

(Translation)

香港特別行政區政府
The Government of the Hong Kong Special Administrative Region

運輸及房屋局

香港九龍何文田佛光街 33 號



Transport and Housing Bureau

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4 August 2017

Mr Derek Lo
Clerk to Legislative Council Panel on Housing
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road, Central
Hong Kong

Dear Mr Lo,

Legislative Council Panel on Housing
Letter dated 15 May 2017

The response to the letter from the Secretariat dated 15 May 2017 relating to the conversion of Tin Wan Shopping centre is at **Annex**.

Grateful if you could pass the above documents to Members for their reference.

Yours sincerely,

(Original Signed)

(Jerry Cheung)

for Secretary for Transport and Housing

Conversion of Tin Wan Shopping Centre

This document serves to respond to the letter dated 15 May 2017 from the Legislative Council Secretariat to the Transport and Housing Bureau regarding the conversion of Tin Wan Shopping Centre. The subject matter was discussed at the 9th meeting of the District Development and Housing Committee (DDHC) of the Southern District Council (SDC) on 29 May 2017, during which various departments have provided their responses on the issue. Please refer to Appendix I for details (SDC DDHC Paper No. 10/2017).

2. Regarding other issues raised in the letter, the following key information is provided for Members' reference.

Divestment of commercial facilities

3. To enable the Hong Kong Housing Authority (HA) to focus on discharging its duties to provide subsidised public housing, HA divested its retail and carparking facilities through The Link (now known as Link) in 2005. Tin Wan Shopping Centre and Car Park, located in the Southern District of Hong Kong Island, was one of such properties. In January 2016, Link assigned the ownership of the property to Ace Precision Investments Limited, i.e. the current owner of the property.

4. Section 4 of the Housing Ordinance empowers HA to discharge a wide range of functions, including requiring HA to secure the provision of housing and "such amenities ancillary thereto as the Authority thinks fit" for relevant persons. In July 2005, in a case of judicial review of the divestment by HA of its retail and carparking facilities, the Court of Final Appeal (CFA) ruled that the divestment plan by HA of these facilities complied with the aforesaid requirement stipulated in the Housing Ordinance. The CFA also noted that The Link, after its public listing, would adopt a market-oriented commercial approach in its operation, and there might be changes in the operation of the relevant facilities (such as the tenant trade mix).

Operation of divested properties and their conversion

5. Just like any other private property owners, Link and other divested property owners have to comply with the relevant laws and land lease conditions. Certain restrictive covenants are contained in the assignment deeds of these properties. For example, under the restrictive covenants on retail facilities, if HA still holds any proprietary interest in the relevant estate or court, the commercial facilities shall not be disposed of except as a whole.

6. Regarding land lease restriction, the land leases have stipulated the land uses of the relevant lots. If an owner wishes to change the relevant land uses, prior agreement from other owners of the lots (including HA and flat owners) and approval from the Lands Department (LandsD) have to be obtained.

7. Generally speaking, as long as the owners comply with the statutory requirements and Government lease conditions, the Government cannot interfere with their lawful right to use their properties. Likewise, as long as the owners do not breach the covenants made with HA, HA cannot and will not interfere with their day-to-day operation and commercial decisions. However, if an owner is in breach of any statutory requirements, land lease conditions or the covenants made with HA, the relevant Government departments and HA will certainly handle the matter seriously and take corresponding actions.

Issues relating to land lease conditions

8. As regards the issues relating to land lease conditions, District Lands Office/ Hong Kong West and South (DLO) received earlier the building plans for the conversion and extension works of Tin Wan Shopping Centre and Car Park. In general, as long as the requirements on the gross floor area of commercial facilities permitted under the relevant lease have been complied with, operating a school on commercial principles in the relevant lots is not in breach of the prescribed uses of the land lease concerned. However, as some items of the conversion works did not comply with the land lease conditions, DLO issued a reply to the authorised person of the owner that it did not support the relevant building plans. Recently, the authorised person submitted the revised building plans. DLO will process the application in accordance with the established procedures.

9. Regarding the issue of the closure of the passageways and lifts in the shopping centre during the period of the conversion works as mentioned in the letter, according to the information provided by LandsD, closure of the internal passageways and lifts in the Shopping Centre during the conversion works is not in breach of the land lease.

Follow-up on residents' concerns

10. In response to the concerns of the Estate Management Advisory Committee of Tin Wan Estate regarding the inconvenience caused to residents while carrying out the conversion works of Tin Wan Shopping Centre, as well as the trade mix and facilities available after completion of the conversion works, the Housing Department (HD) has relayed the residents' views to Ace Precision Investments Limited. The response from the company is at **Appendix II** (only available in Chinese). Separately, a suggestion to provide more lift facilities in the estate area has been raised by the residents. HD will conduct technical studies on the suggestion with the view to facilitating access of residents. Also, according to the Transport Department (TD), green mini-bus operators have already increased the frequency of bus services connecting Tin Wan Estate to other locations in the district in light of the actual circumstances in order to shorten the waiting time and improve accessibility. TD will continue to closely monitor the demand for the above routes and will request operators to further enhance their services if necessary.

- End -

Southern District Council
District Development and Housing Committee

Motion Debate: Concern on “the Resale of Properties in the Southern District by the Link Real Estate Investment Trust and the Development of the Facilities Concerned”

Purpose

This paper aims to seek the views of Members to discuss and take a vote on the motion stated in the ensuing paragraphs.

Background

2. Prior to the meeting, Mr CHAN Fu-ming, MH put forward a written request (**Annex 1**) to discuss the following motion at the 9th DDHC meeting to be held on 29 May 2017:

“This Council objects to the Link REIT’s resale of its shopping centres and car parks previously divested from the public housing estates in Southern District which has affected the daily life of the Southern District residents concerned. As such, this Council urges that the Government should, by all means, provide adequate retail and car park facilities for the affected residents in Tin Wan Estate and Wah Kwai Estate. Meanwhile, this Council requests that the Education Bureau should not approve the international school’s application for using Tin Wan Shopping Centre as its school premises.”

The motion was seconded by Mr AU Lap-sing, MH.

3. Mr CHAI Man-hon also made a written request (**Annex 2**) to discuss the following agenda item, which was seconded by Mr TSUI Yuen-wa, at the same meeting:

“This Council objects to the Government’s relaxation of the Code on Real Estate Investment Trusts, which encourages the Link REIT’s resale of shopping centres divested by the Housing

Authority (HA) previously, including Wah Kwai and Tin Wan Shopping Centres in the Southern District. This has caused a drastic fall in the number of retail shops in the district and thus not able to meet the needs of residents. This Council does not wish to have any further resale of the remaining shopping centre properties by the Link REIT. The Government should, by all means, ensure the provision of social facilities as required under section 4(1) of the Housing Ordinance, such as retail and car park facilities for the affected communities. Hence, concerning the shopping centres of Wah Kwai and Tin Wan, the HA should exercise the powers vested in it by the land lease and ownership and stand up for the Southern District residents in order to ensure that adequate shopping and car park facilities are provided for the residents. In view of the fact that the shopping centres previously divested by HA are not suitable for international school use, this Council objects to the conversion of Tin Wan Shopping Centre into an international school by Sunlink Group Company Limited of Foshan. The Education Bureau should not approve the application for conversion into an international school either.”

4. Subject to Order 16 of the Southern District Council Standing Orders, the Chairman agreed to include the above two motions in the agenda of the 9th DDHC meeting.

5. The written replies from the Education Bureau, the Financial Services and the Treasury Bureau, the Housing Department, the Independent Checking Unit, Office of the Permanent Secretary for Transport and Housing (Housing), the Lands Department and the Planning Department are at **Annexes 3 to 8** respectively.

Advice Sought

6. Members are invited to give views and vote on the above two motions.

Secretariat, Southern District Council

May 2017

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(Translation)

11 May 2017

Mr LAM Kai-fai, MH, Chairman
District Development and Housing Committee (DDHC)
of Southern District Council

Dear Mr LAM,

We hope to have a discussion on the “Link REIT’s resale of shopping centres and car parks previously divested from the public housing estates in Southern District” at the DDHC meeting on 29 May 2017 and move a motion as follows:

“This Council objects to the Link REIT’s resale of its shopping centres and car parks previously divested from the public housing estates in Southern District which has affected the daily life of the Southern District residents concerned. As such, this Council urges that the Government should, by all means, provide adequate retail and car park facilities for the affected residents in Tin Wan Estate and Wah Kwai Estate. Meanwhile, this Council requests that the Education Bureau should not approve the international school’s application for using Tin Wan Shopping Centre as its school premises.”

I would appreciate it if you could accept the above motion.

Moved by : (Signed) CHAN Fu-ming

Seconded by : (Signed) AU Lap-sing

(Translation)

(By Fax: 2553 7268)

12 May 2017

To: Mr LAM Kai-fai, MH, Chairman and Members
District Development and Housing Committee (DDHC)
Southern District Council (SDC)

Dear Chairman,

Proposed Motion for the 29 May 2017 Meeting of DDHC, Southern District Council
“Objection to the Resale of Shopping Centre Previously Divested by Housing Authority
in Southern District and Conversion for International School Use”

I would like to move a motion in the DDHC meeting of SDC held on 29 May 2017:

“This Council objects to the Government’s relaxation of the Code on Real Estate Investment Trusts, which encourages the Link REIT’s resale of shopping centres divested by the Housing Authority (HA) previously, including Wah Kwai and Tin Wan Shopping Centres in the Southern District. This has caused a drastic fall in the number of retail shops in the district and thus not able to meet the needs of residents. This Council does not wish to have any further resale of the remaining shopping centre properties by the Link REIT.

The Government should, by all means, ensure the provision of social facilities as required under section 4(1) of the Housing Ordinance, such as retail and car park facilities for the affected communities. Hence, concerning the shopping centres of Wah Kwai and Tin Wan, the HA should exercise the powers vested in it by the land lease and ownership and stand up for the Southern District residents in order to ensure that adequate shopping and car park facilities are provided for the residents.

In view of the fact that the shopping centres previously divested by HA are not suitable for international school use, this Council objects to the conversion of Tin Wan Shopping Centre into an international school by Sunlink Group Company Limited of Foshan. The Education Bureau should not approve the application for conversion into an international school either.”

Your approval to include the above agenda in this meeting would be greatly appreciated.

<p>(signed)</p> <p>-----</p> <p>Moved by: CHAI Man-hon</p>	<p>(signed)</p> <p>_____</p> <p>Seconded by: TSUI Yuen-wa</p>
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Responses on “the Resale of Properties in the Southern District by the Link REIT and the Development of the Facilities Concerned” from the Education Bureau

As far as the Education Ordinance (Cap. 279) is concerned, if a proposed school is to be operated in any premises not specifically designed as a school, it is necessary to obtain confirmation from the Lands Department that the premises satisfy the requirements of land lease/lease conditions and from the Town Planning Board that its planning permission is not required/its permission has already been given (whichever applicable). In addition, as provided in Section 12(1) of the Education Ordinance, a certificate/notice in writing has to be obtained from the Fire Services Department and the Buildings Department/Housing Department to indicate that the premises are safe and suitable for the purposes of a school. The applicant should submit to the Education Bureau the aforementioned supporting papers issued by relevant departments, together with documents and information pertaining to the offer of curriculum, collection of fees, registration of school manager, etc. Upon receipt, examination and verification of all the necessary information and documents, the Education Bureau will consider issuing a certificate of provisional registration to the school.

No application for school registration is being processed in respect of the premises in Tin Wan Shopping Centre.

Education Bureau

May 2017

Responses on “the Resale of Properties in the Southern District by the Link REIT and the Development of the Facilities Concerned” from the Financial Services and the Treasury Bureau

Real estate investment trusts (“REITs”) are collective investment schemes. The Securities and Futures Commission (“SFC”) publishes a Code on Real Estate Investment Trusts (“the Code”) to regulate the operation and investment scope of REITs for the purpose of market development and investor protection. The Code applies to all SFC-authorized REITs. There are currently 11 REITs authorized by the SFC, including the Link REIT.

To keep up with international regulation and local market development, the SFC amended the Code in August 2014. Under the amended Code, at least 75% of a REIT’s asset value must be invested in real estate that generates recurrent rental income. At the same time, at least 90% of the asset value **cannot** be used in the investment of property development and acquisition of uncompleted units. We note that prior to the amendment of the Code, REITs would already adjust their investment portfolios, such as through selling their assets, in accordance with their investment strategies. The amendments to the Code should not have a material effect on the modus operandi of REITs.

Financial Services and the Treasury Bureau
May 2017

Responses on “the Resale of Properties in the Southern District by the Link REIT and the Development of the Facilities Concerned” from the Housing Department

The Hong Kong Housing Authority (HA) divested part of its commercial and carparking facilities in 2005 in order to focus on fulfilling its objective in providing subsidised public housing, and to improve HA’s financial position in the short-to-medium term with proceeds from the divestment. The efficiency of the commercial facilities would also be enhanced under operation as a private entity in accordance with commercial principles. Wah Kwai Shopping Centre and Tin Wan Shopping Centre in the Southern District of the Hong Kong Island are two of the properties divested at that time.

HA is empowered by section 4 of the Housing Ordinance to exercise a wide range of functions, including to secure the provision of housing and “such amenities ancillary thereto as the Authority thinks fit” to the persons concerned. In handing down its judgment to a judicial review case regarding HA’s divestment of retail and carparking facilities in 2005, the Court of Final Appeal (CFA) affirmed that the divestment plan by HA of its retail and carparking facilities was consistent with the abovementioned requirement under the Housing Ordinance. CFA also noted that The Link (now renamed as “Link”) would adopt a market-oriented commercial approach after listing; and that under The Link, there might be changes in relation to the operation of the relevant facilities, including changes in the tenant trade mix, as an example.

Just like any other private property owners, owners of HA’s divested properties are entitled to rights over their properties and have to comply with the relevant laws and conditions in the land leases. The assignment deeds of these properties also contain certain restrictive covenants, including that, under the retail covenant, if HA still holds any proprietary interest in the estate or court concerned, the shopping centre shall not be disposed of, except as a whole. Generally speaking, so long as the owners comply with the legislation and land lease conditions, the Government cannot interfere with the owners’ lawful right to use their properties. Similarly, so long as the owners do not breach the terms of covenants made with HA, HA cannot and will not interfere with their day-to-day operation and commercial decisions. However, if an owner is in breach of any legislation, land lease conditions or the covenants made with HA, the relevant Government departments and HA will certainly

pursuit seriously and take corresponding actions.

Housing Department

May 2017

Responses on “the Resale of Properties in the Southern District by the Link REIT and the Development of the Facilities Concerned” from the Independent Checking Unit, Office of the Permanent Secretary for Transport and Housing (Housing)

香港特別行政區政府

The Government of the Hong Kong Special Administrative Region

**運輸及房屋局
常任秘書長(房屋)辦公室
獨立審查組**



**Independent Checking Unit
Office of the Permanent Secretary
for Transport and Housing (Housing)**

本組檔號 Our Ref. L/M no. (34) in HD(ICU)E3/185(H)AA(1)-D

電話 Tel. 3162 0509

來函檔號 Your Ref. --

傳真 Fax. 3523 1200

(Fax : 2553 7268)

Date : 22 May 2017

The Chairman
District Development and Housing Committee
Southern District Council
1/F, Ocean Court,
3 Aberdeen Praya Road,
Aberdeen, Hong Kong.
(Attn: Hon. LAM Kai-fai)

Attendance of SDC's DDHC Meeting

Thank you for your emails on 16.5.2017 & 17.5.2017 and the tele-conversation with your secretary (Ms. Queenie Chan) on 16.5.2017 regarding the above.

Tin Wan Shopping Centre is located within the estate boundary of Tin Wan Estate in which the retail and car-parking facilities have been divested. Therefore, all buildings in the same lot including the Shopping Centre are under the control of the Buildings Ordinance (BO).

The Independent Checking Unit (ICU) is set up directly under the Office of the Permanent Secretary for Transport and Housing (Housing) and is independent from the Housing Department. The ICU has been delegated the authority from the Director of Buildings to exercise building control on the properties in Tin Wan Estate under the BO including the processing of submissions in line with the Building Department's practice.

If the proposed building works consist of any non-exempted works other than Minor Works under the BO, formal submission of plans to the ICU by an authorized person (AP) will be required, and prior approval and consent shall be obtained before commencement of the works. After receiving a formal submission from an AP, ICU will consult other relevant government departments such as Fire Services Department, Planning Department and Lands Department, etc., for comments under their purview. Since lease and land matters are not under the statutory control of the BO, LandsD usually convey their comments under lease directly to the AP under separate cover.

香港九龍黃大仙龍翔道138號龍翔辦公大樓8樓
8/F, Lung Cheung Office Block, 138 Lung Cheung Road, Wong Tai Sin, Kowloon, Hong Kong

The proposed alteration and addition works for Tin Wan Shopping Centre have been approved. Subsequently, the school licence application referral has been received from Education Bureau (EB). It is currently under review on the technical requirements as stipulated in Education Ordinance (EO) and we will provide our comments to EB.

We understand the public concern about the alteration and addition works carried out in the shopping centre. However, the submissions are processed under the BO which does not cover the proposed internal uses, detailed design of the shopping centre, estate resident's matters as well as the liaison and communication between the owner and affected residents. Therefore, ICU has no authority to exercise control of such issues and, in view of our tight schedule, we regret that we cannot arrange to attend the captioned DDHC meeting.

We will be pleased to provide more supplementary information related to the BO for your reference. On the other hand, apart from the building control issue, the works in Tin Wan Shopping Centre are also subject to other controls such as the lease conditions, deed of mutual covenant and the outline zoning plan, etc. You may need to check with the relevant government departments for more details.

If you have any queries, please contact our KOK Hei-yuen (A/ICU15) at 3547 0858.

Yours faithfully,



(Adela YUNG)
SA/ICU4
Independent Checking Unit

Responses on “the Resale of Properties in the Southern District by the Link REIT and the Development of the Facilities Concerned” from the Lands Department

Tin Wan Shopping Centre is situated in the Remaining Portion of Aberdeen Inland Lot No. 455 (“the Lot”). According to the lease concerned, the Lot is restricted to non-industrial (excl. godown, hotel and petrol filling station) purposes and for the purposes of the facilities as referred to in Cl. 3.13(c). According to Cl. 3.13(c), the Lessee shall provide (i) commercial facilities with the GFA of not more than 6,691 sq.m. and not less than 4,015 sq.m.; (ii) one public transport terminus; and (iii) other facilities (such facilities may include shroff office, telecommunication facilities and store rooms) with the GFA of not more than 286 sq.m. and not less than 172 sq.m.

District Lands Office/Hong Kong West and South (“DLO”) previously received an alteration and addition submission (“Submission”) for Tin Wan Shopping Centre and Multi-storey Car Park. In general situation, a school running on commercial principles in the commercial floor space stipulated under the lease does not breach of the user clause of the lease. However, the proposed works in the Submission, including addition of a footbridge linking up the Tin Wan Shopping Centre and the R/F of Multi-storey Car Park Building, conversion of the R/F at Multi-storey Car Park Building and alteration of public access, are considered not acceptable under the lease concerned. DLO has informed the Authorized Person the disapproval of Submission.

The Authorized person has recently appealed for our decision of disapproval of the Submission. Lands Department will consider the appeal submission under applicable practice.

Lands Department

May 2017

Responses on “the Resale of Properties in the Southern District by the Link Real Estate Investment Trust and the Development of the Facilities Concerned” from the Planning Department

The Wah Kwai and Tin Wan Shopping Centers fall within an area zoned “Residential (Group A)” (“R (A)”) on the relevant Outline Zoning Plans (OZPs). According to the Notes of the relevant OZPs, eating place, educational institution, office, school, and shop and services are always permitted in the purpose-designed non-residential portion of an existing building. Planning permission from the Town Planning Board is not required.

Notwithstanding the above, any use or development which is always permitted must also conform to any other relevant legislation, the conditions of the Government lease concerned, and any other Government requirements, as may be applicable.

For Motions raised by district councilors, Planning Department has nothing to supplement.

Planning Department
May 2017

(Only available in Chinese)

田灣商場業主就改建事宜的回應

田灣邨居民曾在屋邨管理諮詢委員會上表示田灣商場改建期間未能提供零售、餐飲服務、商場通道及升降機服務暫停開放等，對居民造成不便，以及改建後的商店組合和設施等事宜的關注。

2. 房屋署曾就居民的關注向該物業的業主傑熙投資有限公司反映，促請該公司緊密跟進改建工程事宜，並且盡早重新開放商場通道及恢復升降機服務。

3. 根據傑熙投資有限公司的回覆，該公司指田灣商場已落成大約二十年從沒有大型維修，而且實用率低。面對田灣區內其他商舖競爭，商場店舖空置率一直高企，原來主力租戶依靠旅行團餐酒樓及自由行藥房。樓宇和設備有必要進行翻新改裝，以善用珍貴空間及提供更完善的環境給廣大消費者。該公司特別安排在工程進行期間，維持兩間便利店繼續營業，櫃員機服務一直保持運作。此外，該公司亦在安全使用的前題下提供借道予居民使用。現階段該公司仍與各行業不同商戶洽談租務，初步計劃引入主力商戶以吸引 12 個民生商戶進駐，包括招租私人教育機構、超級市場、診所及餐飲店舖等。就商場改裝工程等事宜，該公司去年初已向有關政府部門提交申請，而相關政府部門已進行申請審批。另外，該公司表示需視乎改建工程進度、商舖租賃及租戶進駐情況，才可安排開放商場通道及提供升降機服務。

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