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Panel on Public Service
Special meeting on 27 October 2008

Background Brief
on the policy on post-service employment of
former directorate civil servants

Purpose

This paper sets out the policy and arrangements governing post-service employment of former directorate civil servants and gives a brief account of the major views and concerns expressed by Members at previous meetings of the Legislative Council (LegCo) and the Panel on Public Service (PS Panel).

Background

2. The Government's policy on post-service employment aims to ensure that civil servants on final leave or who have left the Government will not take up any work outside the Government (referred to as "outside work") which may constitute real or potential conflict of interest with their previous government service, or cause negative public perception embarrassing the Government and undermining the image of the civil service, without at the same time unduly restricting the said individuals' right to pursue employment or other work after ceasing government services. However, the approval given by the Administration to a number of retired directorate officers to take up employment with private enterprises shortly after their ceasing active service or during their final leave has caused concern to LegCo Members and the public.

Previous discussions at the Council and the Panel

3. The PS Panel discussed the mechanism to approve retired directorate officers to take up outside work on 17 May 2004. Panel members questioned the effectiveness of the mechanism in upholding the integrity of civil servants, especially in preventing directorate officers from giving favouritism to private consortia in the formulation of policies and decision-making during their service immediately prior to retirement. The

Panel urged the Administration to review the policy and approval mechanism as soon as possible, including the length of the sanitization period, whether the retired directorate officers should be allowed to take up employment during their final leave, what restrictions should be imposed on the post-retirement employment of directorate officers, and how to enhance the transparency of the mechanism.

4. In view of the wide public concern about the approval given by the Administration for Ms Elaine CHUNG Lai-kwok, the former Deputy Director of Housing to take up post-retirement employment with the Hong Kong Ferry (Holdings) Co. Ltd., Hon KWONG Chi-kin raised an oral question about the approval at the LegCo meeting on 1 December 2004. The PS Panel subsequently discussed with the Administration on 21 December 2004 the policy governing post-retirement employment of civil servants, and requested the Administration to conduct a full investigation of Ms Elaine CHUNG's case.

5. On 2 February 2005, the Council passed a motion on "Monitoring the post-retirement employment of the Chief Executive, principal officials under the accountability system and civil servants at directorate level with private-sector organizations", moved by Hon CHEUNG Man-kwong as amended by Hon TAM Yiu-chung. The wording of the motion passed is at **Appendix I**.

6. The Administration consulted the PS Panel on 21 March and 21 November 2005 the proposed revisions to the arrangements governing post-service outside work by directorate civil servants.

Existing arrangements for post-service employment of directorate civil servants

7. The Administration promulgated in December 2005 a set of new arrangements applicable to directorate officers who cease active service or enter into new agreement on or after 1 January 2006. For directorate officers who ceased active service or entered into agreements before 1 January 2006, the pre-1 January 2006 arrangements continue to apply to them. The key elements of the new arrangements and the vetting procedures and criteria, as provided in the latest annual report on the work of the Advisory Committee on Post-service Employment of Civil Servants¹ (the Advisory Committee), are set out in the ensuing paragraphs.

¹ The Advisory Committee, formerly known as the Advisory Committee on Post-retirement Employment, is an independent body to advise the Government on matters related to post-service employment of civil servants. It is chaired by a High Court judge and comprises four other members. The Advisory Committee reports its work to the Chief Executive annually. The Nineteenth Report on the work of the Advisory Committee covering the period from 1 January 2007 to 31 December 2007 was issued to members of the PS Panel in July 2008.

Key elements of the arrangements

8. In brief, the new arrangements include-
- (a) directorate civil servants need to obtain prior permission from the Secretary for the Civil Service (SCS) to take up any outside work during their final leave period and/or within a specified control period counting from their formal departure from the Government. The control period is three years for civil servants ranked at Directorate Pay Scale Point 8 (D8) and two years for others;
 - (b) retired directorate civil servants are subject to a minimum sanitization period counting from cessation of active government service, during which outside work is not permitted, other than that covered by the blanket permission². The minimum sanitization period for directorate civil servants below D4 is six months and for those at D4 or above is 12 months;
 - (c) directorate civil servants are normally not permitted to take up full-time remunerated work or work of a commercial nature, during their final leave period (even if it exceeds the afore-stated minimum sanitization period);
 - (d) directorate civil servants who take up post-service outside work are subject to a set of standard work restrictions³; and
 - (e) where necessary, the Advisory Committee may advise, and SCS as the approving authority may impose, a longer sanitization period and/or additional work restrictions.
9. Key elements of the new arrangements, as compared with the arrangements before 1 January 2006, are set out in **Appendix II**.

² Blanket permission is given for all directorate civil servants to take up unremunerated work with specified non-commercial organizations throughout the final leave and control periods. The specified non-commercial organizations include (a) charitable, academic or other non-profit making organizations not primarily engaged in commercial operations; (b) non-commercial regional or international organizations; and (c) the central Authorities of the People's Republic of China.

³ Directorate civil servants are subject to standard restrictions that they should not in their post-service outside work- (a) be personally involved, directly or indirectly, in the bidding for any government land, property, projects, contracts or franchises; (b) undertake or represent any person in any work including any litigation or lobbying activities that are connected in any way with- (i) the formulation of any policy or decisions; (ii) sensitive information; (iii) contractual or legal dealings; (iv) assignments or projects; and/or (v) enforcement or regulatory duties in which they were involved or to which they had access during their last three years of government service; or (c) engage in any activities that will cause embarrassment to the Government or bring disgrace to the civil service.

Vetting procedures

10. Processing of applications for outside work from directorate civil servants involve the following steps:

- (a) scrutiny by the Head of Department (HoD) or Head of Grade (HoG) and the Permanent Secretary concerned;
- (b) Civil Service Bureau (CSB) then forwards the application, together with the assessments made by the relevant HoD or HoG and Permanent Secretary, to the Advisory Committee for consideration and advice; and
- (c) the application, with the Advisory Committee's advice, is submitted to SCS for a decision.

Vetting criteria

11. In considering applications for permission to take up outside work, the key factors taken into account by the Advisory Committee are real or potential conflict of interest and public perception.

12. The specific considerations include –

- (a) whether the applicant, while in government service, had been involved in the formulation of any policy or decisions, the effects of which directly or specifically benefited or could directly or specifically benefit his/her own business or prospective employer;
- (b) whether the applicant or his/her prospective employer might gain unfair advantage over competitors because of the applicant's access to sensitive information while in government service;
- (c) whether the applicant, while in government service, had been involved in any contractual or legal dealings to which his/her prospective employer was a party;
- (d) whether the proposed work would have any connection with the assignments/projects and/or regulatory/enforcement duties in which the applicant had been involved while in government service;
- (e) whether the applicant's taking up of the proposed work would give rise to public suspicion of conflict of interest or other impropriety; and
- (f) whether any aspects of the proposed work would cause embarrassment to the Government or bring disgrace to the civil service.

13. The number of applications considered by the Advisory Committee in the past three years (i.e. 2005, 2006 and 2007), with breakdown by the applicants' background, are provided in **Appendix III**.

Suspension of pension

14. Civil servants who are re-appointed to serve in the Government, or appointed to the public organizations gazetted as public service for the purpose of pension suspension, are required to have the payment of their monthly pension suspended. This suspension of pension is not applicable to retired officers taking up employment with private enterprises.

Members' major views and concerns on the policy and approval mechanism

15. The major views and concerns previously expressed by Members at meetings of the LegCo and the PS Panel held during May 2004 to November 2005 are summarized below:

(a) Effectiveness of the approval mechanism

- Given the high approval rate of applications for post-service employment, it is doubtful whether the approval mechanism is effective in achieving the objective of the post-service employment policy. A due process for handling applications is important for maintaining the impartiality of the mechanism, safeguarding public interest, and inspiring public confidence in the probity and integrity of the civil service.
- The Administration should examine how the approval mechanism could be enhanced, taking into account the need to strike a balance between the rights of individual civil servants to pursue employment or business after retirement on the one hand, and the public interest and aspirations of the community regarding the integrity and impartiality of the civil service on the other.
- The Administration should propose effective measures to improve the transparency of the mechanism. For instance, information on outside work taken up by all directorate officers irrespective of their rank should be made available for public inspection.
- The approving authority, including the HoD/Bureau concerned, should be held responsible for wrong judgment if the approved outside work subsequently did give rise to negative public perception.

(b) Sanitization period

- To ensure that the post-service employment of former directorate civil servants will not constitute a conflict of interest with their previous

government service, the granting of approval for post-service employment should be tightened up by lengthening the sanitization period. The sanitization period should be counted from the date on which the retired officers leave the civil service, instead of the date of cessation of active service.

(c) Information for scrutiny of applications

- To facilitate the HoDs concerned in making their recommendations on applications for post-service employment, CSB should collate more information about the applications, such as information on whether the company was a subsidiary or associate of another business group.

(d) Monitoring of approved cases

- The Administration should look into the approved cases of post-service employment and remind the civil servants concerned of the terms of approval, and explore means to strengthen its monitoring of the approved cases to ensure compliance with the terms of approval.

(e) Suspension of pension

- Monthly pension payment should be suspended for those retired officers who have taken up employment with private enterprises.

Recent concerns

16. There were wide public concerns about a recent case concerning an announcement made by New World China Land Limited (NWCL) on 1 August 2008, regarding the appointment of Mr LEUNG Chin-man (former Permanent Secretary for Housing, Planning and Lands and Director of Housing) as an Executive Director and Deputy Managing Director of the company. There was public suspicion that conflict of interest existed in the appointment as NWCL is a subsidiary of the New World Development Company Limited, while one of its subsidiaries was one of the developers involved in the Hunghom Peninsula development, in which Mr LEUNG had been involved during his government service. (**Appendix IV** provides the background information on the disposal of the Hunghom Peninsula flats).

17. Hon Margaret NG had provided the PS Panel with a copy of her letter dated 7 August 2008 relating her concerns on CSB's approval on Mr LEUNG in post-service employment. The letter was circulated vide LC Paper No. CB(1)2259/07-08.

18. The Chief Executive (CE) subsequently made a statement on 15 August 2008 on the case. According to CE's statement, in giving approval to Mr LEUNG's

application, SCS had imposed the following restrictions in addition to the standard ones applicable to directorate civil servants-

- (a) Mr LEUNG should not involve himself in any business of NWCL that is connected with Hong Kong;
- (b) Mr LEUNG should not use or disclose to NWCL any classified or sensitive information acquired while he was in government service;
- (c) Mr LEUNG should not participate in any discussion between NWCL and the Government; and
- (d) Mr LEUNG should confine his proposed appointment to NWCL.

19. As Mr LEUNG's involvement in the handling of the Hunghom Peninsula development had not been duly considered by CSB when processing his application, CE requested SCS to consult the relevant policy bureaux again on Mr LEUNG's application with due regard to his involvement in the Hunghom Peninsula development and present the relevant information to the Advisory Committee for further advice on Mr LEUNG's application.

20. On 16 August 2008, NWDCL announced that the company had agreed with Mr LEUNG Chin-man to resolve the employment contract in question. CE responded to media enquiry on the same day that a re-assessment of Mr LEUNG's application would not be necessary in view of the new development, but instead, a dedicated committee would be set up to examine the best way forward for handling post-service employment of civil servants. On 30 September 2008, CE announced the appointment of the Committee on Review of Post-Service Outside Work for Directorate Civil Servants (the Review Committee), comprising Hon Ronald ARCULLI as the Chairman and ten other members including four LegCo Members and SCS. The Committee will submit its findings and recommendations to CE in mid 2009.

Issues to be followed up

21. Members may wish to follow up on the processing of application from Mr LEUNG Chin-man, as well as the review of the existing policy and arrangements governing post-service outside work for directorate civil servants conducted by the Review Committee.

Relevant Papers

22. A list of relevant papers is in **Appendix V** for members' reference.

Wording of motion passed on 2 February 2005 on "Monitoring the post-retirement employment of the Chief Executive, principal officials under the accountability system and civil servants at directorate level with private-sector organizations", moved by Hon CHEUNG Man-kwong as amended by Hon TAM Yiu-chung

"That, since the approval granted in recent years to a number of civil servants at directorate level for their post-retirement employment with private-sector organizations has aroused public concern, in order to fortify the prevention of civil servants at directorate level from taking up post-retirement employment that involves conflicts of interests with their previous service in the Government, this Council urges the Government to immediately tighten up, monitor the implementation of and strictly enforce the policies and measures governing the post-retirement employment of civil servants at directorate level with private-sector organizations, which should include:

- (a) imposing across the board a sanitization period of at least one year for directorate officers;
- (b) prohibiting directorate officers from taking up employment with private-sector organizations during their pre-retirement leave to guard against double pay;
- (c) identifying loopholes in the work of the Advisory Committee on Post-retirement Employment to prevent the Committee from becoming a rubber stamp which approves applications indiscriminately;
- (d) making public information on the approvals granted by the Government for civil servants at directorate level to take up post-retirement employment with private-sector organizations; and
- (e) closely monitoring the changes in the nature of post-retirement employment taken up by directorate officers with private-sector organizations after such approvals have been granted so as to ensure that there is no conflict of interest between their post-retirement employment and their previous service in the Government;

furthermore, this Council also calls upon the Civil Service Bureau to expeditiously complete the investigation into the incident of Ms Elaine CHUNG Lai-kok and publish the relevant report, and urges the Administration to strictly enforce the relevant policies by exercising appropriate and forceful regulation over the post-departure or post-retirement employment of the Chief Executive and the principal officials under the accountability system with private-sector organizations, so as to achieve the policy direction of 'resolutely against collusion between business and the Government to eliminate any transfer of benefits' announced in the Chief Executive's 2005 Policy Address, thereby ensuring that upon the departure of the Chief Executive, principal officials and directorate officers, they do not enter into any business or take up any employment which may constitute a conflict of interest with their previous service in the Government or adversely affect the image of the Government."

**Key Elements of the Old and New Arrangements
Governing the Post-Service Outside Work of Directorate Officers**

Old Arrangements	New Arrangements
1. Coverage	
<ul style="list-style-type: none"> * Directorate officers who ceased active service before 1 January 2006 and who have retired on pensionable terms * Agreement officers at D3 and above whose last agreement with the Government was entered into before 1 January 2006 	<ul style="list-style-type: none"> * Directorate officers appointed on pensionable or new permanent terms and have ceased or will cease active service on or after 1 January 2006 * Directorate officers appointed on agreement terms who have entered or will enter into new/further agreements on or after 1 January 2006
2. Sanitisation period (counting from cessation of active service during which outside work is not permitted)	
<ul style="list-style-type: none"> * Directorate officers retired on pensionable terms – minimum 6 months, may be shortened if there is no clear conflict of interest or may be lengthened having regard to the circumstances of a case. * Agreement officers at D3 or above – no specified minimum sanitisation period but such requirement may be imposed on a case-by-case basis. 	<ul style="list-style-type: none"> * Minimum sanitisation period for directorate officers retired or retiring on pensionable or new permanent terms – <ul style="list-style-type: none"> D4 or above (or equivalent) – 12 months Below D4 (or equivalent) – 6 months * The minimum sanitisation period is normally shortened or waived for notionally remunerated work and may be shortened for remunerated work taken up with the following organisations (the specified organisations) – <ul style="list-style-type: none"> (a) charitable, academic or other non-profit making organisations not primarily engaged in commercial operations; (b) non-commercial regional or international organisations; or (c) the Central Authorities of the People's Republic of China, where the work would not give rise to conflict of interest and is unlikely to cause negative public

Old Arrangements	New Arrangements
	<p>perception.</p> <ul style="list-style-type: none"> * For all other outside work (in particular work of a commercial nature), the minimum sanitisation period would only be shortened where there are special considerations, and provided that the work would not give rise to conflict of interest or negative public perception. * Having regard to the circumstances of a particular case, a longer sanitisation period may be imposed if so required to more fully forestall conflict of interest or negative public perception. * No minimum sanitisation period is specified for directorate officers not retiring, or not retired, on pensionable or new permanent terms (e.g. agreement officers and resignees). Each case will be considered on its own merits.
3. Final leave period	
<ul style="list-style-type: none"> * The taking up of paid outside work during the final leave period, irrespective of whether such work is undertaken in Hong Kong or elsewhere, is subject to prior permission. 	<ul style="list-style-type: none"> * The taking up of outside work during the final leave period is subject to the rules governing sanitisation. * In addition, directorate officers are not permitted to take up any full-time remunerated work or any work of a commercial nature (including self-employment) during the final leave period, unless there are special considerations. In this regard, directorate officers on final leave may, on application, normally only take up part-time or notionally remunerated work with a specified organisation, subject to the rules on sanitisation and there being no problem of dual identity.

4. Control period (counting from formal departure from the Government during which prior permission is required for taking up outside work)	
<ul style="list-style-type: none"> * Directorate officers retired on pensionable terms AOSGA1 (D8) – 3 years Others – 2 years * Agreement officers at D3 and above – 1 year (in respect of outside work in the same field and where there is a possible conflict of interest) 	<ul style="list-style-type: none"> * Directorate officers retired on pensionable or new permanent terms D8 or equivalent – 3 years Below D8 or equivalent – 2 years. * Directorate officers who left the Government other than retirement after six or more years of continuous service D8 or equivalent – 3 years Below D8 or equivalent – 2 years * Directorate officers who left the Government other than retirement after less than six years of continuous service D8 or equivalent – 1½ years Below D8 or equivalent – 1 year
5. Vetting criteria	
<ul style="list-style-type: none"> * The key factors of consideration are conflict of interest (real or potential) and public perception. 	<ul style="list-style-type: none"> * The key factors of consideration are conflict of interest (real or potential) and public perception. * The specific considerations include – <ul style="list-style-type: none"> (a) whether the applicant, while in government service, had been involved in the formulation of any policy or decisions, the effects of which directly or specifically benefited or could directly or specifically benefit his/her own business or his/her prospective employer; (b) whether the applicant or his/her prospective employer might gain unfair advantage over competitors because of the applicant's access to sensitive information while in government service; (c) whether the applicant, while in government service, had been involved in any contractual or legal dealings to which the prospective employer was a party; (d) whether the proposed work would have any connection with the assignments/projects and/or regulatory/enforcement duties in which the

	<p>applicant had been involved while in government service;</p> <p>(e) whether the applicant's taking up of the proposed work would give rise to public suspicion of conflict of interest or other impropriety; and</p> <p>(f) whether any aspects of the proposed work would cause embarrassment to the Government or bring disgrace to the civil service.</p>
<p>6. Restrictions on scope of work</p>	
<p>* Work-specific restrictions may be imposed on a case-by-case basis.</p>	<p>* In all approved cases of outside work, the officer involved should not –</p> <p>(a) be personally involved, directly or indirectly, in the bidding for any government land, property, projects, contracts or franchises;</p> <p>(b) undertake, or represent any person in, any work including any litigation or lobbying activities that are connected in any way with –</p> <p>(i) the formulation of any policy or decision;</p> <p>(ii) sensitive information;</p> <p>(iii) contractual or legal dealings;</p> <p>(iv) assignments or projects; and/or</p> <p>(v) enforcement or regulatory duties,</p> <p>in which he/she had been involved or to which he/she had access during his/her last three years of government service; or</p> <p>(c) engage in any activities which would cause embarrassment to the Government or bring disgrace to the civil service.</p> <p>* Further specific restrictions on scope of work may be imposed on a case-by-case basis.</p>

7. <i>Blanket permission</i>	
* No blanket permission (but the blanket permission under the new arrangements has been extended to officers subject to the old arrangements).	* Blanket permission is given for unremunerated work with the specified organisations throughout the entire period from cessation of active service to the expiry of control period.

(Source: Annex B to the Nineteenth Report on the work of the Advisory Committee on Post-service Employment of Civil Servants)

**Post-service outside work of former directorate officers
considered by the Advisory Committee
(1 January 2005 - 31 December 2007)**

Period	No. of applications				Applicants' background						
	Processed	Recommended for approval	Recommended for rejection	No. of Applicants (Note)	Age				Salary Scale		
					Below 50	50-54	55-59	60 or above	D1-D2	D3-D4	D5 or above
1 Jan - 31 Dec 2005	93	92	1	56	3	9	30	14	34	11	11
1 Jan - 31 Dec 2006	64	63	1	40	4	5	22	9	16	12	12
1 Jan - 31 Dec 2007	55	55	0	37	3	2	18	14	16	9	12

Note: An applicant may submit more than one applications

(Source: Seventeenth, Eighteenth and Nineteenth Report on the Work of the Advisory Committee on Post-service Employment of Civil Servants)

Background information on the disposal of Hunghom Peninsula flats

Purpose

This paper provides details on the controversies surrounding the disposal of the Hunghom Peninsula flats.

Background

2. Hunghom Peninsula was a Private Sector Participation Scheme (PSPS)^{Note} development. The developer of Hunghom Peninsula was First Star Development Limited (the Developer), a consortium comprising Sun Hung Kai Properties Limited and NWS Holdings Limited, a subsidiary of New World Development Company Limited, with equal shares. The development had a total saleable floor area of 123 500 square metres for the construction of 2 470 flats, 494 car parking spaces and shopping facilities. The land lease was granted to the Developer at a tender price of \$583 million on 24 September 1999. The total guaranteed purchase price for all the 2 470 residential units was about \$1,914 million. Under the Land Grant, the Housing Authority (HA) should nominate eligible home purchasers to purchase the flats within a period of 20 months from the date of the Consent to Sell, which was issued in November 2002.

3. Following the cessation of production and sale of PSPS from November 2002 as a result of the re-positioning of the housing policy, the Government had to explore various possible options to dispose of surplus PSPS flats. In the case of Hunghom Peninsula PSPS flats, the Government considered that the most practicable way was to seek the Developer's agreement to remove the PSPS-related sales restrictions applicable to the flats through lease modification subject to payment of premium, so that the Developer could sell the flats in the open market. It was against this backdrop that the Government commenced lease modification negotiation with the Developer in January 2003. Details of the lease modification process can be found in the chronology of events relating to the disposal of Hunghom Peninsula PSPS flats in **Annex I**.

4. On 9 February 2004, the Government announced its lease modification agreement with the Developer (the Agreement). The Developer agreed to give up its right to receive the payment of the guaranteed purchase price from HA, and pay a premium of \$864 million to the Government for the lease modification.

^{Note} Under the Private Participation Sector Scheme (PSPS), private developers are invited to tender for housing sites on which they are required to build flats conforming to specifications stipulated by the Government. While the land title of a PSPS site is vested in the developer, under the Conditions of Sale, the developer could only sell the flats to eligible purchasers nominated by the Housing Authority (HA). In the event that flats are not sold at the end of a specified period, HA is obliged to purchase the flats at the guaranteed purchase price.

Concerns about the Agreement

5. The Agreement, particularly the agreed premium, had aroused much public concern. In this connection, the Panel on Housing, together with the Panel on Planning, Lands and works, held two special joint meetings on 17 February and 8 March 2004 to discuss the Agreement. Members were not convinced that the Agreement was the only viable option. They pointed out that according to the advice of the Secretariat's Legal Service Division (Paragraphs 4 and 5 of LC Paper No. LS46/03-04), there was no restrictions in the Conditions of Sale that would prevent HA from purchasing the residential flats of Hunghom Peninsula and putting these flats for sale or letting at a later stage. If HA were to dispose of the residential flats together with the non-residential part of the development remaining in the hands of the Developer, it could have applied for a court order for the sale of the whole property under the Partition Ordinance (Cap. 352). Alternatively, HA could surrender all the residential flats to the Government in consideration of cash payment and let the Government deal with the Developer. They also expressed the following concerns at the meetings:

- (a) It was inappropriate for the Administration to negotiate with the Developer behind closed doors. The flats could be sold through open tender or auction to enable other developers to participate. The approach taken benefited only the Developer at the expense of public interests;
- (b) The agreed premium of \$864 million was pathetically low, taking into account the fact that the property market was picking up.;
- (c) The Agreement had not settled the issue once and for all as there was still pending litigation for damages filed by the Developer; and
- (d) The Agreement was against the Administration's stated housing policy of ceasing the production and sale of Home Ownership Scheme and PSPS flats.

6. To address members' queries, the Administration made available, on a confidential basis, the legal advice on the disposal options for the Hunghom Peninsula PSPS project. It had also secured the Developer's consent to disclose the valuation report compiled by the Lands Department for the negotiation and mediation in respect of the estimates on the premium for the lease modification. Details of the discussions on the premium provided by the Administration are in **Annex II**.

Subsequent development after delivery of the Agreement

7. On 29 November 2004, the Developer announced plans to demolish and redevelop Hunghom Peninsula into a luxury residential project. The announcement aroused grave public concern about the possible implications of the plans. These

included the impact on the environment and possible profiteering by the Developer given the low premium paid to the Government. In this connection, the Panel on Housing held a meeting on 6 December 2004 to discuss the demolition plans, at which the then Secretary for Housing, Planning and Lands (SHPL) made a number of clarifications in his opening statement (**Annex III**). In particular, SHPL clarified that the Administration had not received any application from the Developer concerning redevelopment or lease modification

8. Notwithstanding SHPL's clarifications, members raised the following concerns at the meeting:

- (a) Whether the Administration was aware that the Developer might demolish and redevelop the Hunghom Peninsula PSPS flats at the time of negotiation. If so, why the Administration had not included any condition in the Agreement to guard against that;
- (b) Whether the Administration could and would prevent the Developer from demolishing the Hunghom Peninsula flats. In particular, whether clause 11(a) of the Special Conditions of the relevant land lease and clause 7 of the General Conditions of the land lease could, as the Administration claimed, effectively prevent redevelopment of the site even after the deletion from the original land lease during lease modification of certain conditions (the Deletion), such as specifications of the architectural design of flats and the number and sizes of units. In a member's view, the deletion seemed to have been purposely made to facilitate redevelopment; and
- (c) Whether the legal basis upon which the Administration could require the payment of additional premium for redevelopment of the Hunghom Peninsula site was sound enough. If so, whether the requirement could serve any purpose in preventing redevelopment.

9. The Administration was also requested to make public all information about the disposal of the Hunghom Peninsula flats, in particular the Administration's correspondence with the Developer, as well as papers and minutes of internal meetings at which the disposal was discussed. Given the Administration's reluctance in providing the required information, the Panel on Housing passed a motion recommending the setting up of a select committee to inquire into the sale of Hunghom Peninsula. The wording of the motion is in **Annex IV**. The Panel also agreed that the proposal for the setting up of a select committee should be put to the House Committee for consideration.

10. The Administration subsequently advised vide its letter dated 9 December 2004 that it would provide the information requested subject to the guidelines and principles under the Code on Access to Information. After consulting the majority of Panel members, the then Panel Chairman made a short verbal report at

the House Committee meeting on 10 December 2004 that the Panel would decide the next course of action after receipt of further information from the Administration. The requested information was subsequently issued to members in batches as listed in **Annex V**. In December 2004, the Developer announced that it would not proceed with the plans to demolish Hunghom Peninsula flats.

Role of Government officials in the disposal of the Hunghom Peninsula flats

11. There were media reports in 2004 that Mr C M LEUNG, then Permanent Secretary for Housing, Planning and Lands (Housing), was leader of the team responsible for negotiating the lease modification premium with the Developer, and that he might be aware of the Developer's plan to demolish Hunghom Peninsula during the negotiation process. However, on the decisions in relation to the disposal of the Hunghom Peninsula, in particular the deletion of certain conditions from the original land lease, SHPL stated that as the policy secretary under the Accountability System, he himself was responsible for making decisions under his policy portfolio.

Council Business Division 1
Legislative Council Secretariat
23 October 2008

**Chronology of events relating to the
disposal of Hunghom Peninsula Private Sector Participation Scheme flats**

Date	Event
24 September 1999	Land lease was granted to the developer of the Hunghom Peninsula Private Sector Participation Scheme (PSPS) flats (the Developer) at a tender price of \$583 million
22 October 1999	The Developer commenced construction
3 September 2001	The Chief Secretary for Administration announced the moratorium of all sales of Home Ownership Scheme (HOS) and PSPS flats until end of June 2002
6 August 2002	Construction completed
13 November 2002	The Secretary for Housing, Planning and Lands (SHPL) gave a statement on housing policy at the Council Meeting and announced the cessation of the production and sale of HOS and PSPS flats
15 November 2002	The Panel on Housing discussed the statement on housing policy
20 November 2002	The Lands Department issued the Consent to Sell to the Developer and the 20-month prescribed period for the Housing Authority (HA) to nominate purchasers for the completed Hunghom Peninsula PSPS flats commenced
14 January 2003	The Panel on Housing received a policy briefing from SHPL
18 March 2003	The Panel on Housing discussed the disposal of surplus HOS/PSPS flats
January to March 2003	The Administration carried out initial negotiation with the Developer on lease modification
6 March 2003	HA's Strategic Policy Committee approved the disposal arrangement of the surplus HOS/PSPS flats and was informed that negotiation with the Developer was underway
End March 2003	Negotiation with the Developer halted since both sides were unable to reach any agreement upon encountering difficulties

Date	Event
25 July 2003	The Developer initiated litigation against the Administration and HA for breach of the Land Grant and claimed for damages by issuing a Writ of Summons
August to October 2003	The Administration revisited various possible disposal options and decided that further negotiation with the Developer through mediation should proceed
9 October 2003	Mr LEUNG Yiu-chung raised a question at the Council meeting concerning problems arising from cessation of the production and sale of HOS and PSPS flats. The Council was informed that the Developer had filed a writ against the Government and HA
3 November 2003	The Panel on Housing discussed the updated progress of the disposal of surplus HOS/PSPS flats
8 to 23 December 2003	Lands Department, Housing Department and Department of Justice conducted mediation with the Developer with the facilitation of an independent mediator
26 January 2004	The Administration formalized the preliminary agreement with the Developer on lease modification to enable it to sell the Hunghom Peninsula PSPS flats in the open market
February 2004	Completion of lease modification process
9 February 2004	Announcement of the agreement on lease modification
17 February 2004	The Panel on Housing and the Panel on Planning, Lands and Works discussed the disposal of Hunghom Peninsula PSPS flats
8 March 2004	The Panel on Housing and the Panel on Planning, Lands and Works further discussed the disposal of Hunghom Peninsula PSPS flats
17 November 2004	Miss CHOY So-yuk raised a question at the Council meeting concerning disposal of the Hunghom Peninsula and the Kingsford Terrace PSPS flats
29 November 2004	The Developer announced plans to demolish and redevelop flats of the Hunghom Peninsula PSPS project
6 December 2004	The Panel on Housing discussed the disposal of Hunghom Peninsula PSPS flats, and passed a motion to

Date	Event
	recommend the setting up of a select committee to inquire into the Government's sale of Hunghom Peninsula
9 December 2004	The Administration confirmed vide its letter dated 9 December 2004 that it would provide the information requested by members at the 6 December 2004 meeting subject to the guidelines and principles under the Code on Access to Information
10 December 2004	The Chairman of the Panel on Housing made a short verbal report at the House Committee meeting that the Panel would decide the next course of action after receipt of further information from the Administration
10 December 2004	The Developer announced that it would scrap plans to demolish Hunghom Peninsula flats
23 February 2005	Mr Ronny TONG raised a question at the Council meeting concerning Government's consideration of the lease modification application for the Hunghom Peninsula. The Council was informed that the Government had so far not received any application in this regard
6 July 2005	Mr Ronny TONG raised a question at the Council meeting on renovation works for Hunghom Peninsula
19 October 2005	Mr Ronny TONG raised a question at the Council meeting on alteration works for Hunghom Peninsula

Details of the discussions on the premium for modifying the lease of Hunghom Peninsula Private Sector Participation Scheme flats provided by the Administration

The mediation was conducted and concluded between 8 December and 23 December 2003 before an independent mediator accredited by the Hong Kong International Arbitration Centre. During the course of mediation, both the Government and the developer of Hunghom Peninsula (the Developer) carefully examined each other's figures in the presence of the mediator. There were differences on the estimated sale price of the flats after upgrading works, the Developer's profit/bulk discount, marketing cost, upgrading cost and period for sale of flats after completion of upgrading works. The Administration's position was vigorously challenged by the Developer. In particular, the Developer argued that a greater profit/bulk discount was appropriate to reflect the substantial number of flats, and the Developer adopted a comparatively lower estimated sale price of the flats.

2. After several rounds of exchange of details, the Administration proposed, as a basis for settlement and bearing in mind the inherent difficulties in valuing 2 470 upgraded Private Sector Participation Scheme flats as one lot, a premium of \$1,310 million based on an estimated sale price of \$38,000/m² net (\$3,021/sq.ft gross) for the flats and a 15% bulk discount/profit. The Developer rejected the proposal and counter-offered a modification premium of \$864 million, which the Administration understood, was based on, among other things, a selling price of \$35,218/m² net (\$2,800/sq.ft gross) and a profit margin of 20%. Despite further intensive discussions between the two sides, the Developer declined to move from this position.

房屋及規劃地政局局長
出席立法會房屋事務委員會的

發言全文

主席、各位議員：

在 2002 年十一月，政府鑑於當時疲弱的樓市和房屋供求嚴重失衡的情況，為回應社會的訴求，發表了房屋政策聲明，為政府的房屋政策重新定位，同時提出九項措施穩定樓市，其中兩項措施為停建及停售居者有其屋計劃，以及終止私人機構參建居屋計劃。及後房屋委員會作出配合，於 2003 年決定停止興建及出售居屋單位，並且終止私人機構參建居屋計劃。同時，在 2003 年年底，因應政府的深化房屋政策的聲明，通過於 2006 年年底前不會以資助形式推售回購或未能發售的居屋單位。就有關課題，政府已先後十次向立法會房屋事務委員會匯報。今天我想就處理有關“居

屋及私人參建居屋計劃剩餘單位”這課題向大家強調以下

四點：

2. 第一，自房屋政策聲明公布以來，樓市在過去兩年逐步穩定發展，根據差餉及物業估價署以及香港金融管理局資料顯示，自 2002 年 11 月至今，樓價回升了 28%，整體房屋資產回升了 5540 億元，負資產的數目由 78,000 個下降至 25,000 個，這顯示重新定位的房屋政策逐見成效，得到廣大市民的認同，符合社會整體利益。政府在為房屋政策重新定位的同時，已清楚指出要處理如何善後剩餘居屋及兩個剩餘的私人參建居屋計劃，即紅灣半島及嘉峰臺。

3. 第二，政府在處理紅灣半島及嘉峰臺時必須充份考慮到對當時疲弱及供應嚴重失衡的樓市的影響減到最低，並要維持房屋政策的連貫性及公信力。在處理紅灣半島期間正

值樓市低迷，政府和房屋委員會經考慮對樓市的影響，並顧及各項與房屋政策、法律和財政相關的因素後，認為最平衡公眾利益的處理方法，就是與發展商進行修改土地契約，容許發展商在繳付經磋商協定的修訂契約補價後，可將有關物業在公開市場發售。政府與發展商最終就紅灣半島的修訂契約達成協議。我們亦先後於今年二月及三月向立法會作詳細匯報。

4. 第三，政府在處理嘉峰臺時，亦須顧及紅灣半島相似的考慮因素。我們在諮詢房屋委員會及立法會的意見後，沿用了與處理紅灣半島相同的方法來處理嘉峰臺，即容許發展商在繳付經磋商協定的修訂契約補價後，可將有關物業在公開市場發售。然而，我們最終無法與發展商達成協議。其後，房屋委員會決定根據賣地章程訂明的保證售價向發展商購回全部單位。儘管私人物業市場近月已漸趨穩定，但礙於市場仍存在一定數量的貨尾尚待消化。為免影響復蘇不久的樓市，房屋委員會轄下的資助房屋小組委員會最近決定將嘉

峰臺留待於 2007 年才透過居屋計劃發售，並將於 2006 年下半年就有關細節進行研究。

5. 第四，至於從未發售的居屋發展項目，我們已處理了 7,200 個包括把 4,300 個單位售予政府用作紀律部隊宿舍，2,900 個改作出租公屋。我們會繼續研究處理餘下 3,000 個剩餘居屋單位的可行方案。

6. 最後，發展商近日宣布拆卸紅灣半島的計劃，再次引起社會關注。政府到目前為止仍未收到發展商的重建計劃或修訂地契申請，但會密切注視有關發展，並充分明白市民大眾及環保團體關注拆卸和重建工程對環境所帶來的影響。回顧年初，政府與發展商進行修改土地契約的目的是容許發展商可將其單位在市場作公開發售。現時當市民信心回穩和置業意慾增加之際，發展商沒有把這批現貨單位推出市場發售給市民，反而將簇新的樓宇拆卸，希望發展商會因應市民表達的意見作出正面回應。

7. 就李永達議員 12 月 3 日致函立法會秘書處，提問有關發展商如打算重建紅灣半島而涉及更改發展大綱及補

地價的政策，正如我們以往曾向外界解釋，根據有關之土地契約，若該地段重建時，發展商在未獲得到地政總署署長批准前，不得興建總綱發展藍圖或已獲批核的景觀設計計劃上沒有載列的任何建築物或搭建物。如重建項目與總綱發展藍圖和已獲批核的景觀設計計劃不一致，發展商須向地政總署署長申請批准修訂土地契約。地政總署曾去信發展商的代表律師，提醒發展商上述規定。

8. 鑒於發展商近日公佈有意拆卸紅灣半島作重建後社會反響和部份人士的訴求，我們再次確定早前所得的初步法律意見，我們有兩個主要論據 —

- (1) 契約特別條件第(11)(a)條規定，該地段不得進行任何與批地條件、總綱發展藍圖及已獲批核的景觀設計計劃不一致的發展項目或重建項目。
- (2) 契約一般條件第 7 條規定，買家須根據核准建築圖則，保存所有樓宇，而不得對樓宇進行任何更改或修改工程。該條款訂明，有關地段的

樓宇如果拆卸重建，必須符合以下兩個的其中一個條件。第一，新的樓宇必須是與現有的建築物的同類型樓宇而重建後的建築樓面面積不少於現有的建築樓面面積；或者第二，新樓宇的類型及價值的建議須先得地政總署署長的批准。換而言之，如重建項目中的樓宇，與現有樓宇並不屬於同一類型，根據一般條件第 7(b)條規定，買家須向地政總署署長申請批准。

9. 換句話說，地政總署署長作為批租人(即合約的另一方)有權決定是否同意批准修訂地契的申請。我留意昨天報導有立法會議員表示，政府與紅灣半島發展商簽署補價條文時，刪除原本地契中的多項條文，例如刪除大廈外牆及大堂用料、樓宇單位數目及面積大小等的規定，顯示政府清楚發展商意圖重建屋苑。我鄭重聲明，有關說法嚴重混淆視聽。我看不出這項指控的理據何在。在年初時政府與發展商就修訂契約的協議，目的是讓發展商在補價後將其單位推出公開市場發售，以及容許發展商在與總綱發展藍圖及已獲批核的景觀設計計劃一致

的大前提下有適量的彈性，將現有單位質素和內部間隔，以及一些設施提升，以便在私人市場出售。刪除這些條文的用意，是容許發展商將這些私人參建居屋作有限度的改裝，而非容許重建。

10. 發展商若要拆卸，在未得到政府的批准，只能根據現有的總綱發展藍圖重新建造一次。我已請地政總署和律政司的同事就上述條款進一步仔細研究有關署長的權力範圍，以考慮如何處理發展商日後呈交的重建申請。

11. 另一方面，除上述考慮外，地政總署會按照土地契約的條款來評定有關計劃是否涉及土地契約和相關的總綱發展藍圖和景觀設計計劃的改動，如須作任何改動會否批准，以及如果批准申請的話，將按照一貫的土地政策來考慮土地價值是否有所增加，如有的話，則會按照所增加的價值收取補地價。這是一向行之已久的做法。

12. 多謝大家。

在2004年12月6日房屋事務委員會的會議上通過的議案

「本事務委員會建議立法會成立專責委員會調查政府出售紅灣半島事件。」

**Motion passed at the meeting of the Panel on Housing
on 6 December 2004**

(Translation)

"That this Panel recommends that the Legislative Council set up a select committee to inquire into the Government's sale of Hunghom Peninsula."

Annex V

List of additional materials provided by the Administration as follow-up to the meeting of the Panel on Housing on 6 December 2004

- (a) A copy of 16 letters between the Lands Department and the solicitor of the developer of Hunghom Peninsula (the Developer) during and subsequent to the lease modification in the period from 17 January to 7 December 2004 covering the lease modification in question and reflecting the outcome of the Government and the Housing Authority (HA)'s mediation with the Developer in December 2003 (LC Paper No. CB(1)469/04-05);
- (b) Letter dated 13 December 2004 from the Administration concerning the assessment of environmental implications arising from lease modification of Hunghom Peninsula (LC Paper No. CB(1)488/04-05);
- (c) Letter dated 14 December 2004 from the Administration regarding legal advice on the disposal options for the Hunghom Peninsula PSPS project (LC Paper No. CB(1)513/04-05);
- (d) The valuation report and estimates of premium on the Hunghom Peninsula development (LC Paper No. CB(1)522/04-05(01));
- (e) Letter dated 14 December 2004 from the Administration providing information on the contractual agreement between the Government and the Developer on the lease modification (LC Paper No. CB(1)522/04-05(02));
- (f) Letter dated 22 December 2004 from the Administration concerning correspondence the Administration might have from other developers on Hunghom Peninsula (LC Paper No. CB(1)587/04-05);
- (g) Clarifications in response to Mr Ronny TONG on a number of points regarding the lease modification of Hunghom Peninsula arising from the exchange of correspondence in (a) above (LC Paper No. CB(1)636/04-05); and
- (h) Correspondence prior to 17 January 2004 between the Government and the Developer concerning the detailed terms and conditions of lease modification and the Developer's claims against the Government and HA (LC Paper No. CB(1)651/04-05).

Appendix V

Policy on post-service employment of former directorate civil servants

List of relevant papers (Position as at 23 October 2008)

Meeting date	Committee	Paper/Document
17 May 2004	Public Service Panel (PS)	Administration's paper on policy governing the acceptance of post-retirement employment of civil servants http://www.legco.gov.hk/yr03-04/english/panels/ps/papers/ps0517cb1-1786-3e.pdf
17 May 2004	PS	Minutes of meeting (paragraphs 4 to 27) http://www.legco.gov.hk/yr03-04/english/panels/ps/minutes/ps040517.pdf
1 Dec 2004	Council	Hon KWONG Chi-kin raised a question on retired senior civil servants taking up jobs in the private sector. (Hansard "page 6") http://www.legco.gov.hk/yr04-05/english/counmtg/hansard/cm1201ti-translate-e.pdf
21 Dec 2004	PS	The Administration's paper dated 14 December 2004 on policy governing post-retirement employment of civil servants http://www.legco.gov.hk/yr04-05/english/panels/ps/papers/pscb1-473-2e.pdf
21 Dec 2004	PS	Minutes of meeting (Paragraphs 3 to 33) http://www.legco.gov.hk/yr04-05/english/panels/ps/minutes/ps041221.pdf

Meeting date	Committee	Paper/Document
21 Mar 2005	PS	<p>Administration's paper on post-retirement employment of Ms Elaine CHUNG, former Deputy Director of Housing/Deputy Secretary for Housing</p> <p>http://www.legco.gov.hk/yr04-05/english/panels/ps/papers/ps0321cb1-1095-1e.pdf</p>
21 Mar 2005	PS	<p>Administration's paper on review of policy on post-service employment of former directorate civil servants</p> <p>http://www.legco.gov.hk/yr04-05/english/panels/ps/papers/ps0321cb1-1112-5e.pdf</p>
21 Mar 2005	PS	<p>Minutes of meeting (Paragraphs 38 to 84)</p> <p>http://www.legco.gov.hk/yr04-05/english/panels/ps/minutes/ps050321.pdf</p>
21 Nov 2005	PS	<p>Administration's paper on arrangements governing the taking up of outside work by directorate civil servants after ceasing active government service</p> <p>http://www.legco.gov.hk/yr05-06/english/panels/ps/papers/ps1121cb1-295-3e.pdf</p>
21 Nov 2005	PS	<p>Background brief prepared by the LegCo Secretariat on the review of the policy on post-service employment of former directorate civil servants</p> <p>http://www.legco.gov.hk/yr05-06/english/panels/ps/papers/ps1121cb1-295-4e.pdf</p>

Meeting date	Committee	Paper/Document
21 Nov 2005	PS	Minutes of meeting (Paragraphs 9 to 40) http://www.legco.gov.hk/yr05-06/english/panels/ps/minutes/ps051121.pdf
—	PS	The Seventeenth Report on the Work of the Advisory Committee on Post-service Employment of Civil Servants (1 January 2005 - 31 December 2005) http://www.legco.gov.hk/yr05-06/english/panels/ps/papers/pscb1-2150-e.pdf
—	PS	The Eighteenth Report on the Work of the Advisory Committee on Post-service Employment of Civil Servants (1 January 2006 - 31 December 2006) http://www.legco.gov.hk/yr06-07/english/panels/ps/papers/pscb1-2452-1-e.pdf
—	PS	The Nineteenth Report on the Work of the Advisory Committee on Post-service Employment of Civil Servants (1 January 2007 - 31 December 2007) http://www.legco.gov.hk/yr07-08/english/panels/ps/papers/pscb1-2115-1-e.pdf
—	PS	Letter from Ms Margaret NG expressing concern about the post-retirement employment of Mr LEUNG Chin-man, the former Permanent Secretary for Housing, Planning and Lands http://www.legco.gov.hk/yr07-08/english/panels/ps/papers/pscb1-2259-1-e.pdf
—	—	Press release dated 15 August 2008 on SCS submits report to Chief Executive on LEUNG Chin-man's case

Meeting date	Committee	Paper/Document
—	—	Report on the processing of the application from Mr LEUNG Chin-man to take up post-service outside work with New World China Land Limited
—	—	Press release dated 15 August 2008 on statement of the Chief Executive's Office
—	—	Press release dated 15 August 2008 on statement by the Housing Branch of the Transport and Housing Bureau
—	—	Press release dated 16 August 2008 on remarks by CE after visiting Hong Kong Olympic Equestrian Venue (Sha Tin)