

**Minutes of the 6<sup>th</sup> Meeting of**  
**Housing and Building Management Committee**  
**Yau Tsim Mong District Council (2012-2015)**

Date : 14 March 2013 (Thursday)  
Time : 2:30 p.m.  
Venue : Yau Tsim Mong District Council Conference Room  
4/F., Mong Kok Government Offices  
30 Luen Wan Street  
Mong Kok, Kowloon

**Present:**

Chairman

Mr CHONG Wing-charn, Francis

Vice-chairman

Ms KWAN Sau-ling

District Council Members

Mr CHUNG Kong-mo, JP

Ms KO Po-ling, BBS, MH, JP

Mr CHAN Wai-keung

Mr HAU Wing-cheong, BBS, MH

Mr LAU Pak-kei

Mr LEUNG Wai-kuen, Edward, JP

Mr WONG Chung, John

Mr WONG Kin-san

Ms WONG Shu-ming

Co-opted Members

Mr CHING Man-tai, Benny, MH

Mr HO Fei-chi, Stephen

Mr LEE Chung-ming

Representatives of the Government

Ms TSE Yuen-man, Eliza

Assistant Housing Manager/  
Tenancy (Kowloon West 3)2

Housing Department

Mr CHAN Chi-ching, Thomas

Senior Liaison Officer  
(Building Management)  
Yau Tsim Mong District Office

Home Affairs Department

Secretary

Mr KWOK Chun-chung, Josh

Executive Officer  
(District Council)2  
Yau Tsim Mong District Office

Home Affairs Department

**In Attendance:**

Mr CHIU Chung-yan, Charlson

Assistant District Officer  
(Yau Tsim Mong)

Home Affairs Department

Ms SIN Kwai-lan, Sandy	Senior Estate Surveyor/Kowloon South (District Lands Office, Kowloon West)	Lands Department
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**Absent:**

Mr LEUNG Chat-min	Senior Structural Engineer/ Existing Buildings Division 2	Buildings Department
Mr CHOI Siu-fung, Benjamin	District Council Member	
Mr Wong Man-sing, Barry, MH	District Council Member	
Mr NG Cham-sum, Charlie	Co-opted Member	
Mr HO Siu-tak	Co-opted Member	

**Opening Remarks**

The Chairman welcomed participants to the meeting. He reported that Ms Tammy TSO, Housing Manager (Kowloon West 3) of the Housing Department, was absent with apologies and would be represented by Ms Eliza TSE, Assistant Housing Manager/Tenancy (Kowloon West 3)2. Also, Mr LEUNG Chat-min, Senior Structural Engineer/Existing Buildings Division 2 of the Buildings Department (“BD”), Mr Barry Wong and Mr HO Siu-tak were absent due to other commitments.

2. The Chairman proposed that Members who had submitted papers be given no more than two minutes to make supplementary remarks, and that each Member be allowed to speak twice on each item: three minutes for the first time and two minutes for the second time. Participants had no objection to the proposal.

**Item 1: Confirmation of Minutes of Last Meeting**

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3. The minutes of the last meeting were confirmed without amendment.

**Item 2: Impacts of Stratified Sales of Apex Horizon on Supply of Hotel Rooms and Residential Flats**  
**(YTMHBMC Paper No. 5/2013)**

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4. The Chairman said that the joint written response of the Development Bureau (“DEVB”), the Lands Department (“LandsD”) and the Home Affairs Department (“HAD”) (Annex 1) had been put on the table for Members’ reference. He then welcomed Ms Sandy SIN, Senior Estate Surveyor/Kowloon South (District Lands Office, Kowloon West) of the LandsD to the meeting.

5. The Chairman supplemented the contents of the paper.

6. The Vice-chairman pointed out that Apex Horizon was not a residential property and she was worried that buyers of rooms in Apex Horizon might have been misled. She enquired whether the Government would take actions to regulate the related transactions and explain clearly to buyers of rooms in Apex Horizon what they need to pay attention to when purchasing a hotel room.

(Mr Stephen HO joined the meeting at 2:53 p.m.)

7. Mr CHAN Wai-keung questioned if the real estate developer's selling of the rooms in Apex Horizon was a blatant challenge to the current-term Government. He also pointed out that there were public opinions saying that the stratified sale of the property in a hasty manner by the real estate developer before the Government's implementation of Special Stamp Duty might involve transfer of benefits.

8. Mr WONG Kin-san believed that the Government should review existing legislation, in order to plug the loopholes of law. He indicated that there were many hotels in Yau Tsim Mong District, if developers engaged in stratified sale of hotel rooms, the supply of hotel rooms in the district would decrease and the problem of unlicensed guesthouses would become more serious.

9. Mr Benny CHING said that there was existing legislation to strictly regulate the daily operation of hotels and guesthouses. He added that the Government had the responsibility to clarify the relevant legislation to members of the public, in order to safeguard public interest.

(Mr Edward LEUNG joined the meeting at 3:03 p.m.)

10. Ms Sandy SIN responded as follows:

- (i) The Government was seriously concerned about the stratified sale of hotel rooms by the developer and had issued a press release on 19 February, stating that the hotel rooms were for hotel use only, and buyers must consider carefully before purchasing.
- (ii) The Government had submitted a paper to the Legislative Council's Panel on Development on 26 February, outlining the regulatory regime for operation of hotels in Hong Kong and reminding members of the public to assess the level of risks they could take.
- (iii) The LandsD was currently collecting and compiling information on land leases of local hotels. Upon completion, such data would be uploaded onto the LandsD's website for public inspection.

11. Mr Thomas CHAN responded as follows:

- (i) In accordance with the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) ("the Ordinance"), 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. The Ordinance aimed to ensure that standards on various aspects, such as building structure and fire safety as well as

sanitation, were met. The day-to-day operational and management issues of hotels or guesthouses were not under the ambit of the Ordinance. The operation, keeping and management of the hotel or guesthouse should also be under the continuous and personal supervision of the licensee.

- (ii) In accordance with the Ordinance, prior to any alteration of the drawings approved by the Office of the Licensing Authority (“OLA”) under the HAD, or commencing any alteration, addition, renovation or redecoration in the hotel or guesthouse or hotel, guesthouse licensees must first obtain the written agreement from the OLA.
- (iii) In accordance with the Building (Planning) Regulations under the Buildings Ordinance (“BO”), a hotel or guesthouse development project 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 gross floor area 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, or no hotel licence was issued or renewed in respect of the hotel in accordance with the BO, the BD would prosecute the guesthouse licensee or issue an order to prohibit the hotel operation. For the case of Apex Horizon, the Government had sent a letter to the concerned licensee on 19 February, demanding detailed information about the selling of hotel rooms individually and an account of the mode of operation of the property after sale. The OLA was currently reviewing the documents submitted by the licensee and would seek for legal advice if necessary.
- (iv) On 20 February, the OLA had sent staff to inspect Apex Horizon to make sure that the property would comply with the licence conditions and requirements regarding building structure and fire safety stipulated in the Ordinance.
- (v) The OLA would take law enforcement actions against hotels and guesthouses which had contravened any licence conditions.

12. Ms KO Po-ling enquired whether the existing legislation required each hotel or guesthouse be owned by a single owner to ensure that the guesthouse licensee would observe laws regulating the operation of hotels and guesthouses.

13. Mr HAU Wing-cheong wanted to know what action the BD and the LandsD would take during inspection of guesthouses and hotels to ensure that licensees would not change the original use of the property at will.

14. Mr CHAN Wai-keung said that in view of the strong public reaction to the incident of Apex Horizon, he was not worried that other real estate developers would follow suit to engage in stratified sale of hotel rooms.

15. Mr Stephen HO said that the LandsD should have information on land lease of all local hotels, the department should compile and disclose such information as soon as possible.

16. Mr CHUNG Kong-mo wanted to know:

- (i) how did government departments handle similar cases of stratified sale in the

past;

- (ii) under the Ordinance, whether the department concerned could, without warrant, at all reasonable time enter and inspect any hotel rooms that had been sold; and
- (iii) whether the department would prosecute the guesthouse licensee when only one hotel room that had been sold was in breach of the Ordinance or guesthouse licence conditions, or the department would initiate prosecution only when there were considerable number of sold rooms not being used for hotel purpose; whether the department had set out any objective criteria in this regard.

17. Mr Benny CHING reiterated that the existing legislation had stringent regulations on hotel sector. The Government should clarify the relevant legislation as soon as possible to prevent the happening of stratified sale of hotel rooms again.

18. The Chairman wanted to know what action the Government would take in the future to ensure that Apex Horizon would provide a floor area of 21 191 sq.m. for hotel use. Moreover, he considered that the Government should understand the mode of operation of the hotel rooms after sale, and the relationship between owners of those rooms and the property management company, in order to ensure that those hotel rooms would operate in accordance with the guesthouse licence conditions.

19. Ms Sandy SIN said that since 2003, the LandsD had begun to specify on new grant land leases for hotels that owners were not allowed to sell hotel rooms in stratification. However, the land lease of Apex Horizon was granted in 2002, which had no restriction on selling hotel rooms in stratification, therefore it would be difficult for the LandsD to regulate the stratified sale of Apex Horizon by its developer. However, the Government had publicly stressed that the hotel rooms of Apex Horizon should not be used for private domestic purpose, otherwise it might constitute a breach of land use. Depending on individual cases, the LandsD would consider taking action against any irregularities found in hotel rooms that had been sold in stratification.

20. Mr Thomas CHAN responded as follows:

- (i) The Ordinance did not require guesthouse licensees to make application or declaration to the OLA upon change of ownership of hotel or guesthouse. However, licensees should ensure that their hotels and guesthouses should comply with requirements on building structure, fire safety and sanitation prescribed by the Ordinance. Also, the management and operation of the hotel or guesthouse should be under the continuous and personal supervision of the licensee for fulfillment of licensing requirements.
- (ii) The OLA could enter, without warrant, at all reasonable time any guesthouse room for inspection.
- (iii) Regardless of the number of rooms being rented and the length of their tenancy term, a licenced hotel or guesthouse and all of its rooms should be regulated by the Ordinance. The licensee should observe provisions of the Ordinance and licence conditions.

21. Mr Charlson CHIU said that, depending on individual cases and legal advice, the OLA would consider whether the relevant premise was still fall within the ambit of the Ordinance in order to take proper follow-up action.

22. The Chairman wanted to know whether the Government would consider amending the existing legislation to strengthen supervision over the licensing system of hotels and guesthouses.

23. Ms Sandy SIN said that a land lease was a deed entered into by the Government (as the land owner) and the lessee. After execution, both the Government and the developer were not allowed to change the conditions of the lease at will. When changing the land use, the lessee should make application to the LandsD for lease modification. As conditions of land leases were determined according to the situation at the time of execution, and the interpretation of lease conditions required relevant professional knowledge, therefore it would take time for the LandsD to process information regarding the land lease of the hotel. After that, the relevant information would be made public as soon as possible.

24. The Vice chairman was worried that members of the public who had acquired those hotel rooms would have to bear extra legal liability when compared with those bore by normal owners.

25. Mr John WONG asked what action the Government would take to protect owners who had acquired those hotel rooms.

26. Mr Charlson CHIU said that any premises providing sleeping accommodation at a fee should obtain a guesthouse licence before commencing operation, unless exemption was granted by the exemption order under the Ordinance. The relevant premise must observe requirements on building structure and fire safety prescribed by the Ordinance. The operation of the guesthouse should be under the continuous and personal supervision of the licensee, in order to comply with the licence conditions. In general, the OLA would not accept another guesthouse licence application made by any premise which had already obtained a guesthouse licence. The HAD would not comment on whether the owners or occupants of any individual premise would be able to obtain a guesthouse licence under the Ordinance. They should seek professional advice.

27. There being no further comments, the Chairman closed the discussion on this item.

### **Item 3: Any Other Business**

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28. There being no other business, the Chairman closed the meeting at 4:00 p.m. The next meeting would be held at 2:30 p.m. on 6 June 2013.

Yau Tsim Mong District Council Secretariat  
May 2013

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發展局  
規劃地政科

香港添馬添美道二號  
政府總部西翼十七樓



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九龍聯運街三十號  
旺角政府合署四樓  
油尖旺區議會  
房屋事務及大廈管理委員會秘書  
(經辦人：郭振宗先生)

郭先生：

二零一三年三月十四日  
油尖旺區議會  
房屋事務及大廈管理委員會第六次會議

有關你二零一三年三月六日致本局的來函，在徵詢地政總署及民政事務總署後，本局現一併回覆如下。

有關發展商在上月中分拆出售位於葵涌的「雍澄軒」一事，政府十分關注，已即時在二月十九日發出新聞公告提醒市民在考慮購買該物業時，務必小心謹慎，並留意有關物業只作旅館用途（見附件一）。此外，相關政府官員亦在不同公開場合，呼籲買家留意買賣條款和相關法例和地契規定，並同時指出相關部門正從有關範疇進行跟進工作。

其後，政府於二月二十六日向立法會發展事務委員會提交文件（見附件二），概述在香港發展及營運酒店的監管制度，包括就酒店可能被不當地用作私人住宅的相關限制，以及有關部門就發展商出售「雍澄軒」酒店房間單位一事的跟進工作。當中的要點包括－



- 就地契而言，「雍澄軒」座落的地段的契約並無條款禁止出售該地段的不分割份數，然而承批人必須遵從契約的條款，包括指定或擬作酒店用途的建築物的樓面總面積不得少於 21,190 平方米。在契約管制方面，問題不在於出售酒店房間單位，而是酒店房間單位在出售後是否實質上作酒店用途，從而符合契約中有關酒店樓面總面積的規定。地政總署現正研究承批人所提供的資料及解釋，亦會留意單位出售後的實際用途。如有違反契約的情況，政府會採取適當的執行契約條款行動，包括但不限於收回物業。
- 根據《旅館業條例》，經營旅館須領有牌照或豁免證明書，除非有關旅館根據《旅館業(豁免)令》獲得豁免。擬用作旅館的處所假如不符合《建築物條例》及《消防條例》中所訂明有關設計、結構、防火、健康、衛生配置、安全及對生命及財產保障的要求，將不會獲發牌照。旅館持牌人亦必須持續及親自監督有關旅館的經營、開設及管理。此外，持牌人必須遵守所有牌照條件。由牌照事務處簽發的旅館牌照，不會免除任何由政府所批出的租約或牌照內所載的任何條件，亦不會影響或改變旅館所在處所或建築物的任何合約或契約。
- 有關當局正審慎跟進此個案，並會就任何證實違反有關規定的情況嚴格執法或採取管制。如有關建築物更改作非旅館用途及／或其牌照被撤銷或拒絕續期，這有可能違反《建築物條例》下的相關規定。按個案情況，屋宇署會根據法例採取適當的執法行動。

另外，地政總署現正翻查歷年來批出的酒店用途地契，以便整理有關是否限制分拆出售的資料。有關資料整備後會提交立法會發展事務委員會並對外公佈。

有關三月十四日油尖旺區議會房屋事務及大廈管理委員會會議，本局未能派員出席。與會的分區地政處及民政事務處代表會按情況進一步闡釋有關契約管制和旅館牌照方面的事宜。另



外，就議員文件中提及有關旅館供應的事宜，本局知悉秘書處已邀請旅遊事務署直接回覆。

發展局局長

(黃詠慈



代行)

二零一三年三月十一日

副本送

地政總署

民政事務總署

(經辦人：陳永堅先生)

(經辦人：張美儀女士)

## 新聞公報

政府籲市民在考慮購買「雍澄軒」時須留意單位只可用作旅館用途

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政府留意到位於葵涌的「雍澄軒」被分拆形式出售。政府發言人今日（二月十九日）指出出售的單位只可用作旅館用途，並受旅館牌照管制，而並非住宅單位。政府呼籲市民在考慮購買該物業的單位時，務必小心謹慎，並留意下列資料：

### 物業用途

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按已批准的建築圖則，「雍澄軒」是根據《建築物（規劃）條例》第23A條批准為一幢只作旅館用途的建築物。

### 批地文件

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有關物業坐落葵涌市地段第467號餘段，根據該地段的批地文件所載，其用途為「非工業（不包括貨倉及加油站）」，並列出指明作旅館（hotel）用途的樓面總面積不得少於21 190平方米。雖然該批地文件並無禁止業權人把單位分拆出售，有關業權人卻未有就已分拆出售的房間是否並如何仍用作旅館用途向當局提供足夠資料，讓當局信納出售安排不會違反旅館用途的最低樓面總面積要求。如證實有違反任何批地文件的條款，地政總署會採取適當的執行契約條款行動，包括但並不限於收回有關物業。

### 規劃

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「雍澄軒」在葵涌分區計劃大綱圖上是劃作「商業（2）」地帶，根據該圖的註釋，「分層住宅」並不是該地帶的准許用途。

### 已批的建築圖則

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根據屋宇署已批准的建築圖則，在上址所涉及的旅館，即「雍澄軒」，為一幢只可作旅館用途的建築物。根據《建築物條例》（第123章）任何作為該旅館東主的人，或任何作為該旅館建築物或該旅館部分的業主或佔用人的人，未經建築事務監督的事先批准，不得將該旅館建築物或該旅館部分的全部或部分的用途更改作非旅館用途，亦不得導致其用途被更改作非旅館用途。違反有關條例，屬干犯刑事罪行，一經定罪，可被處罰款100,000元及監禁2年。

### 旅館牌照

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現時，「雍澄軒」是一所根據《旅館業條例》（第349章）獲發牌照的旅館，持牌人必須持續及親自督導有關旅館的經營、開設及管理。除非得到旅館業監督的書面批准，持牌人或其他人士（包括業主或租客）不得擅自更改、修改或改變有關物業單位的間隔及內部裝修。此外，根據《旅館業條例》獲授權的公職人員可無須令狀而在任何合理時間進入及視察持牌旅館。任何人士如違反牌照條款，屬干犯刑事罪行，一經定罪會留有案底及最高可被處罰款100,000元及監禁2年，並可就罪行持續期間每一天，另處

罰款10,000元。如果旅館業監督認為有關旅館持牌人已停止經營、開設、管理或以其他方式控制旅館，或持牌人或其住客違反《旅館業條例》的規定，監督有權撤銷牌照或拒絕牌照續期。

跟進

政府正向「雍澄軒」業主及旅館持牌人了解這次分拆出售的詳細資料及該物業出售後運作模式，以研究有否違反任何規定。市民在考慮是否購入前須清楚了解有關的規定和法定要求，並按需要徵詢獨立法律意見。

完

2013年2月19日（星期二）  
香港時間17時53分

CB(1)580/12-13(03)

## 討論文件

2013年2月26日

### 立法會發展事務委員會 酒店發展及營運

#### 目的

本文件旨在概述在香港發展及營運酒店的監管制度，包括就酒店可能被不當地用作住宅的相關限制，以及告知委員有關部門就近日發展商出售位於葵涌的「雍澄軒」酒店房間單位一事的跟進工作。

#### 監管制度

2. 酒店是支持旅遊業及商業的基礎設施。任何酒店發展在香港受相關法例下及酒店所處土地的地契中，有關規劃、土地及建築方面的規管。在營運方面，酒店須申領旅館牌照。詳情見下文。

#### 城市規劃

3. 任何新的酒店發展都須合乎按《城市規劃條例》(第131章)制定的法定圖則。根據法定圖則詞彙/概括用途釋義，「酒店」用途是指「任何處所而其擁有人、佔用人或東主顯示在他可提供的住宿的範圍內，他會向到臨該處所的任何人士提供住宿的地方，而該人看似是有能力並願意為所獲提供的服務及設施繳付合理款項，並且是在宜於予以接待的狀況」。此釋義是參照《旅館業條例》(第349章)。「酒店」用途包括供膳寄宿處(但不是「社會福利設施」的釋義所涵蓋者)、旅館、賓館、度假屋和酒店式附服務設施住宅。在「商業」地帶及「其他指定用途」註明「混合用途」地



帶內，「酒店」用途是經常准許的用途。「酒店」用途在一些其他的用途地帶內，則須獲城市規劃委員會的規劃准許。

4. 在雍澄軒的個案中，有關地盤本劃為「工業」地帶，並於1993年因應其時土地擁有人的改劃建議及按照城市規劃委員會的准許，改劃為「綜合發展區」地帶。現時位處該地盤的綜合發展(包括一幢酒店、兩幢附服務設施住宅及商業/零售用途)於2002年7月獲城市規劃委員會批准。該地盤隨後在2009年被改劃為「商業(2)」地帶，以反映地盤上已完成的發展的土地用途。根據「商業(2)」地帶的《註釋》，在該地帶內，「酒店」是經常准許的用途，但「分層住宅」是不容許的用途。

#### 土地契約

5. 酒店是在市場上收購的私人地段或政府批售的土地上發展的，而有關契約須無禁止該等土地作酒店用途。規限該等地段的契約條件或會各有不同，視乎簽立有關契約的時間及簽立時的考慮因素。

6. 舉例而言，一些舊契約並無載有規定土地用途條款，土地用途實際上不設限制。雖然就契約條件而言該等契約的承批人可靈活決定土地的發展用途，但有關用途及發展必須遵從相關法例。另外，有些契約訂有規定土地用途條款，例如「非工業」(有關條款容許住宅用途)、「非工業但不包括私人住宅」及「酒店用途」等。在某些情況下，契約亦可能訂明作特定用途的最低及／或最高樓面總面積。

7. 承批人須繳付按照契約條件評定的地價。若承批人發展其地段時欲偏離有關的契約條件，則可申請契約修訂。若申請獲批，承批人須補繳地價(如需要)，並遵守其他條款。

8. 市場上出售的酒店發展項目，通常以整幢酒店的方式出售。由於 2003 年向城市規劃委員會提交把土地更改為酒店用途的申請增加，以及酒店發展項目的房間設計與住宅單位近似，當時有意見關注到酒店可能會被不當地用作住宅。為遏止可能出現的不當情況，地政總署在 2003 年 7 月發出內部指示，要求對准予發展酒店的契約修訂及新批出的土地，施加酒店發展轉讓限制（除非酒店以整個項目轉讓）。我們要強調，不論該轉讓限制是否納入契約內，承批人必須遵守有關用地的契約條件及相關法例。

9. 在雍澄軒個案中，規限有關地段（葵涌市地段第 467 號）的契約於 2002 年 6 月簽立，主要相關契約條款為：

- (a) 土地作「非工業（不包括倉庫及加油站）用途」；
- (b) 指定或擬作酒店用途的建築物的樓面總面積不得少於 21,190 平方米（“酒店樓面總面積規定”）；以及
- (c) 承批人必須獲地政總署批准公共契約（“公契”），才可出售該地段或其任何部分。

10. 在遵從有關契約後，轉讓該地段的部份不受限制。簡而言之，契約沒有禁止出售該地段的不分割份數，但承批人須遵從契約，包括酒店樓面總面積規定。就契約管制制度而言，問題不在於出售酒店房間單位，因為這並非契約所不准予，而是酒店房間單位在出售後是否實質上作酒店用途，從而符合契約中有關酒店樓面總面積的規定。

11. 地政總署根據地契條款的要求，在 2006 年批准葵涌市地段第 467 號餘段的公契。有關公契向葵涌市地段第 467 號餘段的發展項目分配不分割份數，發展項目包括附服務設施住宅、零售、酒店、停車場及公用地方。地政總署同樣根據地契條款所載的公契批核規定，在 2011 年批准有關分契，把酒店分拆成酒店房間單位。有關公契就發展項目的管理事宜作出規定，並列明發展項目業主的權利和義



務。在批核分契時，地政總署加入了一項條件，規定承批人須在銷售文件中告知準買家有關的酒店房間單位必須作酒店用途。

### 建築物條例

12. 為鼓勵旅館發展以支持香港的旅遊業，自 1969 年起，建築事務監督已行使酌情權，主要是根據《建築物條例》第 42 條豁免某些旅館面積計算入總樓面面積內，以對真正的旅館發展項目給予寬免。有關寬免安排於 2000 年 11 月在《建築物條例》下的《建築物（規劃）規例》（《規例》）加入第 23A 條正式確立。《規例》第 23A 條訂明，旅館發展項目可被當作非住用項目而享有較高地積比率及上蓋面積。此外，配合旅館運作的若干必要面積及設施，亦可不計算入總樓面面積內。

13. 建築事務監督已發出一份作業備考，訂明就《規例》第 23A 條而言，屋宇署會採用何等準則決定某項擬建計劃是否被視為旅館發展項目處理。有關準則包括：

- (a) 地盤是否適合作旅館發展；
- (b) 有否提供作旅館用途所需的基本設施；
- (c) 有否配備中央空氣調節系統和中央熱水供應系統；  
以及
- (d) 建築物會否根據《旅館業條例》以持牌旅館形式經營。

14. 《規例》第 23A 條亦就旅館建築物在未經批准而其後由旅館用途改作其他用途的情況訂定了罰則。已獲批予寬免的旅館發展項目，建築物的全部或部分用途一旦更改作任何非旅館用途，則屬違反《規例》第 23A(4) 及 (6) 條。如旅館並無根據《旅館業條例》獲得或續期旅館牌照，則根



據《規例》第23A(5)條將被當作用途更改。在有關情況下，屋宇署可採取執法行動，根據《規例》第23A(8)條提出檢控，或根據《規例》第23A(7)條發出命令以終止其現行用途。

15. 「雍澄軒」為一個旅館發展項目（一座36層高的旅館大樓，坐落在4層高的平台上），共有360間酒店客房。佔用許可證於2007年11月2日發出，訂明建築物為一座旅館大樓。項目在建築圖則審批時根據《規例》第23A條獲批予寬免，而旅館須計算的總樓面面積約為21,191平方米。

### 旅館牌照

16. 在香港經營旅館受《旅館業條例》所監管。根據《旅館業條例》，經營旅館須領有牌照或豁免證明書，除非有關旅館根據《旅館業(豁免)令》(第349C章)獲得豁免，不受《旅館業條例》規限。為施行《旅館業條例》，「旅館」指任何處所，其佔用人、東主或租客顯示在他可提供的住宿的範圍內，他會向到臨該處所的任何人士提供住宿的地方，而該人看似是有能力並願意為所提供的服務及設施繳付合理款項，並且是在宜於予以接待的狀況。如處所內所有住宿的提供基準均為就每次出租而言，最短租出期間為連續28天，而如該次出租因任何理由縮短至少於連續28天，將不會免收、退還或減收費用，則不受《旅館業條例》規限。民政事務總署轄下牌照事務處（下稱「牌照處」）負責處理旅館牌照簽發和執法工作。截至2013年1月底，共有1,498所旅館根據《旅館業條例》獲發有效牌照。

17. 根據《旅館業條例》第8(3)條，擬用作旅館的處所假如不符合《建築物條例》及《消防條例》(第95章)中所訂明有關設計、結構、防火、健康、衛生配置、安全及對生命及財產保障的要求，將不會獲發牌照。旅館持牌人亦必須持續及親自監督有關旅館的經營、開設及管理。此外，持牌人必須遵守所有牌照條件。任何人在違反任何牌照條

件的情況下經營、開設、管理或以其他方式控制該旅館，均屬刑事罪行，一經定罪，可處罰款 100,000 元及監禁兩年，以及就罪行持續期間的每一天另處罰款 10,000 元。

18. 牌照處簽發的旅館牌照不會免除任何由政府所批出的租約或牌照內所載的任何條件，亦不會影響或改變旅館所在處所或建築物的任何合約或契約。牌照處已在牌照申請表及指引，以及發牌通知信件等相關文件中，提醒經營者必須確保在有關處所經營旅館符合相關契約文件內所載的條款及條件。

## 稅務

### 利得稅

19. 任何人在香港經營酒店業務須課繳利得稅。酒店擁有人從出售酒店業務或酒店房間所得的利潤，如不屬售賣資本資產所得，須課繳利得稅。

### 印花稅

20. 買賣酒店房間單位亦須繳納印花稅。就印花稅而言，「住宅物業」及「非住宅物業」的分類是按照批准用途而非實際用途或給予物業的標籤或描述而定。根據《印花稅條例》(第 117 章)第 29A(1)條，下述文書會被用以判別一個物業的批准用途屬住宅用途抑或非住宅用途一

- (a) 一份政府租契或政府租契協議；
- (b) 一份《建築物管理條例》(第 344 章)第 2 條所指的公契；
- (c) 一份根據《建築物條例》第 21 條發出的佔用許可證；或
- (d) 印花稅署署長所信納該物業的批准用途有效地予以限制的任何其他文書(例如新的法定規劃圖則)。



如上述任何一份文書顯示有關物業不得全部或部分用作住宅用途，有關物業會被視為「非住宅物業」。

21. 根據現行的《印花稅條例》，就非住宅物業須予以徵收「從價印花稅」的文書為售賣轉易契，而住宅物業的相關文書則包括買賣協議及售賣轉易契（如已就買賣協議繳納「從價印花稅」，須繳納款額為 100 元）。財政司司長於 2013 年 2 月 22 日宣布，待有關法例通過後，由 2013 年 2 月 23 日起，推前向非住宅物業交易徵收印花稅，由向售賣轉易契徵收改為向買賣協議徵收。

22. 此外，買賣住宅物業亦可能須要繳納「額外印花稅」和「買家印花稅」。任何人士於 2010 年 11 月 20 日購入住宅物業並於 24 個月或以內出售該物業，須繳付「額外印花稅」。財政司司長於 2012 年 10 月 26 日宣布待有關法例通過後，將適用於「額外印花稅」的物業持有期由 2012 年 10 月 27 日起延長至 36 個月。同日，他亦宣布待有關法例通過後，由 2012 年 10 月 27 日起引入「買家印花稅」。「買家印花稅」適用於香港永久性居民以外的任何人士取得的住宅物業，稅率劃一為 15%。

### 雍澄軒銷售個案的跟進工作

23. 雍澄軒銷售個案相關的文件載於附件 A 至 J。相關部門已進行協調，就其範疇下各有關方面作跟進工作。

24. 在契約管理方面，地政總署於 2013 年 1 月得悉承批人於 2012 年 12 月以買賣協議方式售出一個酒店房間單位。雖然契約並無禁止轉讓個別酒店房間單位，地政總署於 2013 年 1 月 25 日去信承批人，查詢有否履行酒店樓面總面積的規定及出售該酒店房間單位的安排。其目的是查核該單位是否出售作酒店用途，有關的銷售資料有否清楚說明出售的房間是作酒店用途，以及有否損及酒店樓面總

面積的規定。於 2013 年 2 月 7 日，承批人要求地政總署澄清信件的内容。於 2013 年 2 月 18 日下午較後時間，承批人致函地政總署，就該署對其在 2012 年 12 月發售該酒店房間單位的查詢作出回應，並夾附所出售單位的買賣協議摘錄和酒店營運協議擬稿副本。地政總署於同日下午從新聞報道得悉，承批人將於同日稍後時間在市場發售其酒店房間單位。地政總署再於 2013 年 2 月 19 日以書面作出查詢。該署現正研究承批人就有關查詢提供的資料和所作的解釋。如有違反契約的情況，所產生的重收權歸於政府。

25. 此外，牌照處亦已於 2013 年 2 月 19 日去信旅館持牌人，就物業分拆出售後其旅館的運作模式，提供詳細資料。牌照處已收到持牌人提供的資料，並正詳細審視。如有需要，牌照處會徵詢法律意見。牌照處亦曾在 2 月 20 日派員巡查「雍澄軒」，以確保持牌人遵守《旅館業條例》及牌照條件訂明的樓宇結構及消防安全規定。

26. 當局正謹慎調查此個案，並會就任何證實違反有關規管的情況嚴格執法。如有關建築物不再用作酒店營運及/或其牌照被撤銷或拒-絕續期，這有可能違反《建築物條例》下的相關規定或批地條款。按個案情況，屋宇署會按《建築物條例》採取適當的執法行動，而地政總署亦會採取適當的執行契約條款行動，包括但並不限於收回有關物業。

27. 同時，當局已多次提醒市民，指出出售的酒店房間單位只可作旅館用途，而非住宅單位，並受旅館牌照管制。當局亦在不同場合呼籲市民在考慮購買該等單位時務必小心謹慎，清楚了解有關的規定和法定要求，並按需要徵詢獨立法律意見。

28. 據政府當局了解，地產代理監管局曾經派員巡查該項目的銷售處以了解地產代理的銷售情況。地產代理監管局會繼續留意有關事件發展，如有需要會發出指引。地產代理監管局已提醒地產代理，在銷售過程中，絕不可向客

戶發出任何不準確或具誤導性的資訊。同時，由於銷售酒店或服務式住宅的條款複雜，地產代理應提醒客戶注意相關風險，並建議客戶在購買之前，諮詢法律意見。

## 附件列表

- 附件 A 葵涌市地段第 467 號餘段的土地契約
- 附件 B 雍澄軒的佔用許可證
- 附件 C 雍澄軒的核准建築圖則
- 附件 D 葵涌市地段第 467 號餘段的公契及管理協議
- 附件 E 雍澄軒的分契及管理協議
- 附件 F 由發展商提供的雍澄軒銷售說明書
- 附件 G 2012 年 12 月首宗酒店房間單位交易的買賣協議
- 附件 H 由發展商提供的 2013 年 2 月其中一宗酒店房間單位交易的臨時買賣協議
- 附件 I 由發展商提供有關出售雍澄軒個別酒店房間單位的酒店營運協議擬稿
- 附件 J 由發展商提供有關出售雍澄軒個別酒店房間單位的依循契據擬稿

[註：上述附件可在此網頁下載—[www.legco.gov.hk/yr12-13/chinese/panels/dev/papers/dev0226cb1-580-3-c.pdf](http://www.legco.gov.hk/yr12-13/chinese/panels/dev/papers/dev0226cb1-580-3-c.pdf)]

發展局  
地政總署  
屋宇署  
規劃署  
民政事務總署  
稅務局  
2013 年 2 月