemed to be a change of use under B(P)R.

20. Acting Deputy Director of Home Affairs (2) said that under HAGAO, any premises providing sleeping accommodation at a fee with a tenancy term of less than 28 consecutive days should obtain a licence before commencing operation. Premises in which all accommodation was provided on the basis

of a minimum period of 28 continuous days for each letting were excluded from the application of HAGAO. All licensed hotels and guesthouses must meet, amongst others, the building and fire safety requirements as set out in BO and the Fire Services Ordinance (Cap. 95). If a licence holder had been convicted of an offence against HAGAO or had failed to comply with the conditions as stipulated in the licence, the Hotel and Guesthouse Accommodation Authority might cancel or suspend the licence concerned or refuse to renew the licence by exercising the power conferred by HAGAO.

21. Deputy Commissioner of Inland Revenue (Operations) advised that any person carrying on a hotel business in Hong Kong was liable to profits tax. When a hotel owner sold the hotel business or hotel room units, profits on the sale was subject to profits tax if it was not a sale of capital asset. Furthermore, the purchase and sale of hotel room units were subject to stamp duty. Under the Stamp Duty Ordinance (Cap. 117) ("SDO") currently in force, the instrument chargeable with ad valorem stamp duty for a non-residential property was the conveyance on sale, while that for a residential property included both the agreement for sale and conveyance on sale. Recently, the Financial Secretary announced on 22 February 2013 that, subject to the enactment of the relevant legislation, with effect from 23 February 2013, the stamping of non-residential property transactions would be advanced from the conveyance on sale to agreement for sale. Special Stamp Duty and Buyer's Stamp Duty remained applicable to residential flats but not to non-residential properties.

22. Director of Operations of the Estate Agents Authority advised that following the sale of hotel room units of The Apex Horizon, the Estate Agents Authority ("EAA") had issued emails to some 30 000 licensees and inspected the sales office of the hotel project concerned to understand the sales practices of the concerned estate agents. In view of the complicated sales conditions involved, EAA had reminded licensees that they must not convey any inaccurate or misleading information in the course of property sale. They should draw their clients' attention to the associated risks and recommend that the clients should seek legal advice before making a purchase. Licensees were also reminded to adopt the same practices no matter the property was sold by way of "confirmor sale" or not. He further advised that so far EAA had not received any complaints in relation to the sale of the hotel room units of The Apex Horizon, but if complaints were received in future, EAA would commence investigation. He assured members that EAA would continue to keep in view the developments of the case and issue practice circulars to the trade if necessary.

23. SDEV emphasized that the Administration was investigating the case of The Apex Horizon. Legal advice would be sought if necessary. The Administration would answer members' questions at the meeting based on the information collected so far and keep members informed of any major developments on the case in future, where appropriate.

Control on alienation of a hotel development

24. Noting that in the case of The Apex Horizon, LandsD had approved a sub-DMC which divided the Hotel into hotel room units in 2011, Mr James TIEN enquired about the justification for the approval. D of L replied that although LandsD had issued internal instructions in July 2003 requiring the imposition of restriction on alienation of hotel developments in lease modifications and land grants that permitted hotel developments, most of the leases executed before July 2003 did not contain such a restriction. In the case of The Apex Horizon, the lease governing the lot concerned (Kwai Chung Town Lot No. 467) was executed in 2002 and did not contain a restriction on alienation of part of the lot. In this connection, LandsD must abide by the lease and approve the sub-DMC, if it was in order. LandsD approved the DMC in respect of Kwai Chung Town Lot No. 467 Remaining Portion in 2006. The DMC allocated undivided shares to the development at Kwai Chung Town Lot No. 467 Remaining Portion: service apartments, retail, hotel, car park and common areas. In 2011, LandsD approved the sub-DMC which divided the Hotel into hotel room units. The DMC provided for the management of the development, and set out the rights and obligations of the owners of the development. D of L stressed that in giving the approval for the sub-DMC, LandsD had imposed a condition that the lessee must inform prospective purchasers by sales literature that the hotel room units must be used for hotel purposes.

25. In response to Dr Kenneth CHAN's enquiry about the policy consideration underlying the absence of restriction on alienation in land leases granted before July 2003, D of L explained that with a view to providing lessees with flexibility in developing their lots, the Administration normally did not impose restriction on alienation. As regards Dr CHAN's query on whether the absence of such restriction until July 2003 reflected that there had been loopholes in the regulatory mechanism, D of L disagreed to the allegation. She said that as the tourism industry underwent continuous development, the relevant regulation would need updates from time to time. She pointed out that in 2003, it had come to the Administration's attention that there was an increase of applications for change of land use to hotel purposes made to the Town Planning Board and cases of hotel developments

with rooms the design of which resembled that of residential flats. Given the new trend and to curb possible abuses, LandsD took proactive action in 2003 to impose restriction on alienation of hotel developments in lease modifications and land grants.

26. Dr CHIANG Lai-wan and Miss Alice MAK asked whether the Hotel Developer should be subject to payment of additional premium following the disposal of undivided shares of the concerned land lot. D of L replied that land premium was assessed with reference to the conditions of the lease governing the lot which stipulated, among others, the usage restriction and the minimum GFA designated for hotel use. Since the lease carried no restriction on alienation, whether or not the hotel had eventually been divided into hotel room units for sale was not a new factor which deviated from the lease conditions. Given that the Hotel Developer had not developed the lot differently from what was permitted under the lease, there was no question of payment of additional premium.

Distinction between hotel use and residential use

27. Mr Michael TIEN enquired about the circumstances under which the use of a hotel room would be regarded as residential. He asked whether an owner of a hotel room could lease the room to the owner himself/herself or his/her children without contravening the relevant requirements under the law and the land lease conditions. D of L advised in the negative and explained that a hotel room unit would no longer be a "hotel" under HAGAO if the room was occupied by a person exclusively and could not be rented out to any person presenting himself who appeared able and willing to pay a reasonable sum for the services and facilities provided. As regards enforcement of the land lease conditions, an important matter to be decided by LandsD was whether the terms of the lease, such as the minimum GFA designated for hotel purposes, had not been met.

28. In response to Mr Michael TIEN's question on whether the Administration would work out a clear set of criteria for distinguishing residential use from hotel use, D of L advised that from the perspective of lease enforcement, the Administration had no practical difficulties in making a distinction between the two. She added that while there was no specific definition of "hotel use" under land lease, the Administration would take into account all circumstantial evidence and would make reference to relevant laws, common law precedents and practices as well as common sense understanding when considering whether a hotel room was in substance used for hotel purposes. She assured members that LandsD would rigorously take

enforcement action against any breach of the lease and would not rule out taking some cases to the court where necessary. If an investigation of breach of lease conditions was warranted, it would not be limited to documentation check but would include on-site inspection of each premises concerned.

29. Referring to the sales brochure and layout plans with respect to The Apex Horizon, Mr CHAN Hak-kan said that the design of the hotel rooms of the development was very different from other ordinary hotel rooms given that each room included a kitchen as well as two living rooms and two bedrooms. Mr CHAN queried about the justifications for the Administration to approve the building plans of The Apex Horizon at the outset.

30. DB replied that in deciding whether a proposed development would be accepted as a hotel development for the purpose of Regulation 23A of B(P)R, the Administration would take into account certain criteria which had been set out in a practice note issued by the Building Authority. Such criteria included whether the site was suitable for hotel developments; whether basic facilities required for hotel use were provided; whether a central air-conditioning system and a centralized hot water supply system were provided; and whether the building would be operated as a licensed hotel under HAGAO. If a proposed development had met the criteria, it could be granted concessions mainly in the form of allowing it to be built to non-domestic plot ratio and site coverage as well as exempting certain hotel areas from the GFA calculation under section 42 of BO. In response to Mr CHAN Han-ban's enquiry on whether The Apex Horizon had a central air-conditioning system, DB replied in the affirmative and advised that the installation of the system had been confirmed in an inspection conducted by the Buildings Department before the issue of the occupation permit in respect of the building.

Enforcement of land lease conditions

31. Mr CHAN Kam-lam considered it necessary to have clear guidelines for law enforcement personnel to determine whether a premises was being used as hotel or residential purposes. He enquired whether the concerned Government departments would conduct spot-checks at the hotel rooms of The Apex Horizon and other similar developments to ensure that no lease or licence conditions were breached.

32. D of L said that as far as enforcing land lease conditions was concerned, LandsD would conduct site inspections and make enquiries on cases where there appeared to be possible breaches. Acting Deputy Director

of Home Affairs (2) advised that the Office of the Licensing Authority ("OLA") inspected hotels from time to time to ensure that these premises were operated in compliance with HAGAO, the licence conditions and requirements on structural and fire safety. Furthermore, HAGAO provided that any public officer authorized by the Hotel and Guesthouse Accommodation Authority in writing might without warrant enter and inspect at all reasonable times any hotel and require any person taking part in the operation/management of a hotel to produce any book, document or other articles relating to the operation/management of the hotel. OLA would pay on-site visit to a hotel when it processed an application for the renewal of the licence. Only if all the licensing requirements under HAGAO had been met would a hotel licence be renewed.

33. Dr Kenneth CHAN enquired about the course of action to be taken by the Administration in the event that one of the owners of the hotel room units of The Apex Horizon was found using the room for non-hotel purposes. D of L said that if one of the hotel rooms was not used for hotel purposes such that the minimum GFA requirement for hotel under the land lease had not been met, enforcement actions against non-compliance of the lease might be taken. Mr IP Kwok-him asked what the exact enforcement actions would be. D of L replied that the actions could include registering the warning letter with the Land Registry hence imposing an encumbrance against the property in question as well as re-entering the property or even the whole lot. It would depend on the facts and circumstances of the suspected breach. In determining which parties to prosecute and what action to take, the Administration would exercise reasonableness and would seek legal advice.

34. Mr James TO held the view that the Administration should rigorously enforce the law and land lease conditions but its action should not go beyond the law. He asked what action the Administration would take in the following scenarios where: (a) the owner of a hotel room had given instruction to the hotel operator regarding the room rent, which was unreasonably high, say, at \$10,000 per night; (b) the owner reserved the room through the hotel operator, paid the high rent, which would be reimbursed to him, and occupied the room; and (c) the owner allowed access to the room for any person as the hotel operator might from time to time authorize, and did not alter any internal design and items placed in the room. In response, D of L said that to determine whether a hotel room was used for hotel purposes, the Administration would consider each case on the relevant facts and circumstances. On the scenarios cited by Mr James TO, she advised that some of the factors to be taken into account by the Administration would include whether the owner had set the room rent at a

reasonable level, and whether any persons other than the owner would be allowed to reserve the room for lodging.

35. Mr IP Kwok-him stressed that it was important for the Administration to rigorously enforce the law and to safeguard the interest of consumers. Referring to his recent visit to a development in Ma On Shan which provided rooms at a monthly rental of \$13,000 each for lodging and where occupants were not allowed to alter any internal design and items placed in the rooms, he enquired whether such use of the rooms had breached the land lease. D of L replied that in determining whether a long-term occupation of a room by the same person would breach the relevant land lease, the Administration would consider a basket of factors, such as whether the permitted land use of the site was restricted to hotel use, and if yes, whether there was any stipulation in the lease on the minimum GFA designated for hotel use. Other factors such as how long a room had been occupied by the same person would also be taken into account.

36. Mr Abraham SHEK considered that any enforcement action taken by the Administration should only be taken according to the land lease as well as the law. He did not subscribe to the view that there was no definition of the term "hotel" in current legislation. He pointed out that, apart from the definition under HAGAO, the term "hotel" had also been defined under TPO. In response, D of L clarified that her remarks had been made in the context of enforcement of the land lease conditions when she said there was no specific definition of the term "hotel" under the leases. She assured members that in enforcing land leases, the Administration would make reference to common law practices as well as other relevant legislation, such as TPO and HAGAO.

Hotel licence of The Apex Horizon

37. Mr Dennis KWOK enquired whether the hotel room units of The Apex Horizon could continue to be used for hotel purposes in the event that the current holder of the hotel licence withdrew from operating the hotel and no longer held the licence; and if the hotel operator and the owners of individual rooms did not hold a hotel licence, whether the use of the rooms as either hotel or residential purposes would be illegal.

38. Acting Deputy Director of Home Affairs (2) replied that under HAGAO, a hotel had to be operated in accordance with either a licence or a certificate of exemption. Otherwise, it would be illegal to operate a hotel. However, a premises was excluded from the application of HAGAO and

hence exempted from applying for a hotel licence if all its accommodations were exclusively provided on the basis of a minimum period of 28 continuous days for each letting and no waiver, refund or reduction of fees would be made if the letting was for any reason shortened to less than 28 continuous days. D of L added that, as regards the question on whether the use of a hotel building without a valid hotel licence would breach the lease governing the lot, the Administration would, in determining whether a premises was used for hotel purposes, consider whether there was any breach of the lease conditions, such as the minimum GFA designated for hotel purposes. She stressed that even if the hotel in question was granted a hotel licence, the lessee of the lot where the hotel was located would breach the lease if any hotel rooms were in substance used for non-hotel purposes.

39. The Panel noted that the hotel licence of The Apex Horizon would expire in 2018. Mr CHAN Hak-kan and Mr Michael TIEN enquired about the impact on the owners of the hotel room units if the licence was not renewed upon its expiry. DB reiterated that if no hotel licence was issued or renewed in respect of the hotel under HAGAO, that would be deemed to be a change of use under Regulation 23A(5) of B(P)R. For a hotel granted with hotel concessions, any change of use of the hotel building in whole or part to a use other than that of a hotel would contravene Regulation 23A(4) and (6) of B(P)R.

40. Mr Dennis KWOK pointed out that, under clause 4(e) of the draft Hotel Operation Agreement referred to in the sales brochure for The Apex Horizon, the hotel operator owed no duty to the unit owner to apply for, obtain, renew and maintain the hotel licence. He was concerned how a unit owner could continue to operate his/her unit as a hotel room without the hotel licence. D of L replied that while the Administration was not in the position to interpret the contents of the said Agreement, it was noted that owners of the hotel room units could form an owners' committee themselves for the purpose of obtaining a hotel licence. Mr KWOK held the view that it was not practicable to require unit owners to organize themselves into an owners' committee for obtaining a hotel licence.

41. In response to Mr CHAN Han-ban's enquiry about the possible remedies in the event that owners of the hotel room units could not form an owners' committee themselves, D of L advised that in general, unit owners should resolve hotel management issues in accordance with the relevant DMC and sub-DMC. The Administration could provide owners with assistance in interpreting the contents of these instruments upon their request. However, the Administration was not in a position to give advice

regarding the terms and conditions in the draft Hotel Operation Agreement which was a private contract made between the unit owners and the hotel operator.

Tax obligations of the owners of hotel room units of The Apex Horizon

42. Mrs Regina IP sought clarification on the tax obligations of the owners of the hotel room units of The Apex Horizon in respect of the purchase of the units. Deputy Commissioner of Inland Revenue (Operations) advised that it would first be necessary to determine whether the units were residential properties. According to section 29A(1) of SDO, whether the permitted use of a property was regarded as residential or non-residential was determined by certain instruments such as a government lease, an occupation permit, a DMC etc. According to the occupation permit, the hotel room units of The Apex Horizon were not residential properties. Therefore, buyers of the units, no matter they were non-Hong Kong permanent residents or not, were not liable to pay Buyer's Stamp Duty. Furthermore, the purchase and sale of these units would be subject to ad valorem stamp duty but not Special Stamp Duty. However, the Financial Secretary had announced on 22 February 2013 that the Administration would amend SDO to adjust the rates of the ad valorem stamp duty and to advance the charging of the duty on non-residential property transactions from the conveyance on sale to the agreement for sale. Any non-residential properties acquired on or after 23 February 2013 would be subject to the new rates upon the enactment of the relevant legislation. He continued that when owners sold their hotel room units, profits on the sale were subject to profits tax if it was not a sale of capital asset. Where a property was sold by way of "confirmor sale", the sale would be subject to the charging of profits tax. In response to Mrs IP's further enquiry about the resale restriction on the hotel rooms, SDEV advised that there was no such restriction under the lease. Nevertheless, the hotel room units in question, upon re-sale, would remain to be permitted for hotel use only.

Sale of hotel room units in the secondary market

43. Mr Dennis KWOK said that there were considerable restrictions on the sale of the hotel room units of The Apex Horizon in the secondary market, as the owners were required to comply with a set of requirements specified in the draft Hotel Operation Agreement. He cast doubt on whether the owners were aware of such requirements when they purchased the units. SDEV reiterated that as far as the land lease conditions were concerned, sale and resale of the hotel room units of The Apex Horizon were not prohibited.

However, members of the public who intended to purchase or sell the units should seek legal advice on their own to fully understand the relevant sale and purchase conditions as well as relevant statutory requirements before making a decision.

Issue of alerts to potential buyers

44. The Deputy Chairman held the view that although the Administration had warned the public about the risks associated with the purchase of hotel room units per se, the Administration should have issued the alerts to the public at an earlier time given that there was no lack of consumers who had purchased the units before the alerts.

45. Mr Alan LEONG and Ms Claudia MO considered that following a number of developments in the past, including the issue of internal instructions by LandsD in July 2003 to curb possible abuses of hotel developments and the approval made in 2011 on the sub-DMC which divided The Apex Horizon into hotel room units, the Administration should have sensed the need to alert members of the public in a timely manner about exercising great care when considering purchasing hotel rooms. Ms Claudia MO pointed out that not until February 2013 had the Administration made such an alert. She queried whether the delay reflected a dereliction of duty on the part of the Administration. Mr Alan LEONG expressed dissatisfaction that so far, except reminding buyers to seek legal advice on their own, the Administration could not make it clear to the general public whether there was any breach of the relevant stipulations and requirements in the case of the sale of hotel rooms of The Apex Horizon.

46. In response, SDEV stressed that the Administration had the responsibility to draw the attention of the general public to the risks associated with the purchase of hotel room units and to remind them to exercise extreme care in considering whether to make a purchase, hence it had made alerts repeatedly after the Hotel Developer's announcement of the sale. The Administration had reminded the public that the hotel room units for sale were permitted for hotel use only and were not residential flats, and that the units were subject to the regulation of the hotel licence. He disagreed that there was dereliction of duty on the part of the Administration and reiterated that in the case of The Apex Horizon, the lease did not prohibit disposal of undivided shares of and in the lot, but required the lessee to obtain LandsD's approval to a DMC before proceeding with the disposal. Insofar as the lease control regime was concerned, the matter at issue was not the sale of hotel room units per se, but whether the lessee had informed

prospective purchasers by sales literature that the units must be used for hotel purposes, and following the sale, the units must in substance be used for hotel purposes.

47. D of L added that according to recent media reports, there were suggestions that the hotel room units for sale could be used by the purchasers as private residential units. The Administration considered it necessary to alert members of the public that the units were permitted for hotel use only and hence issued the warning through a press release. She said that a preliminary review of the information provided by the Hotel Developer indicated that it had been stated in some documents that the units should be used for hotel purposes only and owners of the units should appoint the hotel operator to manage and operate the units as part of the hotel in accordance with the draft Hotel Operation Agreement. In this connection, potential buyers should be clear about their own intentions when they purchased the units. If they had appointed the hotel operator to manage and operate their units as normal hotel rooms, they should not worry that they themselves would breach the relevant requirements specified in the land lease.

48. Mr Abraham SHEK did not consider it appropriate to make an assumption in the case of The Apex Horizon that buyers of the hotel room units must have been misled and that they must not be aware of the associated risks in relation to the ownership and management of their units at the time of purchase. Given that the sale of the units was not against the law, and the sub-DMC to divide The Apex Horizon into hotel room units had been approved by LandsD, he considered it unnecessary for the Administration to issue public alerts lest they might cause panic. Mr SHEK stressed the importance to abide by the land lease conditions and to protect the right of private ownership of property in accordance with Article 6 of the Basic Law.

Sales conduct of estate agents

49. Mr CHAN Kam-lam said that in the sales brochure of The Apex Horizon which was tabled at the meeting, it was stated clearly that the hotel room units should only be used for hotel purposes and not for private residential purposes or uses. However, he was concerned whether the estate agents had provided accurate and comprehensive information about the restriction on the usage of the units to potential buyers. In response, Director of Operations of the Estate Agents Authority said that EAA, which was tasked with the regulation of the practices of estate agency trade under the Estate Agency Ordinance (Cap. 511) ("EAO"), had all along been attaching

great importance to the professional standards and conduct of estate agents. Should EAA receive any complaint against the conduct of any estate agent concerning the sale of hotel room units at The Apex Horizon, it would carefully assess the information collected with a view to conducting a formal investigation. If any breach of the requirements or provisions of EAO was substantiated, EAA would meter out disciplinary sanctions to the concerned estate agent.

Action to protect the interest of buyers

50. Noting that buyers of the hotel room units of The Apex Horizon would have to comply with certain complicated requirements including the need to use the units for hotel purposes only and to enter into a Hotel Operation Agreement with the hotel operator, the Deputy Chairman was concerned that the buyers might not be fully aware of the restrictions. To better protect consumers and for the benefits of the tourism industry, he suggested that the Administration should consider reviewing the regulation of sale of individual hotel rooms. Sharing Mr TSE's concern, Dr CHIANG Lai-Wan urged the Administration to liaise with the Hotel Developer with a view to helping buyers meet the requirements or solve any problems arising from the purchase of the rooms.

51. SDEV noted members' views. He remarked that according to media reports, there were buyers who had made the purchase for investment purposes and were aware of the associated risks. He believed most buyers had made a conscious purchasing decision after evaluating what they expected from the investment, the possible returns and their risk tolerance.

52. Mr CHAN Kin-por opined that the Administration should alert owners of the units about the possible consequences if one of the unit owners used his/her room for non-hotel purposes. He also asked whether the Administration had any plan to tighten up the existing regulatory control over the sale of hotel room units with a view to enhancing investor protection and avoid the re-occurrence of incidents similar to the Lehman Brothers minibonds fiasco. SDEV advised that the Administration was studying the information collected and would consider seeking legal advice with respect to the case. He undertook that the Administration would keep members informed if there were any significant developments on the review of the relevant control in future.

53. Mr Frederick FUNG said that according to some information, the rooms of more than 80 hotels could be sold individually in the market

without breaching the leases. He was concerned whether prospective buyers would understand the usage restriction on these rooms when they were offered for sale in future. He asked about the Administration's plan to regulate the sale of these hotel rooms. In response, SDEV advised that the lease conditions governing each of the lots where hotels were located might be different, hence it might not be correct to say that the usage restriction on all those hotels were the same. The Administration had on different occasions reminded members of the public to make sure that they fully understood the relevant statutory requirements, the sale conditions as well as the associated risks upon making a purchase decision.

54. Ms Cyd HO considered that the situations of the buyers in the case of The Apex Horizon were similar to those of the investors of Lehman Brothers minibonds in that they had made a purchase but were not fully aware of their rights and obligations with respect to the investment products. She criticized that the buyers' hasty purchasing decision was attributed to the Administration's failure in addressing the housing shortage problem over the past few years. She urged the Administration to liaise closely with the Consumer Council on the handling of purchasers' complaints that might arise from the case of The Apex Horizon and to provide legal advice to the buyers, who would unlikely be eligible to receiving legal aid, if they had such a need.

55. Dr LAM Tai-fai held the view that the Administration had created grey areas in the legislation and land leases, making it possible for the Hotel Developer to sell the units separately to members of the public who were not well aware of the usage restrictions. He shared Ms Cyd HO's view that the case of The Apex Horizon was akin to the Lehman Brothers minibonds fiasco and urged the Administration to provide assistance to the buyers who considered themselves misled into the purchase.

56. SDEV dismissed the existence of any grey areas in respect of sale of hotel room units in the existing legislation and land leases. He said that both the Consumer Council and EAA would handle purchasers' complaints with respect to the sale, including those related to misleading sales conduct.

57. Mr Albert CHAN pointed out that the Administration had approved an application in 1999 made by the Hotel Developer for changing the use of the site where Rambler Crest (in Tsing Yi) was located from "commercial" to "service apartment". The service apartment development was later sold to the public by individual units. However, the occupants had been seriously irritated by the noise of the traffic on the nearby roads, which reflected that the environmental factors taken into consideration for a hotel development

might not suit a residential development. Recalling that LandsD, making reference to the sale of the units of Rambler Crest, had said that it would not approve the alienation of similar developments again, Mr CHAN expressed disappointment on the permitted alienation of The Apex Horizon. He said that he had recently urged the Consumer Council to collect information from the buyers of the hotel room units of The Apex Horizon in order to find out whether any of them had been misled at the time of purchase and to consider taking legal action with the Consumer Legal Action Fund against the Hotel Developer if so warranted. He held the view that, on the other hand, the Administration could withdraw the land lease for The Apex Horizon to make all the transactions for the hotel room units void.

58. In response, SDEV reiterated that the sale of hotel room units in the case of The Apex Horizon was in compliance with the lease. He echoed the view of Mr James TO that the Administration should rigorously enforce the land lease conditions but could not go beyond the law. Mr Albert CHAN cautioned that as the Administration had not yet looked into all relevant information about the case of The Apex Horizon, it should refrain from emphasizing that the sale of the hotel room units was not against the land lease conditions.

59. Mr Frederick FUNG and Dr LAM Tai-fai considered that the Administration had not yet made it clear to the public whether and in what ways the sale of the hotel room units of The Apex Horizon had contravened any legal requirements. Mr Frederick FUNG criticized that the buyers' hasty purchasing decision was due to the Administration's housing policy which led to speculation about the continual rise in property prices in future. Mr LEUNG Kwok-hung said that the Hotel Developer concerned had taken advantage of the loopholes in the existing legislation. He urged the Administration to seek legal advice as early as possible in order to plug these loopholes.

60. In reply, SDEV advised that the Administration had been looking into the information collected on the case and the explanation provided by the Hotel Developer. Legal advice would be sought where necessary. Mr Frederick FUNG expressed regrets that the Administration was still at the stage of reviewing relevant information but not taking remedial action. He considered that the Administration should be blamed for not initiating any action to alert the public when the Hotel Developer sold the first hotel room of The Apex Horizon in December 2012.

61. On the sale that took place in December 2012, D of L explained that when it came to the attention of LandsD in January 2013 that the Hotel Developer had disposed of one hotel room unit by agreement for sale and purchase in December 2012, LandsD had dutifully reminded the Developer that the units sold in the market per se must be used for hotel purposes. With a view to confirming that the unit had been sold for hotel use, that the sale materials had clearly conveyed that the room for sale would be for the purposes of hotel and that the minimum GFA requirement for hotel specified in the lease was not compromised, LandsD had written to the Developer on 25 January 2013 to enquire about the fulfilment or otherwise of the minimum GFA requirement for hotel and arrangements in relation to the sale of that hotel room unit. D of L reiterated that alienation was not prohibited under the lease concerned. Although the Hotel Developer had disposed of one hotel room unit in December 2012, it was not a practice in lease enforcement to draw public attention about the disposal where there was no reasonable doubt that the Developer had breached any lease conditions.

62. Mr Paul TSE opined that the buyers of the hotel rooms had purchased the units on terms which were not favourable to them at all. He considered that the Administration should take remedial action as soon as possible instead of adopting a passive attitude to see how the incident would develop. In his view, the incident was political in nature and the Administration should actively communicate with the Hotel Developer with a view to solving buyers' problems and preventing the incident from developing into a major social dispute.

63. Mr CHAN Han-pan, Mr CHAN Hak-kan and Mr IP Kwok-him expressed regrets over the Hotel Developer's move to realize maximum financial gains through the sales project. Mr CHAN Han-pan criticized the Hotel Developer for taking advantage of the higher plot ratio permitted for hotel developments to gain profits from the sale. He considered that a good communication between the Administration and the Hotel Developer was essential to resolving the issues arising from the project.

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64. Dr KWOK Ka-ki said that many purchasers of the hotel room units had been misled into the purchase, with the misunderstanding that they could use the units for residential purposes. He considered it necessary for the Administration to inform the public about the details of other hotel rooms in Hong Kong that could be allowed to be put up for individual sale, so as to make the public stay alert. Mr CHAN Hak-kan said that according to some information, about 4 500 hotel rooms were provided in three other hotels developed by the Hotel Developer, namely Horizon Suite Hotel (800 units), Harbourview Horizon (1980 units) and Harbourfront Horizon (1662 units). He urged the Administration to provide statistics regarding the number of hotel room units in the territory that were allowed to be sold individually, including the total GFA involved. SDEV undertook that the Administration would provide the relevant information. He added that LandsD would take some time to compile the relevant information.

Supply of hotel rooms

65. Noting that most land leases for hotel developments executed before 2003 did not usually restrict alienation, Mr James TIEN, Mr Alan LEONG, Dr KWOK Ka-ki, Ms Claudia MO and Dr Kenneth CHAN expressed concern on the supply of hotel rooms for meeting tourists' demand if more hotel developers would sell their hotel room units individually in future. Dr Kenneth CHAN pointed out that in planning for land supply for hotel use, the Administration should take such sales activities into consideration.

Serviced apartments

66. Miss Alice MAK pointed out that an incident similar to the sale of the hotel room units of The Apex Horizon had happened before in 2002. At that time, the Administration had approved the sub-DMC with respect to Rambler Crest (in Tsing Yi), which was a service apartment ("SA") development since 1999. Subsequently the developer (also being the developer of The Apex Horizon) put up individual units of Rambler Crest for sale in the market. She criticized the repeated practice of the Hotel Developer to exploit the grey areas of the legislation and enquired about the number of SA units that still existed in Hong Kong and the regulatory control on the sale of these units. Mr James TIEN recalled that between 1999 and 2003, a number of lots had been disposed of by the Administration and some hotels were developed at these lots. He sought clarification on whether alienation was permitted for these hotel developments.

67. D of L said that the hotel developments referred to by Mr James TIEN might actually be "serviced apartments", the sale of which had raised public concerns in 1999 and afterwards. She clarified that in general, the restriction on alienation of hotel developments was implemented after 2003. Since 2000, to avoid confusion to the public, no new "SA" developments had been approved. From the lands and planning perspective, new "SA" developments would be treated either as residential developments or hotel developments with reference to the facts of the case.

Inviting representatives of the Hotel Developer to attend a meeting

68. The Chairman said that he had received a letter from Dr Kenneth CHAN dated 20 February 2013 about inviting representatives of the Hotel Developer to attend a meeting of the Panel and provide relevant documents for members' perusal and discussion. A copy of the letter had been circulated to members vide LC Paper No. CB(1)596/12-13(01) on 22 February 2013. The Chairman invited members to give views on Dr CHAN's suggestion.

69. Dr Kenneth CHAN opined that a special meeting should be held for members to discuss the outstanding issues related to the case. Representatives of the Hotel Developer should be invited to attend the special meeting to provide relevant information and answer members' questions. He supplemented that the purpose of putting questions to the Developer was not to cross-examine it but to obtain the information that members of the public might want to know.

70. Mr Abraham SHEK declared that he represented the Real Estate and Construction Functional Constituency. He did not support Dr Kenneth CHAN's suggestion and pointed out that the major function of the Panel was to monitor the work of the Administration, not the private sector. If necessary, members might send their questions in writing to the Developer for replies. After studying the replies, members might consider whether a special meeting was required to meet with the Administration and the Developer.

71. Mr CHAN Kam-lam held the view that a special meeting to discuss the subject matter should be held only if members had new questions to ask, and the request for representatives of the Hotel Developer to attend the special meeting should only be made if there were justifications.

72. To sum up, the Chairman suggested that a special meeting to further discuss the subject matter would be held if there was such a need in future. If

he decided that a special meeting be held, he would instruct the Clerk to invite representatives of the Hotel Developer to attend the meeting. Members agreed to the Chairman's suggestion.

73. Owing to time constraints, the Chairman proposed that discussion on agenda item VII, namely "Planning Study on Future Land Use at Anderson Road Quarry -- Final Recommended Outline Development Plan", be postponed to the next meeting to be held on 26 March 2013. Members raised no objection to the Chairman's proposal.

VI Progress report on heritage conservation initiatives

(LC Paper No. CB(1)580/12-13(09) -- Administration's paper on progress report on heritage conservation initiatives

LC Paper No. CB(1)580/12-13(10) -- Paper on heritage conservation prepared by the Legislative Council Secretariat (Updated background brief))

Relevant paper

(LC Paper No. CB(4)293/12-13(02) -- Administration's paper on development of International Culinary College of Vocational Training Council)

74. Members noted the submission of the Government Hill Concern Group on the conservation of the former Central Government Offices tabled at the meeting.

(Post-meeting note: A soft copy of the submission (LC Paper No. CB(1)633/12-13(01)) was circulated to members by email on 27 February 2013.)

75. SDEV introduced the salient points of the Administration's paper on progress report on heritage conservation initiatives (LC Paper No. CB(1)582/12-13(09)). In particular, he updated the Panel on the latest development on Batch III of the Revitalizing Historic Buildings through Partnership Scheme ("the Revitalization Scheme"). As announced on 21 February 2013, three projects proposed by non-profit-making organizations ("NPOs") had been selected under Batch III of the

Revitalization Scheme. Haw Par Mansion would be converted by the Aw Boon Haw Foundation into the Haw Par Music Farm for providing training on Chinese and Western music as well as social outreach activities for the public. Journalism Education Foundation Hong Kong Limited would revitalize the Bridges Street Market into the HK News-Expo, a news museum providing media education programmes, experimental studios, lectures and workshops. The Hong Kong Federation of Youth Groups would turn the Former Fanling Magistracy into the Hong Kong Institute of Leadership Development for providing leadership education programme, with early identification of young leaders in Hong Kong as the focus. While the Advisory Committee on Revitalization of Historic Buildings ("the Advisory Committee") did not select any proposals for the revitalization of King Yin Lei, SDEV said that he had accepted the recommendation of the Advisory Committee to include King Yin Lei in the next batch of applications

Revitalizing Historic Buildings through Partnership Scheme

76. Dr CHIANG Lai-wan showed appreciation for the Administration's efforts in heritage conservation and support for the review to be conducted on heritage conservation policy as mentioned in the Chief Executive's Policy Address 2013. Referring to the selected projects under the Revitalization Scheme, she sought details about the financial support from the Administration for these projects and asked whether the Administration would share the profits generated from the projects. Dr CHIANG also enquired on how the Administration would monitor the effectiveness of individual projects.

77. Deputy Secretary for Development (Works)1 ("DS/DEV(W)1") said that under the Revitalization Scheme, NPOs were invited to submit proposals to revitalize selected Government-owned historic buildings in the form of social enterprises. The Advisory Committee would assess the merits of the proposals received, including the financial viability. Where justified, the Administration would provide financial support including, among others, one-off grants to cover the cost of major renovation to the buildings and to meet the starting costs and operating deficits (if any) of the social enterprises for a maximum of the first two years of operation at a ceiling of \$5 million, on the prerequisite that the social enterprise proposal was projected to become self-sustainable after this initial period. There was no provision in the tenancy agreement that the selected NPOs had to share any part of profits from the project with the Administration. The Administration would sign a tenancy agreement with the selected NPOs, normally for a period of three

years. The Administration would review the performance of the relevant NPOs and other factors prevailing at the time to decide whether the tenancy agreement would be renewed. To monitor the effectiveness of the projects, the Administration would review and assess the operation of the social enterprises regularly. The tenancy agreements would contain general and special conditions to set out the parameters that the selected NPOs had to meet. The selected NPOs were required to submit regular reports to ensure that the social enterprises were run to the satisfaction of the Advisory Committee. She added that, during the operational stage, the Secretariat of the Advisory Committee would also conduct visits to the project with or without notice to monitor the progress.

Internal monitoring mechanism for the preservation of historic buildings

78. Dr Kenneth CHAN said that the Civic Party held the view that with a growing awareness of Hong Kong people of their local identity, a comprehensive review of the heritage conservation policy had been long overdue. He looked forward to the completion of the consultancy study on the setting up of a heritage trust. He believed that the recommendations of the study could form a focus for discussion on the way forward. Referring to the submission from the Government Hill Concern Group, he requested the Administration to preserve historic sites/buildings in clusters, not on building basis, so as to achieve the purpose of heritage conservation.

79. Noting from the Administration's paper that 26 buildings on the list of 1 444 historic buildings which had been reviewed for grading by the Antiquities Advisory Board ("AAB") had been demolished or substantially altered, Dr Kenneth CHAN considered the demolition/alteration a setback to the Administration's conservation efforts. He sought details from the Administration about the 26 buildings. In this connection, he asked whether the Administration would include its internal monitoring mechanism for the preservation of historic buildings in the upcoming review with a view to introducing more effective measures to protect graded historic buildings from demolition or alteration. Referring to a recent incident related to the conservation of archaeological heritage in Hong Kong where AAB had not been informed at the first instance, he asked whether the role of AAB would be included in the Administration's review on heritage conservation policy.

80. SDEV said that the proposed scope of the review on heritage conservation policy as announced in the Policy Address focused on the conservation of privately-owned historic buildings. Preliminarily, the scope included formulating a set of more detailed mechanism and criteria for

determining the extent and means to use public resources for the conservation of privately-owned historic buildings, and studying whether there was a need to enhance the conservation of such buildings in the context of town planning. The Administration would invite AAB to assist in the review and defer to AAB's advice before finalizing the scope and timetable of the review. He agreed that the roles and functions of AAB could be included in the review and emphasized that stakeholders would be engaged during the review.

81. On the Administration's internal monitoring mechanism for preventing privately-owned historic buildings from demolition and substantial alteration, DS/DEV(W)1 advised that under the mechanism, the Buildings Department, the Lands Department and the Planning Department would alert the Commissioner for Heritage's Office and the Antiquities and Monuments Office regarding any identified possible threat which might affect privately-owned sites of archaeological interests, monuments/proposed monuments, graded historic buildings/buildings proposed to be graded that had been brought to the departments' attention through applications and enquiries received and in the normal course of duty. However, as no applications were required for some demolition or alteration works, such as minor building works and some building works of the New Territories exempted houses, some cases might not be caught by the monitoring mechanism. In some other cases, owners of the buildings might have undertaken works without obtaining the necessary prior approval from the Administration. She further advised that of the 26 buildings mentioned by Dr Kenneth CHAN, seven were given no grading by AAB, 11 Grade 3 / proposed Grade 3 historic buildings had been demolished, one proposed Grade 2 and seven proposed Grade 3 historic buildings had been substantially altered. The relevant departments were reviewing these cases and would consider taking enforcement actions against those works for which prior approvals had not been given by the Building Authority. AAB was aware of the limitation of the existing internal monitoring mechanism, which would be included in the policy review. In response to Dr CHAN's request, the Administration undertook to provide information about the follow-up actions, if any, taken/to be taken by the relevant Government departments in respect of the 26 buildings.

(Post-meeting note: The Administration's supplementary information was circulated to members vide LC Paper No. CB(1)738/12-13(01) on 20 March 2013.)

Consultancy study on heritage trust

82. Mr CHAN Hak-kan asked the Administration to expedite the review on heritage conservation policy. He enquired about the findings of the consultancy study on heritage trust, including the proposed scale and operation mode. In reply, DS/DEV(W)1 said that the consultancy study was almost completed and the consultant was finalizing the report, which would be submitted to the Administration by end of March 2013. According to the consultant's interim report, the operation of a trust would provide certain advantages such as greater flexibility as the trust could establish closer relationship with private sector organizations thus facilitating its work in soliciting donations and recruiting volunteers. However, the establishment of a trust was not expected to be a solution for all the problems relating to heritage conservation. For instance, the Government might still need to fund the operation of the trust and given the scarce land resources in Hong Kong, the conservation of privately-owned historic buildings would still be a challenge. The Administration would review and analyze the recommendations of the consultancy study before mapping out the way forward. DS/DEV(W)1 assured members that the Administration would brief the Panel on the findings of the study and consult the Panel on the review on heritage conservation policy.

VII Any other business

83. There being no other business, the meeting ended at 6:15 pm.

Council Business Division 1
Legislative Council Secretariat
24 May 2013