

立法會
Legislative Council

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LC Paper No. CB(1)1065/99-00

(These minutes have been
seen by the Administration)

LegCo Panel on Planning, Lands and Works

Minutes of meeting
held on Thursday, 18 November 1999, at 10:45 am
in Conference Room A of the Legislative Council Building

Members present : Hon Edward HO Sing-tin, SBS, JP (Chairman)
Dr Hon TANG Siu-tong, JP (Deputy Chairman)
Hon HO Sai-chu, SBS, JP
Ir Dr Hon Raymond HO Chung-tai, JP
Hon LEE Wing-tat
Hon Ronald ARCULLI, JP
Hon WONG Yung-kan
Hon LAU Wong-fat, GBS, JP
Hon Timothy FOK Tsun-ting, SBS, JP
Hon TAM Yiu-chung, GBS, JP

Member absent : Hon James TO Kun-sun

Public officers attending : **For item III**

Mr Stephen FISHER
Deputy Secretary for Planning, Environment
and Lands (Urban Renewal and Buildings)

Mr Geoffrey WOODHEAD
Principal Assistant Secretary for Planning,
Environment and Lands (Buildings)

Mrs Alice LEE
Registry Manager, Land Registry

Ms May LEE
Deputy Principal Solicitor
Land Registry

Mr G A FOX
Senior Assistant Law Draftsman
Department of Justice

For item IV

Mr Patrick LAU
Deputy Secretary for Planning, Environment
and Lands (Lands & Planning)

Mr WONG Hung-kin, JP
Director of Territory Development

Mr YUE Chi-hang
Project Manager
Territory Development Department

Mr Wilson FUNG
Principal Assistant Secretary for Planning,
Environment and Lands (Planning)

Mr Ivan CHUNG
Assistant Secretary for Planning,
Environment and Lands (Planning)

Clerk in attendance : Miss Odelia LEUNG, Chief Assistant Secretary (1)1

Staff in attendance : Ms Bernice WONG, Assistant Legal Advisor 1

Ms Sarah YUEN, Senior Assistant Secretary (1)4

I Date of next meeting and items for discussion
(LC Paper Nos. CB(1)241/99-00(01) and (02))

Members agreed to hold a joint meeting with the LegCo Panel on Environmental Affairs on 9 December 1999 at 10:00 a.m. to receive a briefing on the latest position of the Study on Sustainable Development for the 21st Century.

2. Members agreed to discuss the following items at the next regular

meeting of the Panel scheduled for 9 December 1999 at 10:45 am -

- (a) Hong Kong 2030 - Vision and Development Strategy;
- (b) Cleaning up of environmental black spots in the New Territories;
and
- (c) Capital Works Reserve Fund block allocations - provision for 2000-2001.

(Post-meeting note: At the request of the Administration and with the concurrence of the Chairman, items (a) and (b) were subsequently replaced by "Tseung Kwan O Development Phase 3 - remaining engineering works" and "Planning and Development Studies on North East and North West New Territories".)

3. Members noted the list of follow-up actions arising from discussions at Panel meetings.

II Information papers issued since last meeting

4. Members noted that no information paper had been issued since the last meeting.

III Land Titles Bill

(LC Paper Nos. CB(1)241/99-00(03) and CB(1)340/99-00)

5. The Deputy Secretary for Planning, Environment and Lands (Urban Renewal and Buildings) (DS/PEL(URB)) briefed members on the outcome of the consultation exercise on the draft Land Titles Bill (the draft Bill) to convert the present deeds registration system to a land title registration system, and the proposed amendments to the draft Bill as detailed in the information paper.

Conversion arrangement

6. Mr Ronald ARCULLI sought information on the mechanism for deeming after 15 years all unconverted land to be converted to the title registration system. DS/PEL(URB) explained that conversion to the new system would be effected through first transfer of property, voluntary application and the registration of titles in respect of all new developments. The Administration expected that about 60% of all properties would be converted to the new system 15 years after the Land Titles Ordinance (the Ordinance) came into operation. On an appointed date after the end of the 15-year period, any unconverted land in the deeds registration system would be

deemed to be converted to the title registration system. Given the high accuracy of the current land register, if no queries had been raised about the title to the property during the proposed transitional period, it could be presumed that the title to the property as shown in the land register was in order although technical uncertainties such as inconsistent signatures might exist. The Senior Assistant Law Draftsman, Department of Justice stressed that the ownership of the unconverted land would remain unchanged upon conversion to the new system. The only difference would be that the first person who purchased the property thereafter would get the full protection under the new system. He further pointed out that as in the original proposal, automatic mid-night conversion would occur under the present proposal although it would be 15 years and not immediately after the enactment of the Ordinance.

7. Mr Ronald ARCULLI opined that there were differences between the original and the present proposals as far as mid-night conversion was concerned. Under the original proposal, the solicitor handling the first transaction after the automatic conversion would have to check the title to the property and it was only after the first transaction would the new land register guarantee title to the property concerned. However, under the new proposal, the last title on the deeds registration system was assumed to be in order on the assumption that there had been no litigation for the past 15 years. In response, Deputy Principal Solicitor of Land Registry (DPS/LR) clarified that under either proposal, automatic conversion would be by operation of law and it was not necessary for the conveyancing solicitor to investigate the title by reviewing all title deed documents as the land register would be the conclusive evidence of the title to the property, subject only to matters registered on the land register and overriding interests.

8. Mr LEE Wing-tat said that the Administration had been emphasising that the originally proposed overnight conversion would be simple, efficient and clear-cut. He questioned whether these claimed advantages would be compromised under the present proposal of a gradual transition to the new system over a period of 15 years. DS/PEL(URB) said in response that the Administration remained of the view that overnight conversion was the most effective way. However, the general public did not have confidence on such an arrangement and the legal profession had also expressed grave concerns. Taking into account different views, the Administration revised the proposal which it hoped would be acceptable to most if not all relevant parties. In the Administration's view, a gradual conversion process over 15 years was reasonable. If no queries had been raised about the title to a property in 15 years, there should be a comfortable degree of certainty on its title.

Indefeasibility of title of the purchaser

9. Noting that the last registered title holder under the deeds registration system would automatically be taken to be the title holder under the title

registration system 15 years after the operation of the Ordinance, Mr Ronald ARCULLI expressed concern about how a person who suffered loss by reason of incorrect entries in the land register arising from fraud could seek remedies. In response, DS/PEL(URB) said that the draft Bill provided that on application by the innocent former owner, the Court would have the power to order rectification of the land register where it was satisfied that fraud had been involved and a failure to do so would be unjust.

Admin.

10. Mr Ronald ARCULLI enquired about the meaning of "unjust" and whether there were similar provisions in other jurisdictions. In reply, DS/PEL(URB) advised that the provisions in the draft Bill were modelled on the Land Registration Ordinance of the United Kingdom which had been in operation for a long time and there should be case law for reference. At members' request, he agreed to provide case law in common law countries regarding the power of the Court in this regard.

Indemnity provisions

11. Mr LAU Wong-fat said that Heung Yee Kuk considered it unfair that an upper limit of \$30 million should be set for each claim for an indemnity for loss suffered by reason of an entry in or an omission from the land register arising from either fraud affecting the ownership or mistakes/omission of the Land Registry staff. In response, DS/PEL(URB) said that the Bill proposed to set up an Indemnity Fund which would be self-financing from a levy on applications for registration. Without an upper limit for each claim, the level of the levy would have to be very high. An upper limit for a claim would also prevent the fund from being exhausted by an extraordinarily high claim. Since the proposed upper limit would cover 99.7% of all property transactions, sufficient protection for property owners would be provided. It would be unfair to increase the levy significantly just for the purpose of covering the remaining 0.3% of property transactions. Moreover, past statistics indicated that frauds mainly involved properties with a value below \$30 million. The Administration believed that in transacting a property the value of which exceeded \$30 million, both the vendor and the purchaser involved should be able to seek appropriate legal advice and should be prudent enough to ensure certainty of title.

12. In response to Mr LAU Wong-fat's further query as to whether the setting of an upper limit for indemnity would be in breach of Article 25 of the Basic Law which provided that all Hong Kong residents should be equal before the law, DS/PEL(URB) pointed out that as each registered title holder would pay the same level of levy and be subject to the same indemnity limit of \$30 million irrespective of the value of the property, the Administration considered the proposed arrangement fair. The Administration expected that the levy for each application would be a hundred dollars and something.

13. Dr TANG Siu-tong enquired whether the upper limit for a claim would apply on the basis of a 'lot' or a transaction. In reply, DS/PEL(URB) clarified that the indemnity limit would apply per registration of title.

14. Dr TANG Siu-tong was concerned that the proposed upper limit might make it difficult for purchasers of properties exceeding \$30 million to secure bank mortgages. DS/PEL(URB) stressed that in considering whether or not to grant a mortgage application, normally the bank's main concerns were the repayment ability of the applicant and the certainty of the title to the relevant property.

Title certificate

15. As regards Mr LEE Wing-tat's question on how a title owner could confirm his title to a property under the current and the proposed systems, DS/PEL(URB) advised that at present, a title owner could pay \$15 for a copy of the registry in respect of the property. However, such information was not conclusive of his title. For certainty, he had to engage the service of a solicitor to check the Government grant and the title documents recording all the transactions affecting the property that extended to not less than 15 years. Upon conversion to the new system, the land register would be the conclusive evidence of the title to the property. A title certificate would be issued upon application and payment of a specified fee by the property owner and this title certificate would be a title document.

Solicitor's criminal liability

16. Regarding the nature of the various frauds actionable under the draft Bill, DPS/LR confirmed in response to Mr Ronald ARCULLI that fraudulent verification of an application for registration would be a criminal offence, while civil cases were subject to claims for indemnity.

17. Mr Ronald ARCULLI queried the need to introduce criminal liability for fraudulent verification of an application for registration as fraudulent acts had already attracted criminal liability under the criminal law. In response, DS/PEL(URB) and DPS/LR pointed out that the successful operation of a land title registration system relied heavily on the integrity of the legal profession. There was thus a need to make express provisions in the Bill for criminal liability for fraudulent verification of applications for registration. Mr ARCULLI was unconvinced of the Administration's explanation.

Land boundaries

18. Mr Ronald ARCULLI said that the land register would not be the conclusive evidence of title to properties because it did not guarantee the land boundaries. The Chairman and Dr TANG Siu-tong echoed this view.

Dr TANG pointed out that the land register could not serve its purpose as far as missing lots were concerned. DS/PEL(URB) acknowledged that the issue of guarantee of lot boundaries in the New Territories had long been a practical problem. It was practically difficult to ascertain the accuracy of land survey in the New Territories which was done a long time ago. However, land boundaries should not be a problem for urban land. DPS/LR said that under both the current deeds registration system and the proposed title registration system, land boundaries would not be guaranteed.

Admin.

19. The Chairman said that under the present deeds registration system, a map showing the land boundaries in relation to a property would be deposited with the Land Registry for reference. He requested to Administration to examine how the issue of land boundary plans could be addressed under the new title registration system.

Others

20. On the organisations consulted, DPS/LR said in reply to the Chairman that altogether 13 organisations had been consulted. They included the Consumer Council, the Law Society of Hong Kong (the Law Society), The Real Estate Developers Association of Hong Kong, Hong Kong Bar Association, Heung Yee Kuk New Territories, Hong Kong Institute of Surveyors, Hong Kong Association of Banks, Hong Kong Institute of Real Estate Administration, Hong Kong Society of Accountants, and Hong Kong Chamber of Professional Property Consultants Limited.

21. In reply to the Chairman's further enquiry about the Law Society's comments on the draft Bill, DPS/LR advised that its comments would not be ready before the end of November 1999. DS/PEL(URB) supplemented that the draft Bill had already undergone the second round of consultation. Since 1994 when the draft Bill was first introduced, regular dialogue had been maintained with the Law Society and a number of amendments had been made to the original Bill to allay its concerns. In fact, the present draft on which the Law Society had yet to comment was already the 14th draft.

22. In view of the controversial nature of the draft Bill, Mr HO Sai-chu questioned the need to introduce the Bill at all. In response, DS/PEL(URB) stressed that a title registration system could help streamline conveyancing in line with the world trend. Moreover, the existing land registration system could not accommodate electronic transactions of properties which would be the future trend. He said that the Administration would continue to sort out different views and endeavour to introduce the Bill in the 2000-2001 legislative session.

IV Replanning of West Kowloon Reclamation (Paper No.CB(1)399/99-00(01))

23. The Deputy Secretary for Planning, Environment and Lands (Lands & Planning) (DS/PEL(L&P)) referred to plan K127 circulated to members vide LC Paper No. CB(1)399/99-00(01) and briefed members on the background behind Government's decision to fundamentally review the land uses of the southern portion of West Kowloon Reclamation (WKR) for the development of a world-class integrated arts, cultural and entertainment district, and to facilitate this by deleting the remaining works in the existing road and infrastructure works contract on WKR. DS/PEL(L&P) said that the project area, measuring about 40 hectares, was originally zoned for a regional park (13.79 hectares), commercial (5.02 hectares) and residential (0.77 hectare) development, other open space (7.94 hectares) and government, institution and community (1.45 hectares) uses, and for the construction of Road D13 and three side roads (SR6, SR7 and SR8). Open roads would take up about one-quarter of the project area under the original land use planning. The Chief Executive announced in the 1998 Policy Address the planning of a new state-of-the-art performance venue (PV) in the project area. The preliminary findings of a consultancy study commissioned by the Hong Kong Tourist Association (TA) also recommended the development of the area into a new art, culture and tourist district and complementing the PV by other arts, cultural and entertainment facilities to achieve a clustering effect. The Administration, after careful consideration, concluded that from the perspective of overall land-use planning and commercial viability, to develop a PV in isolation would not be appropriate and replanning the project area would be essential to fully develop the potential of this prime waterfront area to create a new look of the Victoria Harbour. DS/PEL (L&P) stressed that in reviewing the land uses of the project area, the Administration had considered the possibility of retaining some, if not all, of the planned road and infrastructure works which might serve the needs of the new design. However, the existing road layout would be incompatible with the future entertainment district. For example, Road D13 would lead to the Public Cargo Working Area near the Yau Ma Tei Typhoon Shelter and this would attract goods vehicles and container truck traffic to pass through the heart of the entertainment district.

24. Ir Dr Raymond HO supported the replanning decision. He sought information on the number of contracts involved, the inclusion or otherwise of any termination clauses in the contracts, and the estimated amount of compensation payable to the contractors in question. In response, DS/PEL(L&P) said that only one contractor was involved and the Administration would discuss with the contractor within a week on the detailed arrangements. The Director of Territory Development (D of TD) added that the financial loss would not be significant because the Administration was not proposing to delete the whole contract. One-third of the works under the contract would not be affected. Some of the works completed such as a small

plot of reclaimed land and the Mass Transit Railway Corporation's cooling mains would be retained. Moreover, the relevant contract allowed adjustments to the scope of works although the extent of adjustments had not been specified. The value of completed works which might become abortive was estimated to be about \$21 million.

25. Mr LEE Wing-tat was concerned that the financial loss resulting from the replanning decision might well exceed \$21 million because of the possibility of a large claim from the contractor for deleting the works which, according to the Administration, covered the superstructure of certain footbridges, at grade roads (road base and pavements), watermains and some soft landscaping works, the total value of which was around \$163 million. In response, DS/PEL(L&P) stressed that although the contract value for the portion of works that fell within the project area was about \$210 million, the value of completed works which would be aborted, such as the foundations of certain footbridges, at grade roadworks (formation and drains) and watermains was about \$21 million. The value of completed works which would be retained was about \$26 million. It was better to delete the remaining works costing \$163 million now than to proceed with the works which would most likely become abortive. Mr HO Sai-chu supported the Administration's decision and said that it was wise to suspend the project pending replanning in order to obviate further possible loss of money.

26. Mr TAM Yiu-chung questioned if the original design of the project area was not well-conceived which made it necessary to replan now to achieve the purpose of development WKR as a whole. He called on the Administration to ensure that the advantage of redesigning the area would outweigh the financial loss incurred for deleting the works and that adequate transport linkage would be provided for the district, especially for the adjacent Public Cargo Working Area. In response, DS/PEL(L&P) pointed out that the current outline zoning plan was prepared in the early nineties when there was less public concern about the impacts of reclamation and the design of open road network. He assured members that the Administration would endeavour to provide an environmentally-friendly as well as efficient transport network in WKR. The major mode of transport would be railways as both the Airport Express and the future West Rail would go through the district. Intra-district traffic would be served by either submerged roads or roads in tunnels where possible.

27. In reply to Mr LEE Wing-tat, D of TD confirmed that the replanning decision only affected one of the two contracts covered by the relevant Public Works Programme item worth \$914 million approved by the Finance Committee (FC) at its meeting on 16 October 1998. The other contract covering reclamation at the site of the Marine Department's old dock would continue.

28. Mr LEE Wing-tat pointed out that the Chief Executive announced the PV plan at more or less the same time as the relevant financial proposal was submitted to FC. He opined that greater flexibility should have been provided for in the relevant works contract in anticipation of possible amendments. The Chairman shared this concern and said that as the relevant works only commenced in December 1998, if there had been better co-ordination among the relevant bureaux/departments, the works might be held in abeyance pending a decision on the way forward. This would have obviated the loss arising from the abortive works. In response, DS/PEL(L&P) explained that the PV per se did not necessitate the replanning decision as it could be accommodated in WKR without significantly affecting the planned land uses of the adjoining sites. It was the change in the overall planning intention for WKR which made replanning of the area and the deletion of some works therein necessary. The planning intention was revised and confirmed after taking into account the findings of TA's study which were presented to the Government in February 1999 and the outcome of consultation with interested parties thereafter.

29. Mr HO Sai-chu enquired whether before the relevant funding proposal was submitted to FC for approval, site investigations and the detailed design had been completed so that the project commenced immediately upon securing funding approval. DS/PEL(L&P) confirmed that this had been the case. He further stressed that in making the decision to suspend the project pending the new design, the Administration would avoid more abortive works and expenditure. Mr LEE Wing-tat was unconvinced and requested a detailed account of events leading to the replanning decision.

30. The Chairman, Mr Ronald ARCULLI and Mr LEE Wing-tat opined that the Administration had a responsibility to report to FC any major changes to projects the funding of which had been given. It would be up to FC members to decide whether further action was necessary. DS/PEL(L&P) undertook to provide written information to explain in detail the Government decision. He said that the Administration was ready to brief PWSC or FC should members consider it necessary.

(Post-meeting note : the Administration provided a note to FC which was circulated to members vide LC Paper No. FC39/99-00 on 20 December 1999.)

V Any other business

31. There being no other business, the meeting ended at 12:40 pm.

Legislative Council Secretariat

24 February 2000

