

立法會

Legislative Council

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Subcommittee on Issues Relating to Shopping Centres, Markets and Carparks in Public Rental Housing Estates and Home Ownership Scheme Estates

Minutes of the sixth meeting held on Tuesday, 30 October 2018 at 2:30 pm in Conference Room 1 of the Legislative Council Complex

Members present : Hon Jeffrey LAM Kin-fung, GBS, JP (Chairman)
Hon HO Kai-ming (Deputy Chairman)
Hon LEUNG Yiu-chung
Hon Paul TSE Wai-chun, JP
Hon Claudia MO
Hon Frankie YICK Chi-ming, SBS, JP
Hon YIU Si-wing, BBS
Hon CHAN Chi-chuen
Hon LEUNG Che-cheung, SBS, MH, JP
Dr Hon KWOK Ka-ki
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon Andrew WAN Siu-kin
Hon CHU Hoi-dick
Dr Hon Junius HO Kwan-yiu, JP
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai
Hon SHIU Ka-chun
Hon Wilson OR Chong-shing, MH
Hon YUNG Hoi-yan
Dr Hon Pierre CHAN
Hon CHEUNG Kwok-kwan, JP
Hon LAU Kwok-fan, MH
Dr Hon CHENG Chung-tai
Hon KWONG Chun-yu
Hon Jeremy TAM Man-ho
Hon Gary FAN Kwok-wai
Hon AU Nok-hin
Hon Tony TSE Wai-chuen, BBS

Member attending : Hon Alvin YEUNG

Members absent : Hon James TO Kun-sun
Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Hon CHAN Han-pan, BBS, JP
Hon Alice MAK Mei-kuen, BBS, JP
Hon KWOK Wai-keung, JP
Hon Dennis KWOK Wing-hang
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Elizabeth QUAT, BBS, JP

Public Officers attending : Dr Raymond SO, BBS, JP
Under Secretary for Transport and Housing

Miss Rosaline WONG
Deputy Director (Estate Management)
Housing Department

Mr Ricky YEUNG
Assistant Director (Estate Management)²
Housing Department

Mr Jerry CHEUNG
Assistant Director (Policy Support)
Housing Department

Ms Josephine SHU
Chief Estate Surveyor (Commercial Properties)
Housing Department

Clerk in attendance : Ms Angel WONG
Chief Council Secretary (4)⁴

Staff in attendance : Miss Mandy NG
Council Secretary (4)⁴

Ms Sandy HAU
Legislative Assistant (4)⁴

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I. Practical solutions to issues relating to the divested retail and carparking facilities in public housing estates; and the suggestion of buying back Link

(LC Paper No. CB(4)1261/18-19(01) -- Paper provided by the Administration)

The Subcommittee deliberated (index of proceedings attached at **Annex I**).

Declaration of interest

2. Mr SHIU Ka-fai declared interest as a non-official member of the Hong Kong Housing Authority ("HA").

Major views and concerns

"Buy-back" proposal

3. Members noted from the Administration's paper that the Government considered buying back Link Real Estate Investment Trust ("Link") or individual divested properties incompatible with public interests and the principle of prudent financial management. Ms Claudia MO, Mr Gary FAN, Dr CHENG Chung-tai, Mr LEUNG Yiu-chung, Dr KWOK Ka-ki and Mr Jeremy TAM considered that buying back Link or individual divested retail and carparking facilities ("divested properties") would benefit the community. In their views, Link and the subsequent buyers of the divested properties had ignored the needs of the grass roots, a buy-back was necessary to change the operation mode of the divested properties to ensure the needs of public housing residents could be met. Moreover, taking into account the huge fiscal reserve, they considered that a buy-back was feasible. The Deputy Chairman enquired whether the Administration, HA or other public bodies would consider buying back Link. Mr CHU Hoi-dick asked if the Administration would consider issuing Government Bonds to raise funds to buy back the fund units of Link or individual divested properties. Ms Claudia MO enquired about the Administration's ballpark estimate of a full buy-back.

4. Under Secretary for Transport and Housing ("USTH") reiterated that the Government and HA had no plan to buy back Link or individual divested properties. As at late September 2018, the market value of Link was over \$160 billion. A buy-back would involve a huge amount of public money and resources. With the Administration's intention to buy back Link made known in the market, the prices of Link's assets would go up drastically, where institutional investors would readily pocket the profit, reaping benefits at the expense of public coffers. Moreover, as Link was governed by the relevant listing rules which contained provisions protecting the interest of unitholders,

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the Administration would not be able to unilaterally alter the mode of operation of Link even if it acquired a certain amount of fund units of Link. Given the limited public resources, the Administration and HA had to prioritize its resources and focus them on providing public housing.

5. As the Government had no plan to buy back Link or individual divested properties, Mr LEUNG Che-cheung considered that the Administration should proactively explore effective measures to alleviate the impact of divested properties on the livelihood of the grass roots, such as increasing the provision of public markets, commercial facilities and carparking facilities in the vicinity of divested properties. Mr Jeremy TAM suggested the Administration to consider redeveloping the aged public housing estates with divested properties.

6. USTH advised that as announced in the Chief Executive's 2018 Policy Address, the Administration would build new public markets in Tin Shui Wai and Tung Chung and was identifying sites for public markets in Tseung Kwan O and Kwu Tung North New Development Area, so as to offer wider choices of fresh food provision to the public. The Administration would also, based on new thinking, put in resources to revitalize the existing public markets. To cater for the evolving needs of residents, HA had put forward a number of new initiatives to provide more choices of goods and services to residents of its public housing and the local communities, such as mobile banking and mobile medical service stations, etc. HA would sustain its efforts in providing diversified commercial facilities to meet the daily needs of public housing residents. Also, the Administration would follow the principle of "single site, multiple uses" to provide more public parking spaces and explore suitable locations to build underground car parks in the territory.

7. Mr Holden CHOW opined that the new market in Tung Chung should be managed by the Food and Environmental Hygiene Department and a cooked food centre should be provided therein. USTH advised that the Administration would adopt an open attitude towards the operation mode of new public markets and undertook to convey Mr CHOW's views to relevant Bureaux/Departments for follow-up actions.

Divested retail and carparking facilities

8. Mr Andrew WAN and Dr KWOK Ka-ki expressed great dissatisfaction that HA had not seriously addressed members' concerns over HA's role in providing ancillary facilities to public housing residents. They considered it unreasonable for the Administration to explain in its paper that public housing residents, as members of the general public, could have their needs for shopping, carparking, etc. fulfilled through various means, including facilities provided by public and private organizations in various districts. Mr WAN queried how the needs of public housing residents could be met if overall provision of market and carparking facilities in the territory was insufficient. Dr KWOK highlighted

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that it was not practical for elderly residents to travel elsewhere to buy daily necessities.

9. Mr Gary FAN pointed out that Link had recently renovated a divested shopping centre and the supermarket, clinic, etc. therein were not offered renewal of tenancies. Dr CHENG Chung-tai was concerned that a subsequent buyer had leased half of the divested market to an indoor amusement park, depriving residents of fresh provisions and groceries in their neighbourhood. The Deputy Chairman drew the Administration's attention that some subsequent buyers had left their divested shopping centres vacant for prolonged periods of time, causing inconvenience to the residents. Ms YUNG Hoi-yan questioned whether the high vacancy rates of certain divested shopping centres might constitute breaches in land lease conditions.

10. Dr CHENG Chung-tai and Dr KWOK Ka-ki drew the Administration's attention that Link and the subsequent buyers had substantially increased the parking charges and sold individual parking spaces of divested carparks to different owners in pursuit of maximum return on profits.

11. USTH explained that when handing down its Judgement in 2005 on a judicial review case regarding HA's divested properties, the Court of Final Appeal was aware of the fact that there might be changes in the operation of the relevant facilities, such as the tenant and trade mix. As for carparking facilities, if the assignment deeds of divested properties did not contain the Carpark Covenant or if the Covenant had already been lapsed, individual parking spaces in these properties could be sold to different owners. In fact, as with other private property owners, Link and the subsequent buyers of the divested properties were governed by relevant laws and conditions of land leases. As long as the relevant statutory requirements, land lease conditions and restrictive covenants were complied with, the Administration could not interfere with their day-to-day operation and commercial decisions, including determination of the trade mix, renovation, leasing arrangements, rent, etc. However, in case Lands Department ("LandsD") and HA received complaints, referrals or enquiries about suspected breaches of legislation, land leases and non-compliance of restrictive covenants of the divested properties, they would follow-up in accordance with the established practice. Recently, LandsD had taken enforcement actions in response to complaints about Hing Tin Estate and Tin Ma Court.

12. The Deputy Chairman pointed out that there were restrictions under government leases for the provision and use of parking spaces within the lot which might not permit the parking of private light buses including nanny vans and school buses. Link was reluctant to convert the parking spaces for the parking of nanny vans and school buses because of the considerable administrative/waiver fees charged by LandsD. He urged the Administration to waive the relevant fees so that conversion could be made to meet public housing

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residents' needs. USTH undertook to relay the Deputy Chairman's views to LandsD and advised that the Administration was aware of the shortage of commercial vehicle parking spaces. A consultancy study on commercial vehicle parking had been commenced in 2017 with a view to formulating appropriate measures to ease the shortage of parking spaces.

Land leases and restrictive covenants

13. Mr Andrew WAN, Mr Gary FAN and Mr AU Nok-hin noted from media reports that Link would put up 10 divested properties for sale to reap huge profits again. Mr WAN was worried that just like other subsequent owners, the new owners might breach land lease conditions and restrictive covenants with HA, namely the welfare-letting covenant, split-ratio covenant, etc. For the purpose of protection of investors' interests, Mr AU called on the Administration to conduct a topical study on the influence of the amendments to the Code on Real Estate Investment Trusts ("REIT Code") in 2014 on the community and require Link to disclose its substantial transactions.

14. USTH reiterated that so long as the operations of the owners of the divested properties complied with prevailing legislation, land lease conditions and terms of the restrictive covenants, the Administration and HA would not interfere with their commercial decisions, such as disposal of properties. Notwithstanding the change in ownership, covenants such as the welfare-letting covenant, would continue to be in force. HA had reminded the subsequent buyers on various occasions to duly observe the statutory requirements, land lease conditions and the restrictive covenants. If breaches of covenants were confirmed, the Administration and HA would pursue the matter seriously and take appropriate actions. Regarding disclosure of substantial transactions, under the prevailing regulatory requirements, REITs were required to disclose information regarding insider dealings or price-sensitive information. The requirements in the REIT Code were not designed for an individual REIT, but for regulating the operation of the entire REIT market. The Administration therefore had no plan to conduct a topical study focusing on an individual REIT.

15. Mr Alvin YEUNG and Mr CHU Hoi-dick enquired whether there was a mechanism to ensure compliance with the split-ratio covenant by Link and the subsequent buyers; and whether there were measures to assist Incorporated Owners ("IOs") of the relevant Home Ownership Scheme ("HOS") courts to understand their rights under the covenant.

16. USTH explained that prior to the divestment of its retail and carparking facilities, HA, as the owner of the commercial facilities in the 23 HOS courts, made contributions to management and maintenance ("M&M") expenses of certain "specific activities" in the common areas and common facilities of those HOS courts apart from the requirements under the Deeds of Mutual Covenant. The purpose of the split-ratio covenant was for the subsequent buyers of

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divested properties to continue with the goodwill initiatives of HA in those HOS courts. As such, the split-ratio did not apply without restrictions to all M&M expenses of all common areas and common facilities. Instead, it only applied to the "specific activities" of those HOS courts where HA had made contributions prior to its divestment of properties. Owners of divested properties had the responsibility to duly observe their duties under the split-ratio covenant. HA would take actions as it might deem necessary in the event of any non-compliance. Meanwhile, all the assignment deeds of divested properties containing the relevant restrictive covenants, including the split-ratio covenant, had been registered at the Land Registry for public inspection. Members of the public were all along aware of the cost-sharing arrangement and the split-ratio covenant. In response to the recent public concern over the covenant, HA had contacted IOs and management companies of the 23 HOS courts again to provide them with the relevant information.

Storerooms in public housing estates

17. Mr SHIU Ka-chun said that according to the direct investigation report published by the Office of The Ombudsman, many idle spaces in public housing estates had been converted into storerooms for letting out to PRH tenants or mutual aid committees. However, the vacancy rates of these storerooms were rather high. He urged the Administration to improve the conditions of the vacant storerooms (such as providing windows) and rent them to non-government organizations for provision of welfare services.

18. USTH explained that HA had been trying to convert the storerooms and empty bays to domestic and non-domestic uses, where circumstances permitted. However, conversion of storerooms was not always possible due to various constraints (such as insufficient natural lighting or ventilation), and the feasibility for conversions would be subject to compliance with relevant statutory and regulatory requirements. Nevertheless, HA agreed that vacancy rate of the storerooms in public housing estates could be improved and would explore other possible ways for better utilization.

Motion

19. The Chairman referred members to a motion moved by Mr AU Nok-hin (wording of the motion at **Annex II**) and put it to vote. A majority of members present voted for the motion. The Chairman declared that the motion was passed and requested the Administration to provide a written response to it.

(Post-meeting note: The Administration's written response to the motion passed was issued to members vide LC Paper No. CB(4)347/18-19(01) on 19 December 2018.)

II. Any other business

Work progress of the Subcommittee

20. At the invitation of the Chairman, members and the Administration expressed views on the issues of concern raised in the joint letter from Mr Andrew Wan, Dr KWOK kai-ki, Mr SHIU Ka-chun, Mr CHU Hoi-dick and Mr Gary FAN (LC Paper No. CB(4)144/18-19(01)). After deliberations, most of the members present did not see the need to hold a meeting to receive public views again as a prolonged meeting had been held in July 2018 to receive views from the public on the operation of shopping centres, markets and carpark in public housing estates. The Chairman also advised that as the list of divested properties to be put up for sale by Link had not been confirmed, it might not be appropriate for the Subcommittee to conduct a visit to those properties.

21. The Chairman further informed members that a policy subcommittee should complete its work within 12 months of its commencement. Given that the Subcommittee had commenced its work on 8 January 2018, the Subcommittee would submit a report to the House Committee in early January 2019.

22. There being no other business, the meeting ended at 4:22 pm.

**Proceedings of the sixth meeting of the
Subcommittee on Issues Relating to Shopping Centres, Markets and
Carparks in Public Rental Housing Estates and Home Ownership Scheme
Estates on Tuesday, 30 October 2018, at 2:30 pm in Conference Room 1
of the Legislative Council**

Time marker	Speaker(s)	Subject(s)/Discussion	Action required
<i>Agenda item I - Practical solutions to issues relating to the divested retail and carparking facilities in public housing estates; and the suggestion of buying back Link</i>			
000715- 001405	Chairman Mr Andrew WAN The Administration	Opening remarks Briefing by the Administration	
001406- 001819	Chairman Mr Andrew WAN The Administration	Mr WAN's concern about the insufficient provision of commercial facilities in public housing to cater for residents' daily needs	
001820- 002228	Chairman Mr SHIU Ka-chun The Administration	Mr SHIU's calling on the Administration to convert idle spaces in public housing into social welfare facilities	
002229- 002655	Chairman Ms Claudia MO The Administration	Ms MO's enquiry about the Administration's stance on buying back Link Real Estate Investment Trust ("Link")	
002656- 003100	Chairman Mr Gary FAN The Administration	Mr FAN's concerns about Link's commercial approach to operate divested properties and the Administration's stance on buying back Link	
003101- 003527	Chairman Dr CHENG Chung-tai The Administration	Dr CHENG's concern about the operation of divested carparks and markets by Link and the subsequent buyers	
003528- 004003	Chairman Deputy Chairman The Administration	The Deputy Chairman's concerns about the Administration's stance on buying back Link, high vacancy rates of the divested shopping centres and considerable fees charged for parking space conversion	
004004- 004433	Chairman Mr Alvin YEUNG The Administration	Mr YEUNG's enquiry about the mechanism to ensure compliance with the split-ratio covenant by Link and the subsequent buyers	
004434- 005024	Chairman Mr LEUNG Yiu-chung The Administration	Mr LEUNG's concern about the Administration's stance on buying back Link	
005025- 005555	Chairman Mr AU Nok-hin The Administration	Mr AU's calling on the Administration to study the potential impact on the community arising from the amendment of the Code on Real Estate Investment Trusts	

Time marker	Speaker(s)	Subject(s)/Discussion	Action required
005556-010126	Chairman Mr LEUNG Che-cheung The Administration	Mr LEUNG's calling on the Administration to explore effective measures to alleviate the impact of divested properties on the livelihood of the grass roots	
010127-010547	Chairman Dr KWOK Ka-ki The Administration	Dr KWOK's urge for a buy-back to meet the daily needs of public housing residents	
010548-011104	Chairman Mr Jeremy TAM The Administration	Mr TAM's concern about the Administration's stance on buying back Link	
011105-011501	Chairman Mr Holden CHOW The Administration	Mr CHOW's views on the operation mode of the new public market in Tung Chung	
011502-011930	Chairman Ms YUNG Hoi-yan The Administration	Ms YUNG's concern about the high vacancy rates of certain divested markets	
011931-012420	Chairman Mr CHU Hoi-dick The Administration	Mr CHU's concern about non-compliance with the split-ratio covenant and views on issuing Government Bonds to facilitate the buy-back proposal	
012421-012540	Chairman Mr AU Nok-hin	Member's motion	
<i>Agenda item II – Any other business</i>			
012541-015356	Chairman Mr CHU Hoi-dick Mr Gary FAN Dr Junius HO Mr SHIU Ka-fai Mr Jeremy TAM Mr AU Nok-hin Mr Frankie YICK Mr Tony TSE Mr LEUNG Che-cheung The Administration	Members' views on the joint letter from Mr Andrew WAN, Dr KWOK Ka-ki, Mr SHIU Ka-chun, Mr CHU Hoi-dick and Mr Gary FAN (LC Paper No. CB(4)144/18-19(01)) The Administration's response to members' views	
015357-015511	Chairman	Work progress of the Subcommittee Closing remarks	

**公屋及居屋商場、街市及停車場事宜小組委員會
Subcommittee on Issues Relating to Shopping Centres, Markets and
Carparks in Public Rental Housing Estates and
Home Ownership Scheme Estates**

**在 2018 年 10 月 30 日的會議上
就議程項目"處理公共屋邨之零售和停車場設施在拆售後的問題
及有關回購領展的建議"通過的議案**

**Motion passed under the agenda item
"Practical solutions to issues relating to the divested retail and carparking
facilities in public housing estates; and the suggestion of buying back Link"
at the meeting on 30 October 2018**

議案措辭

本委員會促請房委會及房屋署設專責隊伍及機制，確保領展及其後的買家根據 2005 年房委會與領匯(領展前身)簽訂的買賣協議，履行所有的限制性契諾(包括「福利租賃契諾」、「分攤比率契諾」等)的責任，即須負責攤分有關屋苑公用地方的管理和維修費，以及須持續跟進領展或其後的買家有否違反協議，以保障居民權益。

動議人：區諾軒議員
和議人：尹兆堅議員

Wording of the Motion

(Translation)

This subcommittee urges the Housing Authority ("HA") and the Housing Department ("HD") to set up a taskforce and a mechanism to ensure that Link and the subsequent buyers will fulfill their obligation to comply with all the restrictive covenants (including welfare-letting covenants, split-ratio covenants, etc.) contained in the assignment deeds signed between HA and The Link (the former entity of Link) in 2005, which require Link and the subsequent buyers to share the management and maintenance costs of the common areas in the relevant housing estates; and that HA and HD will continue to monitor whether Link and the subsequent buyers are in compliance with the deeds, so as to protect the interests of the residents.

(Moved by Hon AU Nok-hin and seconded by Hon Andrew WAN Siu-kin)