

Chapter 5 The performance of parties involved in processing Mr LEUNG Chin-man's application for post-service work with New World China Land Limited

5.1 In view of the controversy caused by the approval of Mr LEUNG Chin-man's application for post-service work with NWCL, the Select Committee considers it necessary to inquire into the process for the vetting and approval of Mr LEUNG's application within the Government and the consideration of the application by ACPE in order to evaluate the way the parties performed their roles. In assessing an application, CSB would seek the views of parties concerned. The Select Committee takes the view that this is part of the assessment process and the parties concerned are all playing an important role irrespective of whether they are making recommendations or giving their views on the application. The Select Committee summoned government officials and the Chairman and members of ACPE who had handled the application to give evidence as witnesses at its public hearings. To facilitate the conduct of proceedings at the hearings, the witnesses were also asked to provide written statements on the areas on which evidence would be taken from them.

5.2 This Chapter provides a detailed account of the processing of Mr LEUNG's application within the Government and by ACPE, and how the witnesses discharged their responsibilities. It also sets out the Select Committee's observations on the performance of the witnesses and the inadequacies of the officials responsible for the vetting and approval in general.

5.3 The focus of the public controversy caused by SCS's approval of Mr LEUNG's post-service employment with NWCL is that in vetting and approving Mr LEUNG's application, the Administration had failed to consider Mr LEUNG's involvement in the Hunghom Peninsula case.

Moreover, as Mr LEUNG had taken part in the formulation and execution of major housing or land policies and decisions while in government service, his taking up of post-service work in the real estate sector would give rise to a public perception issue. Having regard to these considerations, the Select Committee's questions to witnesses had paid particular attention to Mr LEUNG's role and involvement in the Hunghom Peninsula case and the possibility of a public perception issue arising from his taking up of the employment with NWCL.

Housing Branch of the Transport and Housing Bureau

5.4 Upon receiving an application for post-service work from a directorate civil servant, HB of THB will assess the application with reference to the guidelines set out in CSB Circular No. 10/2005. The application will be vetted by the Assistant Director (Administration) to find out if there is any impropriety. If it is observed that there are aspects which may give rise to potential conflict of interest as a result of the applicant's taking up of the prospective post-service work, the Assistant Director (Administration) will conduct file research, consult other senior directorate officers, or ask the applicant to provide further information, and alert PS(H)/D of H. After vetting the application, the Assistant Director (Administration) will submit his assessment and recommendations together with a draft completed assessment form for return to CSB (if required) to PS(H)/D of H via the Deputy Director (Corporate Services). The Assistant Director (Administration) will reply to CSB after PS(H)/D of H's endorsement of the application.

Mr Thomas CHAN, Permanent Secretary for Transport and Housing (Housing)/Director of Housing and Mr David CHOW, former Assistant Director (Administration)

5.5 Since Mr LEUNG Chin-man had served as PSH/D of H immediately before his cessation of active service in the Government, according to CSB's procedure, HB of THB was required to provide an assessment of Mr LEUNG's application stating whether his application should be supported, and to complete Assessment A of Part III of the application form. Mr David CHOW was the then Assistant Director (Administration), responsible for vetting Mr LEUNG's application and making a submission via the Deputy Director (Corporate Services), Mr LEE Tai-chi, to PS(H)/D of H, Mr Thomas CHAN. Mr CHAN was responsible for making the decision on whether Mr LEUNG's application should be supported taking into account the recommendation of his staff, and for signing Assessment A of Part III of the application form. Since Mr CHAN and Mr CHOW had an important role in handling Mr LEUNG's application, the Select Committee summoned them to attend its hearings.

Evidence obtained from Mr Thomas CHAN and Mr David CHOW

5.6 Mr Thomas CHAN took over the post of PSH/D of H from Mr LEUNG Chin-man in January 2006 when Mr LEUNG proceeded on pre-retirement leave. According to Mr CHAN, he had known Mr LEUNG as an AO grade colleague but Mr LEUNG had never been his supervisor or subordinate. They did not have any close personal relationship. Mr David CHOW was the Assistant Director (Administration) of HB, THB since January 2007 up to his retirement from the Government in December 2008. According to Mr CHOW, he did not know Mr LEUNG personally.

5.7 According to the file minute on Mr LEUNG's application submitted to Mr Thomas CHAN via Mr LEE Tat-chi on 4 June 2008, Mr David CHOW pointed out that HD did not have direct dealings with NWCL. He commented that it was unlikely that the information which Mr LEUNG had come across during his tenure as D of H would enable his prospective employer to gain any undue/unfair advantage over its competitors, and the possibility for Mr LEUNG's former position as D of H to benefit directly or specifically his prospective employer was also remote. As no real or potential conflict of interest had arisen from Mr LEUNG's former position as D of H and his prospective employment, Mr CHOW recommended no objection to Mr LEUNG's application.

5.8 As regards the factors which Mr CHOW had considered in coming to the above conclusion and whether he had conducted any file research or consulted other officers in processing Mr LEUNG's application, Mr CHOW gave evidence that when vetting Mr LEUNG's application, he had examined the information provided in the application form and consulted the guidelines set out in CSB Circular No. 10/2005. He noticed that the business of Mr LEUNG's prospective employer, NWCL, was conducted in the Mainland, and Mr LEUNG would be based in a major city in China and would not be involved in the business of NWCL's parent company. He had visited the website of NWCL to ascertain its business. Mr CHOW explained that as he was an ex-officio member of the Senior Officials' Meeting of HD, he was familiar with the business of HD. He knew that HB, HA, or HD did not have business dealings with companies in the Mainland. As PSH/D of H, Mr LEUNG was responsible for formulating local housing policies and the development and management of local public housing. Mr CHOW took the view that Mr LEUNG's previous duties should not have any connection with the business of NWCL which was mainly involved in the development of hotels and real estate in the Mainland; Mr LEUNG should not have been involved in formulating any policy that could have benefited NWCL during his tenure as PSH/D of H; and the information

which he had obtained would not enable NWCL to gain any undue/unfair advantage over its competitors. Hence, Mr CHOW concluded that Mr LEUNG's prospective work with NWCL would not constitute any real or potential conflict of interest with his previous duties of PSH/D of H. As to the parties whom he had consulted in processing Mr LEUNG's application, Mr CHOW said that he had submitted the file minute through Mr LEE Tai-chi to Mr Thomas CHAN.

5.9 Mr CHOW had made his assessment of Mr LEUNG's application based on his knowledge of the operation of HB, HA and HD, and the information provided by Mr LEUNG in the application form. Mr CHOW had answered "No" to items 33 to 39 of Assessment A of Part III of the application form for Mr Thomas CHAN's signature. Mr CHOW also stated under item 40 that "*it is unlikely that the proposed employment will give rise to any negative public perception or embarrassment to the Government.*" This answer was made on the basis that there was no connection between the business of Mr LEUNG's prospective employer with HA or HB, that Mr LEUNG would be working in the Mainland, and that he would not be involved in the business of the prospective employer's parent company, NWDCL, or any of its subsidiaries.

5.10 In respect of the Hunghom Peninsula case, Mr CHOW said that he knew that Mr LEUNG was involved in the Hunghom Peninsula case but he had not associated the case with Mr LEUNG's application. He explained that in his assessment, he had focused on Mr LEUNG's prospective employer, NWCL. As Mr LEUNG had indicated in item 22 of the application form that he would not be involved in the business of NWDCL, he had not considered past dealings between Mr LEUNG and NWDCL, and had not given any special consideration to Mr LEUNG's involvement in the Hunghom Peninsula case or NWCL's status as a subsidiary of NWDCL. Mr CHOW further advised that during his service as Assistant Director (Administration), he had not come across

any matters relating to the Hunghom Peninsula development in his work, nor had the subject matter been raised for discussion at the Senior Officials' Meeting of HD.

5.11 Mr CHOW told the Select Committee that the Control Regime operated under an honour system. He considered that Mr LEUNG had the responsibility to provide full and accurate information to the approving authority. Unless he found the information provided by Mr LEUNG unclear and improper, or he had doubts about the information, he would accept the information. As he did not have doubts on the answer of "*Introduced by a family friend*" for item 25 of the application form relating to how the offer of outside work arose, he had not asked Mr LEUNG for clarification.

5.12 In response to the Select Committee, Mr CHOW admitted that he had not made a thorough assessment of Mr LEUNG's application. He said that had Mr LEUNG stated in the application form that the appointment with NWCL was offered through his previous business contact in the Government, he would have asked Mr LEUNG for further information. He expressed regrets for having failed to take into account the Hunghom Peninsula case and to bring the issue to the attention of his supervisors. He acknowledged that there was a gap between his assessment of and the public reaction on Mr LEUNG's application. Mr CHOW admitted that he had underestimated the public's perception of the application.

5.13 On the other hand, Mr Thomas CHAN told the Select Committee that he had examined the information provided in the application form, considered the recommendation of Mr David CHOW and Mr LEE Tat-chi, and paid regard to the considerations set out in CSB Circular No. 10/2005 before formulating his views on Mr LEUNG's application.

5.14 According to Mr CHAN, when considering Mr LEUNG's application he noted that Mr LEUNG had stated in item 22 of the application form that he would not be involved in the business of NWCL's parent company or any of NWCL's subsidiaries. Hence, he had focused on the business activities of NWCL, which were conducted in the Mainland. Mr CHAN also noted that Mr LEUNG had stated in the application form that he did not have contractual or legal dealings, or official or unofficial contacts with NWCL during his previous government service. According to his understanding, neither HA nor HD had any dealings with NWCL. He did not ask his staff to check the relevant facts as he believed that there were no files relating to the connection of HA or HD with companies in the Mainland. In these circumstances, he did not think that Mr LEUNG's duties when serving as PSH/D of H would give rise to any conflict with his future business activities in the Mainland. He also did not consider that Mr LEUNG was likely to have obtained sensitive information relevant to the business of NWCL which would enable NWCL to gain any undue/unfair advantage over its competitors. Likewise, he considered that the fact that NWCL was a subsidiary company of NWDCL did not materially affect the assessment of whether Mr LEUNG's past duties in anyway conflicted with his future business activities. Hence, Mr CHAN considered that the application had no conflict with Mr LEUNG's past duties, and the prospective work would unlikely give rise to any negative public perception or embarrassment to the Government. He agreed with Mr CHOW's recommendation that Mr LEUNG's application be approved, and that it was unnecessary to impose additional work restrictions on the application.

5.15 As regards the Hunghom Peninsula case, Mr CHAN told the Select Committee that he was aware of the case and Mr LEUNG's involvement in it, as well as the wide public concern about the negotiation of land premium between the Government and the developer. But his recollection was that media reports relating to the case focused on

Mr Michael SUEN Ming-yeung, the then Secretary for Housing, Planning and Lands ("SHPL"). Mr CHAN said that his memory of the Hunghom Peninsula case was like information stored in the hard disk of a computer, which might not be always in use. The memory of that case did not come to his mind at the time when he considered Mr LEUNG's application. Since Mr LEUNG had stated that he would not be involved in the business of NWCL's parent company and he would be working in the Mainland, Mr CHAN was unable immediately to associate Mr LEUNG's prospective work with his past dealings with NWCL's parent company in Hong Kong. Mr CHAN further informed the Select Committee that since he took up the post of PSH/D of H in January 2006, he had not come across any matters relating to the Hunghom Peninsula development until May 2008 when he received documents through an email from his staff on the sales arrangement of the flats in Harbour Place¹⁷ which was mentioned only as a private property development project rather than a PSPS project.

5.16 Mr CHAN admitted that he had taken a narrow view in assessing Mr LEUNG's application and was not sufficiently sensitive about the issue of public perception. He agreed that he should have taken into account Mr LEUNG's past dealings with NWDCL in assessing the application, even though Mr LEUNG had stated that he would not be involved in the business of the company.

Observations of the Select Committee

5.17 The Select Committee has to point out that HB of THB was the only party consulted who was requested to assess Mr LEUNG Chin-man's application and make a recommendation on whether it should be approved. The views and recommendations of HB were crucial to CSB's consideration of Mr LEUNG's application as only HB had in its

¹⁷ The Hunghom Peninsula PSPS development was renamed as "Harbour Place" by the developer when the flats were put up for sale in the private property market in 2007.

possession first-hand material of Mr LEUNG's involvement in the Hunghom Peninsula case, and a complete picture of Mr LEUNG's dealings with real estate organizations when he served as PSH/D of H. The Select Committee considers that HB should have conducted file search before assessing Mr LEUNG's application. However, HB did not conduct any file search, with the result that the officials concerned had neither provided sufficient information including information on the Hunghom Peninsula case which aroused public concern, nor had they brought to the attention of CSB the public perception issue. It was astonishing that, without first conducting file search to establish the facts, HB came to the view that Mr LEUNG's duties in his proposed employment would not have any real or potential conflict of interest with his previous duties in the Government, that the prospective employment would unlikely give rise to any negative public perception or embarrassment to the Government, and recommended that CSB approve the application. The Select Committee considers that HB's failure to bring Mr LEUNG's involvement in the Hunghom Peninsula case to the attention of CSB was a serious omission.

5.18 On the performance of Mr David CHOW, the Select Committee considers that when processing Mr LEUNG's application, he should have conducted a thorough research on Mr LEUNG's past duties in HB and HD by searching through the files in HB and HD before making his recommendation. Furthermore, given the wide range of business under the purview of HD, Mr CHOW should have consulted senior officers of various divisions on the major projects and/or business which Mr LEUNG had handled when serving as PSH/D of H. The Select Committee is surprised to find that, except for looking up the business of NWCL from the company's website, Mr CHOW did not search for any other information or conduct file research, nor did he consult officers in HB and HD. Although he said that he was aware that Mr LEUNG had been involved in the Hunghom Peninsula case, he did not check the relevant files. Instead, he relied solely on the information provided by

Mr LEUNG in the application form and on his own knowledge about the operation of HA and HD, and made his recommendation on the basis of superficial information and subjective judgment and assumptions. The Select Committee notes from the further information provided by Mr CHOW that when serving as Assistant Director (Administration), he had handled another nine post-service work applications made by directorate civil servants without having conducted any file research. The Select Committee considers that Mr CHOW had not done what he should in processing post-service work applications made by directorate civil servants, but plainly acted in a perfunctory manner and failed to discharge his responsibility in this respect. The Select Committee expresses regret that Mr CHOW had not done his duty to assist Mr Thomas CHAN to assess Mr LEUNG's application.

5.19 As regards Mr Thomas CHAN, he should have known that HB was the only party consulted who was requested to assess Mr LEUNG's application and make a recommendation on whether it should be approved. As PS(H)/D of H, he should be the person most familiar with the duties and responsibilities of the post, and hence was in the best position to assess whether the prospective work would constitute any conflict of interest with Mr LEUNG's previous duties in the post and whether it would cause embarrassment to the Government, as well as recommend to CSB as to whether the application should be approved. Regrettably, Mr CHAN did not provide the crucial information and a reliable assessment of Mr LEUNG's application to CSB. The Select Committee considers that Mr CHAN had not discharged his responsibility in assessing Mr LEUNG's application.

5.20 The Select Committee considers that even though Mr LEUNG had stated in the application form that he would not be involved in the business of NWDCL, Mr CHAN, as the gatekeeper of HB, should have considered the relationship between Mr LEUNG and his prospective employer's parent company and the parent company's subsidiaries, and

should not have confined his assessment to Mr LEUNG's past dealings with NWCL. The Select Committee has to point out that under item 40 of Assessment A of Part III of the application form, in assessing whether the prospective employment would cause embarrassment to the Government or bring disgrace to the civil service, the assessing party should take into account a number of factors including the background of the employer. Moreover, given that CSB had informed HB in its memorandum dated 19 May 2008 that NWDCL was the parent company of NWCL, Mr CHAN should have taken all such considerations into account when assessing Mr LEUNG's application. Furthermore, the Select Committee is of the view that when considering Mr LEUNG's application, Mr CHAN should not merely accept Mr CHOW's views and endorse his recommendation by signing on the assessment form prepared by Mr CHOW. Mr CHAN should have noticed that the file minute submitted by Mr CHOW had not attached any information in support of Mr CHOW's recommendation of approving Mr LEUNG's application. Mr CHAN should have given his serious consideration to the application, made enquiries and discussed the matter with his staff. The Select Committee finds the way in which Mr CHAN handled Mr LEUNG's application totally unacceptable, and that there was plainly a dereliction of duty on the part of Mr CHAN.

5.21 The Select Committee has to point out in particular that Mr CHAN had served for almost five years as the Director of Information Services from 1997 to 2002. With the vast working experience of the media and sectors in the community he must have gathered while serving in the post, Mr CHAN should have been astute in grasping the public sentiment and anticipating public reaction on sensitive issues. However, even though he was aware of Mr LEUNG's involvement in the Hunghom Peninsula case, he had failed to foresee the negative public reaction to Mr LEUNG's employment with NWCL. Mr CHAN's performance is deeply to be regretted.

Planning and Lands Branch of the Development Bureau

5.22 Upon receipt of a post-service work application from a directorate civil servant from CSB, the Administration Unit of PLB will examine the application and seek clarifications from CSB on the information sought where required. CEO (Administration) will bring the application to the attention of her supervisor, PEO (Administration). If PEO (Administration) advises that the application should be handled in accordance with the relevant CSB circulars, CEO (Administration) will search for the relevant information, give an analysis/comments/recommendations on the application, and prepare a file minute for submission to PS(PL) for consideration and endorsement, via PEO (Administration) and the respective Deputy Secretary for Development (Planning and Lands) ("DS(PL)"). There are two DS(PL) in PLB, namely DS(PL)1 and DS(PL)2. DS(PL)1 is responsible for policy issues relating to the Planning Department ("PD") and the Lands Department ("LD"), and DS(PL)2 is responsible for policy issues including those relating to BD. The respective DS(PL) will give comments on an application concerning department(s) under his portfolio and then submit it to PS(PL) for consideration. The Administration Unit will respond to CSB on the application after PS(PL) has considered the recommendations.

Mrs Susan MAK, former Deputy Secretary for Development (Planning and Lands)1 and Mrs Pearl SIU, Chief Executive Officer (Administration)

5.23 In processing Mr LEUNG Chin-man's application, Mrs Susan MAK was the then DS(PL)1 who considered and endorsed the reply to CSB on 28 May 2008 in her capacity as the acting PS(PL) when the then PS(PL) Mr Raymond YOUNG Lap-moon was on sick leave from 21 to 28 May 2008. As CEO (Administration), Mrs Pearl SIU researched for

relevant information, made analysis and prepared the file minute on Mr LEUNG's application. The Select Committee therefore summoned them to attend its hearings.

Evidence obtained from Mrs Susan MAK and Mrs Pearl SIU

5.24 According to Mrs Susan MAK, Mr LEUNG Chin-man was her supervisor for about four months when she joined the AO grade in 1981. She had no personal relationship with Mr LEUNG. Mrs Pearl SIU told the Select Committee that she had no personal or official relationship with Mr LEUNG.

5.25 According to Mrs Pearl SIU's evidence, in processing Mr LEUNG Chin-man's application, she had conducted information search on the internet relating to NWCL and NWDCL with the assistance of her staff, and had also sought comments from BD on the application and requested BD to provide information on the department's dealings, e.g. contractual dealings, with NWCL and its parent company NWDCL. BD advised that it did not have any contractual dealings with NWCL or NWDCL, but there were building plans submissions for development projects (e.g. the Hunghom Peninsula project and the Tsim Sha Tsui New World redevelopment project) made under BO by the subsidiary companies of NWDCL. In the file minute prepared by Mrs Pearl SIU on Mr LEUNG's application for submission to Mrs Susan MAK, she had given a detailed account of the application including the business of NWCL and the proposed employment of Mr LEUNG as well as the above information provided by BD. Mrs SIU also mentioned the Grand Promenade case, attached extracts of the reports of the Public Accounts Committee ("PAC") and the Independent Committee of Inquiry on the Sai Wan Ho Development on Inland Lot No. 8955 ("ICI"), and the press release on the speech of the then Chief Secretary for Administration ("CS") at the LegCo motion debate on 17 May 2006 concerning PAC's conclusions and recommendations on the Grand Promenade development.

As she considered that there were no conflict of interest issues or negative public perception between Mr LEUNG's proposed work with NWCL and his former duties as D of B (the tenure of which had ceased for almost six years), she recommended informing CSB that PLB had no objection to Mr LEUNG's application and conveying to CSB the information provided by BD on contractual dealings between NWCL or NWDCL and BD, as well as building plans submissions by NWDCL's subsidiaries.

5.26 Mrs Pearl SIU told the Select Committee that as Mr LEUNG had participated in the Grand Promenade case during his service as D of B, she considered it worthwhile to draw the attention of her supervisors to the facts relating to the case. She explained to the Select Committee that she had noticed from CS's speech that PAC did not consider Mr LEUNG to have acted *ultra vires* or abused his power in the case. She had also noted ICI's view that Mr LEUNG should bear no blame in the case. Given that NWCL's business was mainly in the Mainland and that Mr LEUNG had stated that he would be based in a major city in the Mainland, she considered Mr LEUNG's proposed appointment to be a Mainland-oriented job and concluded that his application would not constitute any conflict of interest or give rise to negative public perception.

5.27 As regards the Hunghom Peninsula case, Mrs SIU said that she had not associated the case with Mr LEUNG's application. She explained that in processing the application, she had focused on whether Mr LEUNG's former duties as D of B would have any conflict of interest with his major duties and responsibilities in NWCL. Since her focus was on whether there were any contractual dealings between BD and NWCL or NWDCL, and given BD's advice that there were no such dealings, it did not cross her mind that there was any need to seek further information from BD on the building plans relating to the Hunghom Peninsula project.

5.28 CSB enquired with PLB by email on 30 May 2008 on whether PLB had any specific comments on Mr LEUNG's application. According to Mrs Pearl SIU, after consulting Ms Wilma TOONG, PEO (Administration), she replied to CSB that PLB had no specific comment on the application. She explained that it was because Mrs Susan MAK had accepted on 28 May Ms TOONG's advice as set out in the file minute:

"as SCS has asked us to comment on Mr LEUNG's application in view of the business nature of the company, we [PLB] should refrain from giving a recommendation on Mr LEUNG's proposed appointment."

Mrs SIU said that PLB's reply of *"no comment"* neither indicated that it objected nor that it had no objection to the application.

5.29 Mrs Susan MAK said that in considering Mr LEUNG's application, she noted that the major business activities of NWCL were based in the Mainland, that the major duties and responsibilities of Mr LEUNG in NWCL would be performed outside Hong Kong, that there were standard work restrictions for post-service work taken up by a directorate civil servant, and that PLB had taken into account a similar case as well as Mr LEUNG's previous post-service work applications which had been approved by CSB. She also considered the comments given by Mrs Pearl SIU, Ms Wilma TOONG and Mr Tommy YUEN, DS(PL)2, on the application. Ms TOONG was of the view that PLB should refrain from giving a recommendation on Mr LEUNG's application since CSB had only invited PLB's comment on the application in view of the business nature of NWCL. Mr YUEN also made the observation that notwithstanding the business nature of NWCL's parent company, since Mr LEUNG's job was outside Hong Kong and he would not be involved in official dealings with the

Government, Mr YUEN did not see why the Branch would have any comment at all on CSB's referral. As Assessment A of Part III of the application form was to be completed by PS(H)/D of H, and PS(PL) was not asked to give an assessment of or recommendations on Mr LEUNG's application, and SCS had only invited comments from PS(PL) on Mr LEUNG's application in relation to the business nature of NWCL, Mrs MAK considered that the words "no objection" in the reply proposed by Mrs SIU should be deleted, and only the information provided by BD should be forwarded to CSB.

5.30 As regards the exclusion of the information on the Grand Promenade case in PLB's reply to CSB, Mrs MAK said that in considering the application, she had taken note of Mrs SIU's file minute relating to the Grand Promenade case and the extracts attached thereto. She noted that both PAC and ICI did not consider that Mr LEUNG had abused his power in the case, that the case had occurred some six to seven years ago, and that the developer of the Grand Promenade did not have any direct relationship with Mr LEUNG's prospective employer. Therefore, she considered it unnecessary to include such information in the reply to CSB.

5.31 As regards the reason for not seeking LD's views on Mr LEUNG's application, Mrs MAK explained to the Select Committee at the hearing on 3 April 2009 that in considering Mr LEUNG's application, she had focused on the period during which he served as D of B. As Mr LEUNG had not served in LD before, PLB had not sought LD's views on Mr LEUNG's application. She added that after considering Mrs SIU's file minute and the comments made by Mr YUEN and Ms TOONG, it did not occur to her that there was any need to seek views or information from LD. She had not associated the information on "Hunghom Peninsula project building plans submissions" with the Hunghom Peninsula case which occurred in 2003. Since DEVB was established in 2007 and housing matters were not under the purview of

the Bureau, PLB did not have any files relating to the case and hence could not raise any particular concern in this respect. She pointed out that the disposal of the Hunghom Peninsula PSPS flats was not under the policy area of the then PLB, and she also understood that a staff member in LD was seconded to HB of the then Housing, Planning and Lands Bureau ("HPLB") to assist in the negotiation of the lease modification premium with the developer of the Hunghom Peninsula development.

5.32 The Select Committee was concerned about whether Mrs MAK had knowledge of the negotiation on the lease modification premium between the Government and the developer of the Hunghom Peninsula development when she was considering Mr LEUNG's application. Mrs MAK said at the hearing on 8 April 2009 that she had no such knowledge, nor did she know about LD's involvement in the negotiation process since she took up the post of DS(PL)1 in July 2007. It was after the public had shown concern about the approval for Mr LEUNG to take up post-service employment with NWCL that she came to know that PLB of the then HPLB was not involved in the negotiation of lease modification premium. She also clarified that the LD staff involved in the negotiation reported directly to the then HB rather than through a secondment arrangement. Mrs MAK told the Select Committee that she could not recall when and from whom she picked up the above information. She agreed that, with hindsight, she should have consulted LD on Mr LEUNG's application and asked for information on LD's dealings with NWCL and NWDCL. She also acknowledged that she had not obtained more detailed information on Mr LEUNG's application for CSB's consideration.

5.33 Mrs MAK agreed that post-service employment of directorate civil servants was a matter of public interest as it concerned the public's trust and confidence in the civil service. She also agreed that the protection of the public interest should be the prime consideration in vetting post-service work applications, but a balance should be struck

between the protection of the public interest and the individual's right to work. She pointed out that public perception of post-service work had a very wide scope and was difficult to measure. As regards public suspicion about the possibility of Mr LEUNG's appointment being a deferred reward from NWDCL, Mrs MAK said that she had not considered the aspect of "deferred reward" in considering Mr LEUNG Chin-man's application because this was not a specified factor for consideration under the existing Control Regime.

Observations of the Select Committee

5.34 The Select Committee observes that PLB had only provided CSB with the information on the contractual dealings of BD with NWCL and NWDCL and building plans submissions for development projects from the subsidiary companies of NWDCL, without further details and analysis on any possible real or potential conflict of interest involved. This was not helpful in facilitating CSB's and SCS's consideration of Mr LEUNG's application. Had PLB given further thoughts to the information provided by BD on building plans submissions for the Hunghom Peninsula project from the subsidiary companies of NWDCL, it would have obtained more details which would have revealed information concerning Mr LEUNG's involvement in the Hunghom Peninsula case to facilitate CSB's consideration. The Select Committee considers that PLB had the duty to give a clear view and detailed information to CSB. In giving an ambiguous response to CSB, PLB had failed to discharge its duty in this respect.

5.35 The Select Committee also observes that in considering Mr LEUNG's application, Mrs Susan MAK had confined her assessment to the business nature of NWCL and the contractual dealings between NWCL/NWDCL and Mr LEUNG when Mr LEUNG served as D of B. The Select Committee considers that Mrs Susan MAK, who was acting Permanent Secretary at that time, should have been alert to the six

specific considerations set out in CSB Circular No. 10/2005 and give them full consideration. However, she failed to discern that Mr LEUNG's taking up of work with NWCL would cause embarrassment to the Government and bring disgrace to the civil service. Even though Mr LEUNG had not served in LD prior to his retirement, he had taken part in the formulation and execution of major housing or land policies and decisions when in government service. Her failure to consult LD was a serious weakness in her consideration of Mr LEUNG's application. The Select Committee considers that as acting PS(PL), Mrs Susan MAK had failed to discharge her due responsibility to assist CSB to consider Mr LEUNG's application.

5.36 On the other hand, the Select Committee observes that in processing Mr LEUNG's application, Mrs Pearl SIU made a comprehensive search of the files and gathered all the relevant information, and presented a detailed analysis for her supervisors' consideration. The Select Committee considers that she had conscientiously discharged her responsibility.

Works Branch of the Development Bureau

5.37 Upon receipt of CSB's requests to provide comments and/or recommendations on the post-service work applications from directorate civil servants, the Administration Unit of WB will examine the applications and, where necessary, seek clarifications/supplementary information from the applicants, CSB and/or departments concerned. The Administration Unit will make a detailed analysis of the case, having regard to the guidelines promulgated in the CSB Circular concerned. If the prospective employer is engaged in the construction field, the Administration Unit will consult the Work Policies 2 Section of WB, which will conduct a search of the two contractor lists managed by WB, namely, the List of Approved Contractors for Public Works and the List

of Approved Suppliers of Materials and Specialist Contractors for Public Works to ascertain if the company concerned or its related companies were/have been/are contractors of the government departments to facilitate an assessment of whether there is any real or potential conflict of interest between the applicant's proposed post-service work and his former government duties. The Administration Unit will prepare a file minute, setting out information and a recommended reply to CSB, for submission to PS(W) for endorsement where the applicant is at the rank of D4 or above, or Deputy Secretary for Development (Works)¹ where the applicant is at a rank below D4. The Administration Unit will convey the recommendations and/or comments to CSB.

Mr MAK Chai-kwong, Permanent Secretary for Development (Works), and Mr WONG Kwai-kuen, Chief Executive Officer (Works) Administration

5.38 Mr WONG Kwai-kuen was acting PEO (Works) from 19 to 30 May 2008. In his acting capacity, Mr WONG was responsible for making an initial assessment and recommendation to Mr MAK Chai-kwong, PS(W), on Mr LEUNG Chin-man's application. Mr MAK endorsed the reply to CSB after considering Mr WONG's analysis and recommendation. The Select Committee therefore summoned them to attend its hearing.

Evidence obtained from Mr MAK Chai-kwong and Mr WONG Kwai-kuen

5.39 According to Mr MAK Chai-kwong, he did not have any social contacts with Mr LEUNG Chin-man. Mr WONG Kwai-kuen said that he did not have any personal relationship with Mr LEUNG.

5.40 On the procedures adopted by WB in processing Mr LEUNG's application, Mr WONG Kwai-kuen informed the Select Committee that while Mr LEUNG had not retired from positions in WB or departments

under its policy portfolio, CSB had invited WB to comment on the application as the business of Mr LEUNG's prospective employer involved real estate development, construction and management. He had sought information from the Works Policies 2 Section on whether NWCL and its related companies (including NWDCL) were involved in engineering or construction contracts with the Government in order to assess whether there was any real or potential conflict of interest between Mr LEUNG's former government duties and the proposed work with NWCL. After searching the two contractors' lists managed by WB and the relevant websites, the Works Policies 2 Section advised that as at the time of checking, neither NWCL nor NWDCL were WB's listed contractors but the latter owned about 56% of the shareholding in NWS, which in turn, through some other companies, wholly owned nine companies which were WB's listed contractors and had 13 outstanding public works contracts at that time.

5.41 Mr WONG pointed out that since Mr LEUNG had not served in WB or its departments prior to his retirement, WB had little knowledge about his previous duties in the Government. WB advised CSB that it was difficult for it to assess whether the application would constitute any real or potential conflict of interest with Mr LEUNG's previous duties in the Government. WB would focus on providing factual information on the involvement of NWCL in public works contracts. Mr WONG recommended in his file minute to PS(W) that WB should provide CSB with factual information about public works contracts involving NWCL and its group of companies and WB's general observation on the application, that is, in view of the fact that Mr LEUNG's prospective employer was engaged in the business of real estate development, construction and management, the proposed appointment by NWCL, on account of the relevance of Mr LEUNG's former responsibilities as D of B, might raise a public perception issue.

5.42 In explaining why he considered that Mr LEUNG's application might raise a public perception issue, Mr WONG said that he had noted from the information provided in the application that Mr LEUNG was involved in the processing and approval of building plans from real estate developers when serving as D of B. Since Mr LEUNG's prospective employer was engaged in real estate business, and Mr LEUNG had occupied senior positions in the Government, and that his previous duties as D of B involved the processing and approval of building plans from developers, Mr WONG considered that Mr LEUNG's taking up of an appointment with NWCL might give rise to a public perception issue even though NWCL's business was outside Hong Kong. Mr WONG added that given the close relationship between NWCL and NWDCL, the public might consider NWDCL to be Mr LEUNG's prospective employer. In his file minute to PS(W), Mr WONG referred to a previous case of a similar nature when WB was consulted by CSB in January 2008 in respect of which WB had also expressed to CSB its concern about a possible issue with public perception.

5.43 As to the reason why WB did not raise objection to Mr LEUNG's application when further consulted by CSB on 17 June 2008, Mr WONG pointed out that as Mr LEUNG had not served in WB nor its departments prior to his retirement, WB was not in a position to comment on or to object to the application. He had therefore reiterated WB's general observation that given the business nature of Mr LEUNG's prospective employer and the senior positions he held during his service in the Government, the application might give rise to a public perception issue. On whether the disclosure of the "no objection" stance of HB and PLB on Mr LEUNG's application by CSB in its further consultation with WB had put any pressure on WB, Mr WONG said that he did not consider that the information had exerted pressure on WB, as each bureau, branch, or department would formulate its own views on an application based on its respective established procedures.

5.44 Mr MAK Chai-kwong told the Select committee that in assessing Mr LEUNG's application, he took note of the information provided in Mr LEUNG's application and the analysis made by the Administration Unit on the application. He agreed with the analysis and endorsed the assessment. He agreed that as a consulted party, WB had the duty to provide all relevant views and information to assist CSB in its consideration. He said that it was WB's intention to point out the public perception issue to CSB in order to alert the latter to the matter.

5.45 As to how public perception was assessed, Mr WONG said that he had viewed the application from the perspective of an ordinary member of the public. In view of Mr LEUNG's senior positions during his government service, his involvement in the regulation of the real estate and building sectors, and the business nature of his prospective employer, he considered that the taking up of work with NWCL by Mr LEUNG might give rise to a public perception issue. Mr WONG told the Select Committee that while he was aware of the Hunghom Peninsula case as it had been widely reported by the media in 2003 and 2004, he had not associated the case with the application when assessing Mr LEUNG's application. Mr MAK Chai-kwong concurred with Mr WONG's assessment that given that Mr LEUNG was a former high ranking official who had served in senior positions in the Government and as D of B, and his previous duties were related to planning and land policies, his taking up post-service work in the real estate sector might lead to a public perception issue. Mr MAK said that he had not associated the Hunghom Peninsula case with the application when assessing Mr LEUNG's application.

5.46 As to whether the four additional work restrictions imposed by CSB on Mr LEUNG's appointment with NWCL could address the public perception issue, Mr WONG Kwai-kuen considered that they could not mitigate the concern effectively although they might address the issue of conflict of interest. Mr MAK Chai-kwong said that he agreed with the

view that the taking up of post-service employment in the real estate sector by a senior official who had previously worked in HD or had handled land and planning work would give rise to negative public perception. Mr MAK also told the Select Committee that conflict of interest and public perception were two separate issues in the consideration of post-service work applications.

Observations of the Select Committee

5.47 The Select Committee considers that unlike other branches and bureaux, WB, in assessing Mr LEUNG's application, had adopted a different approach by considering whether the application would give rise to public suspicion about conflict of interest or a public perception issue. The officials of WB had also considered the relationship between NWCL and NWDCL, the nature of business of Mr LEUNG's prospective employer, and Mr LEUNG's previous duties and senior positions during his government service. WB had conducted a search on the relevant files and collected information on the dealings between the works departments and NWCL, NWDCL and its subsidiaries. The Select Committee considers that WB was the only party among those consulted by CSB which had adopted a responsible and practical approach in vetting and assessing Mr LEUNG's application.

5.48 Despite the fact that Mr LEUNG had not served in WB or its departments prior to his retirement, and WB had no knowledge of the works or building projects he had been involved in when serving as D of B, Mr MAK Chai-kwong and Mr WONG Kwai-kuen had given regard to Mr LEUNG's senior positions and his heavy involvement in policy matters concerning the real estate sector during his previous government service, and to the relationship between a parent company and its subsidiaries, and were thus able to bring the public perception concern repeatedly to CSB's attention. The Select Committee considers that Mr MAK and Mr WONG had discharged their responsibilities in

vetting and assessing Mr LEUNG's application. The Select Committee commends their performance. Regrettably, CSB had not fully considered and properly dealt with the public perception alert raised by WB. CSB had not informed HB and PLB about WB's concern, but had instead asked WB to clarify whether it had any objection to Mr LEUNG's application and disclosed to WB that the other two branches had taken a stance of "no objection", and had eventually approved Mr LEUNG's application, resulting in a serious error.

Advisory Committee on Post-service Employment of Civil Servants

5.49 ACPE is the only external assessment body under the Control Regime responsible for advising SCS on post-service work applications from directorate civil servants. The chairman and members of ACPE perform a public service on a voluntary and part-time basis. After collating the views from the relevant parties within the Government on a post-service work application by a directorate civil servant, CSB will prepare a draft paper on the application which is forwarded by the secretary of ACPE to the chairman for consideration and advice. If there is anything unclear in the paper, the chairman will seek clarifications from CSB. The chairman will also decide whether the application should be dealt with by circulation or in a meeting with members convened for the purpose.

5.50 If the chairman of ACPE considers that the application can be dealt with by circulation, he will advise the secretary of his views on the application and, where applicable, any declaration of interest that he wishes to make. The secretary of ACPE will finalize the paper by adding a paragraph headed "Views of the Chairman" and, where applicable, a description on the interest he declared. The secretary will then circulate the paper to members with a copy to the chairman. Members will give their views on the application separately and, make

any declaration of interest that they wish by completing a reply slip. A copy of the reply slip is in **Appendix 11**.

5.51 If the chairman of ACPE considers it necessary to convene a meeting to deal with the application, the secretary of ACPE will make arrangements for the meeting and circulate before the meeting a paper which will not contain "Views of the Chairman". Members will discuss and express their views on the application during the meeting. The secretary of ACPE will circulate the notes of meeting for confirmation by the chairman and members after the meeting.

The Chairman and members of the Advisory Committee who were responsible for considering Mr LEUNG Chin-man's application

5.52 Mr PANG Kin-kee, Chairman of ACPE¹⁸, and four members of the Committee, namely Dr Elizabeth SHING Shiu-ching¹⁹, Mr James Edward THOMPSON²⁰, Ms Marina WONG Yu-pok²¹ and Mr Simon IP Sik-on²² gave views on Mr LEUNG Chin-man's application. Mrs Carrie WONG, CEO (Pensions) of CSB, was the secretary of ACPE responsible for preparing the draft paper on Mr LEUNG's application, consulting the Chairman's views and circulating the paper to the members. The Select Committee therefore summoned the above six persons to appear before the Committee at its hearing.

Evidence obtained from the Chairman and members of the Advisory Committee

5.53 Mr PANG told the Select Committee that he and Mr LEUNG Chin-man were in the same class during the years 1964 to 1966 when

¹⁸ Mr PANG Kin-kee was Chairman of ACPE from July 2003 to July 2009.

¹⁹ Dr Elizabeth SHING was a member of ACPE from October 2002 to October 2008.

²⁰ Mr James Edward THOMPSON was a member of ACPE from July 2003 to July 2009.

²¹ Ms Marina WONG has been a member of ACPE since July 2007.

²² Mr Simon IP has been a member of ACPE since June 2005.

they attended secondary school. In the 42 years since he left school, he had never had any dealing with Mr LEUNG in a personal capacity although they had met on several occasions at alumni functions. As regards the four members of ACPE, all of them said that they did not have any personal relationship with Mr LEUNG. Mrs Carrie WONG also told the Select Committee that she did not have any personal relationship with Mr LEUNG.

5.54 Mrs Carrie WONG gave evidence that she had prepared the draft paper on Mr LEUNG's application and submitted it to Mr PANG on 30 June 2008. The paper contained the background information of Mr LEUNG's last two postings in government service, his previous post-service work applications, information on his prospective work, and the assessment of the consulted parties. On 2 July 2008, Mr PANG called her and advised the application be dealt with by circulation of papers to members of ACPE. He said that he agreed to CSB's recommendation and had no objection to the approval of Mr LEUNG's application, and that the appointment concerned should be subject to the standard work restrictions and the four additional work restrictions. Mr PANG also declared that Mr LEUNG was his secondary schoolmate and asked her to disclose this to members of ACPE. Mrs WONG finalized the paper by adding a paragraph on "Views of the Chairman" and the Chairman's declaration of his relationship with Mr LEUNG. On the same day, she circulated the paper for consideration and advice of members of ACPE with a copy to the Chairman. None of the four members of ACPE made any declaration of interest in relation to Mr LEUNG's application. All of them recommended approval for Mr LEUNG to take up the appointment with NWCL without further sanitization and subject to the standard work restrictions and the four additional work restrictions.

5.55 The Note on Declaration of Interest issued by CSB to ACPE states that:

"If the chairman declares an interest in a matter under consideration at meetings, the Advisory Committee shall elect a member to take over the meeting in respect of the discussion of the matter in question."

As regards whether a member should be elected to take over the Chairman in handling Mr LEUNG's application after Mr PANG had made a declaration on his relationship with Mr LEUNG, Mr PANG said that it was a matter for other members to decide. Mr PANG told the Select Committee that since his relationship with Mr LEUNG was not close, he was of the view that he could continue consideration of the application. He added that he would have refrained from considering Mr LEUNG's application if pecuniary interests were involved in his relationship with Mr LEUNG, or if Mr LEUNG was his close relative, or if they had close personal or business relationship.

5.56 Mrs Carrie WONG told the Select Committee that, in respect of the declaration made by Mr PANG, she had not consulted ACPE members on the need to elect a member to take over the Chair in handling Mr LEUNG's application. Mrs WONG said that she had included Mr PANG's declaration in the paper circulated to members of ACPE. She added that if members considered it inappropriate for Mr PANG to handle Mr LEUNG's application, they would have informed her. If ACPE members considered it necessary to convene a meeting to discuss the application, they would also have made such a request.

5.57 Mr PANG said that he had taken into account the following factors in considering Mr LEUNG's application: the prevailing policy in handling post-service work applications by retired directorate officers of Mr LEUNG's grade, the information regarding Mr LEUNG's last two postings in government service and the major duties involved, the dates of Mr LEUNG's cessation of active service and retirement, Mr LEUNG's

previous post-service work applications processed by ACPE, the particulars of Mr LEUNG's proposed employment with NWCL including its core business and Mr LEUNG's major duties and responsibilities in the appointment, and the views and recommendations of the various parties including PS(H), PS(PL), PS(W), the AO Grade Management and CSB.

5.58 As regards the reasons for his decision to deal with Mr LEUNG's application by circulation of papers instead of in a meeting, Mr PANG said that since he considered that there was sufficient information in the paper, the issues had been adequately addressed by the various government departments consulted, and there was no major divergence in views, he did not see the need to convene a meeting to discuss the application. He added that if he observed any serious disagreement in the views on an application or any issues requiring clarification, he would convene a meeting to discuss the matter.

5.59 In respect of the comments made by WB and PLB on Mr LEUNG's application, Mr PANG said that he noted that while WB had raised the public perception concern, WB had not elaborated on its observations, nor had it explicitly raised an objection to the proposed appointment; WB had only pointed out that both NWDCL and NWCL were not listed contractors of WB. As for PLB's response, Mr PANG said that he noted that BD had no dealings with NWCL although there were building plans submissions from subsidiaries of NWDCL. Mr PANG believed that PS(W) and PS(PL) had formed their views on the application with full understanding of the criteria contained in CSB Circular No. 10/2005, and that the issues raised by them should have been resolved. As such, Mr PANG considered that there was sufficient information and it was not necessary to seek clarifications on the issues raised by CSB, WB and PLB.

5.60 As regards how he had considered the public perception issue raised by WB, Mr PANG told the Select Committee that it was difficult to

measure public perception on post-service work applications. Since ACPE could not possibly conduct an opinion survey to gauge public views on an application, he had adopted the legal concept of "the reasonable man" in assessing Mr LEUNG's application. In his view, a reasonable man was an ordinary person who would view and consider matters in a rational and neutral manner. He added that if an application, viewed from the perspective of a reasonable man, would give rise to concerns about public perception, he would consider recommending work restrictions on the application to mitigate the concern. In respect of Mr LEUNG's application, he considered that the standard work restrictions together with the four additional work restrictions could adequately address the public perception concern. As to whether a question of deferred reward would arise when the application was assessed from the perspective of a reasonable man, Mr PANG said that in considering Mr LEUNG's application, he had not thought of the factor of deferred reward.

5.61 On whether Mr LEUNG's taking up of the appointment with NWCL would constitute problems of conflict of interest, Mr PANG told the Select Committee that having considered the views of various consulted parties as contained in CSB's paper, he did not consider there to be any conflict of interest in Mr LEUNG's appointment with NWCL. He noted that WB had raised a concern about public perception, but it did not give any views on conflict of interest. He took the view that WB did not consider there to be a real conflict of interest issue. He further noted that CSB had considered that the proposed appointment would unlikely constitute problems of conflict of interest, and that the AO Grade Management also considered that there did not appear to be any apparent conflict between the appointment and Mr LEUNG's former duties. He believed that, as recommended by CSB, any conflict of interest which might arise had been adequately addressed by imposing the standard restrictions and the four additional work restrictions.

5.62 The four members of ACPE also gave evidence on whether they considered Mr LEUNG's appointment with NWCL would constitute conflict of interest and how they had considered the public perception issue raised by WB.

5.63 Dr Elizabeth SHING said that she agreed with CSB's view and she considered that the appointment would unlikely constitute problems of conflict of interest, the imposition of the four additional work restrictions would address the public perception issue, and approval might be given to Mr LEUNG's application. In arriving at her conclusion, Dr SHING had taken note that although NWDCL was the parent company of NWCL, Mr LEUNG's proposed appointment with NWCL would only involve the company's business in the Mainland. She also noticed that Mr LEUNG had left the posts of D of B and PSH/D of H for six years and over two years respectively, and that Mr LEUNG had no previous dealings or business connection with NWCL.

5.64 Mr James THOMPSON said that as Mr LEUNG would not be employed by a company operating in Hong Kong and would not be physically present in Hong Kong in the performance of his duties in NWCL, he considered that the approval of Mr LEUNG's application would not constitute or give rise to any conflict of interest or negative public perception. He noted that WB had stated that approval of Mr LEUNG's application "*may have a public perception issue*". He considered that the word "*may*" only indicated a possibility and was not definitive. He had weighed the views of WB against the more definitive statements of other bureaux, and concluded that the approval of Mr LEUNG's application was justified in light of the imposition of the four additional work restrictions.

5.65 Ms Marina WONG told the Select Committee that she had taken into consideration the assessment criteria stated in CSB Circular No. 10/2005 and the factors relating to conflict of interest and possible

negative public perception when considering Mr LEUNG's application. Since Mr LEUNG had left the post of D of B for six years and the control period under the new arrangements applicable to Mr LEUNG was only three years, she did not take note of WB's comment regarding the public perception issue. She had also considered the comments of PLB and was of the view that as NWCL did not have business operations in Hong Kong, it would not be able to benefit from Mr LEUNG's experience, knowledge and connections gained previously during his service with the Government. She took the view that the appointment should not give rise to problems of conflict of interest, and hence recommended approval of Mr LEUNG's application subject to imposition of the four additional work restrictions.

5.66 Mr Simon IP said that after considering the information and views set out in CSB's paper, he concluded that there would be no actual conflict of interest between Mr LEUNG's former duties in the Government and his duties for the prospective employer. He considered that the imposition of the standard work restrictions and the four additional work restrictions could remove any potential conflict of interest that might arise, and address the public perception issue raised by WB. As Mr LEUNG's work would be based entirely in the Mainland while his previous duties in the post of D of B and PSH/D of H were exclusively Hong Kong based, Mr IP considered that the work restrictions would effectively insulate Mr LEUNG from anything connected with Hong Kong or with any other company in the New World group of companies. He had hence supported the application.

5.67 On whether ACPE should have conducted its assessment of applications in a critical manner and should not have relied solely on CSB's information and recommendations, Mr PANG considered that he should not adopt a critical approach in considering applications but should assess them on the facts and information provided by CSB. He said that ACPE had no resources to carry out independent research or

investigation on the applications and had to rely on CSB's support for its work. Under the existing set-up of ACPE, he considered that he had done his duty in the consideration of Mr LEUNG's application.

5.68 Members of ACPE shared the view that they had to rely on CSB to provide them with the information on which to assess an application. Ms Marina WONG and Dr Elizabeth SHING said that CSB could provide more information including newspaper clippings on issues which attracted wide public concern and in which the applicant was involved during his previous government service. This might alert them to possible concerns of public perception, and would assist them in considering the application.

5.69 As regards whether consideration had been given to the Hunghom Peninsula case when handling Mr LEUNG's application, Mr PANG told the Select Committee that he was not aware of Mr LEUNG's role in the Hunghom Peninsula case when he considered Mr LEUNG's application. He understood from the media that Mr Michael SUEN was involved in the disposal of the Hunghom Peninsula development. Mr Simon IP said that the Hunghom Peninsula case was not mentioned in CSB's paper. His only recollection of the case was that there was objection to the demolition of the development. He did not connect the case to Mr LEUNG's application when he considered the application. Mr James THOMPSON said that he had no knowledge of the Hunghom Peninsula case. He was of the view that if Mr LEUNG would be working in the Mainland, it would not give rise to any conflict of interest with his previous duties in the Government. Mrs Carrie WONG said that she had not included such information in the paper to ACPE as Mr LEUNG's involvement in the Hunghom Peninsula case had not been raised by any of the parties consulted within the Government, and she had also noted that Mr LEUNG would not be involved in the business of NWCL's parent company or any of its subsidiaries.

5.70 According to Mr PANG's evidence, of the 395 post-service work applications considered by ACPE during the period from July 2003 to April 2009, five were dealt with at meetings; the rest were dealt with by circulation of papers. Four of these five cases were considered at meetings after Mr LEUNG's case. ACPE had offered views on some of the 395 cases²³. Mr PANG told the Select Committee that as the Chairman of ACPE, he had made decisions on whether or not the applications should be dealt with by circulation of papers or discussion at meetings, and he was responsible for his decisions in this respect. Mr Simon IP said that if CSB had provided adequate information on an application, it would not be necessary to conduct a meeting to discuss the application. In his view, one could not come to the conclusion that ACPE did not discharge its duties properly on the mere fact that meetings were not convened to discuss the applications.

5.71 As to how ACPE perceived its role and functions, Mr PANG said that ACPE was an advisory organization responsible for advising SCS on post-service work applications from directorate civil servants. In considering applications, ACPE should have regard to the policy objective of the Control Regime of protecting the public interest and safeguarding former directorate civil servants' right to work. Mr Simon IP concurred that ACPE should assume an advisory role and not act as the gatekeeper under the Control Regime. He also stressed the need for striking a balance between the above two aims under the policy objective of the Control Regime. Mr James THOMPSON told the Select Committee that, like other advisory committees in Hong Kong, ACPE functioned as another set of "*experienced eyes*" and its members would

²³ ACPE considered 395 post-service work applications during the period from July 2003 to April 2009. According to the Administration, ACPE's majority views differed from the preliminary recommendations of the Administration in respect of 13 applications. Of these, ACPE recommended the imposition of a longer sanitization period for eight applications, and the imposition of additional/stricter work restrictions for the remaining five. The vetting and approving authority had accepted ACPE's views on these cases.

try their best to give their views on applications on the basis of information provided by the Government. He understood that the Government was not bound to accept their views.

Observations of the Select Committee

5.72 The Select Committee notes that the terms of reference of ACPE include considering and advising SCS on post-service work applications from directorate civil servants. The Select Committee considers that ACPE has an important role as it is the only external assessment body under the Control Regime. The Select Committee appreciates that the Chairman and members of ACPE perform a public service on a voluntary and part-time basis. The Select Committee also understands the limits within which they operate, including not having their own secretariat and the limited resources available. However, from the evidence, the Select Committee observes that there are inadequacies in the operation of ACPE, as explained below.

5.73 The Select Committee observes that during the period from July 2003 to April 2009, only five out of 395 applications were dealt with by ACPE by way of discussion at meetings, while 390 cases were dealt with by circulation of papers. Of the five cases, only one was discussed at meetings held before the public controversy arising from the approval of Mr LEUNG's application. Although there may not be any direct or necessary relationship between the effectiveness of ACPE's work and the number of meetings held, the Select Committee would stress that meetings are an effective means for ACPE members to discuss and exchange views on applications. The Select Committee also considers that apart from the Chairman, ACPE members should also be requested to give a view on whether a meeting should be convened to discuss applications.

5.74 Mr PANG said that it was not possible for ACPE to conduct an opinion survey to gauge public views on a post-service work application, and that he had considered Mr LEUNG's application from the perspective of a reasonable man. He also considered that imposing the four additional work restrictions on Mr LEUNG's application would be adequate to address any public perception concern. Other members of ACPE also considered that the imposition of the additional work restrictions could address the public perception issue raised by WB. However, as a matter of fact, there was grave negative public reaction immediately after Mr LEUNG's case had come to light. In the view of the Select Committee, this shows that ACPE did not grasp the public perception issue.

5.75 The Select Committee notes that, in respect of declaration of interests by the Chairman of ACPE, the relevant guideline on declaration of interests states that:

"If the chairman declares an interest in a matter under consideration at meetings, the Advisory Committee shall elect a member to take over the meeting in respect of the discussion of the matter in question."

There is, however, no guideline in cases where post-service work applications from directorate civil servants are considered by circulation of papers. The Select Committee considers that there are obvious loopholes in the guideline in this respect.

5.76 In sum, the Select Committee observes that most of the previous post-service work applications from directorate civil servants considered by ACPE had been dealt with by circulation of papers, and seldom by way of discussion at meetings. There was a lack of interactive and in-depth discussions and exchange of views among members in considering applications. In considering Mr LEUNG's application,

ACPE had relied solely on the information provided by CSB and had not attached sufficient importance to the public perception concern. The Select Committee is of the view that the above reflects that ACPE did not attach sufficient importance to its role and was too content to play a passive role in the assessment process. The Select Committee considers that ACPE should perform its role proactively, consider post-service work applications from the public's perspective and give independent and impartial advice to SCS; otherwise, ACPE would not be able to play an effective role. The Select Committee's recommendations on improvements to the operation of ACPE are set out in Chapter 9.

Civil Service Bureau

5.77 After receiving an application for post-service work from a directorate civil servant, CSB will consult the relevant Permanent Secretary, Head of Department or Head of Grade to seek their comments and assessment. After obtaining their comments and assessment, CEO (Pensions) of CSB will prepare a paper and submit to DS(CS)1, via Administrative Assistant to SCS²⁴, for clearance²⁵ and then circulate it for the consideration of ACPE and consultation with ACPE members. After receiving the advice of ACPE, Administrative Assistant to SCS will make the final recommendation and prepare the case file for submission, via DS(CS)1 and PSCS, for SCS's decision.

²⁴ Prior to 7 July 2008, Principal Assistant Secretary (Appointments) was responsible for the processing of such post-service work applications.

²⁵ With effect from October 2008, papers prepared by CEO (Pensions) of CSB for the consideration of ACPE are subject to clearance by DS(CS)1.

Miss Denise YUE, Secretary for the Civil Service, Mr Andrew WONG, Permanent Secretary for the Civil Service, and Mrs Sarah KWOK, former Deputy Secretary for the Civil Service 1

5.78 In respect of the vetting and approval of Mr LEUNG Chin-man's application, Mrs Sarah KWOK, the then DS(CS)1, was responsible for ensuring that Mr LEUNG's application was processed in accordance with established procedures and all relevant parties had been consulted; providing an assessment of Mr LEUNG's application as the Head of the AO grade under delegated authority by Mr Andrew WONG, PSCS; clearing CSB's proposed preliminary views and recommendations on Mr LEUNG's application for consultation with ACPE; and providing advice to Miss Denise YUE, SCS, on the application when the final submission was routed through her to Mr WONG and Miss YUE. Mr Andrew WONG was responsible for providing advice on the application after obtaining the comments, assessment, advice and recommendations from all concerned parties, for SCS to make the final decision. As the approving authority for post-service work applications, Miss Denise YUE decided to approve Mr LEUNG's application with the imposition of the standard and other additional work restrictions. Having regard to their important role in assessing and approving Mr LEUNG's application, the Select Committee summoned Miss YUE, Mr WONG and Mrs KWOK to attend its hearings.

Evidence obtained from Mrs Sarah KWOK

5.79 According to Mrs Sarah KWOK, she was DS(CS)1 from November 2007 to October 2008, and she did not have any personal relationship with Mr LEUNG Chin-man.

5.80 As regards the factors considered in vetting Mr LEUNG's application, Mrs Sarah KWOK said that she had taken into account the policy objective and the specific considerations in vetting post-service

work applications as set out in CSB Circular No. 10/2005, the information provided in the application form and collated by her staff including the business of NWCL being in the Mainland, Mr LEUNG's duties being to oversee the company's business in the Mainland only, his being based in a major city in the Mainland and not being involved in the business of NWCL's subsidiaries or its parent company, NWDCL. Having regard to the above information, she considered that there was no apparent conflict of interest between Mr LEUNG's proposed appointment with NWCL and his former duties in the Government.

5.81 As to whether Mrs KWOK had considered public suspicion that Mr LEUNG's appointment by NWCL might involve a deferred reward from NWDCL, she pointed out that deferred reward was not a specific consideration listed in the approving criteria for post-service work applications under the existing Control Regime. She said that the vetting parties had the responsibility to assess public perception issues on an application and, in her view, a public perception problem might arise if there was real or potential conflict of interest between the prospective work and the former government duties of the applicant. In the absence of a scientific formula for measuring public perception, she had made her assessment of Mr LEUNG's application based on the facts. Since Mr LEUNG's prospective work with NWCL involved property business in the Mainland only, she considered that there was no real conflict of interest between Mr LEUNG's taking up of the work and his previous duties in the Government. In order to guard against any potential conflict of interest which might give rise to public perception concern, Mrs KWOK considered it necessary to impose additional work restrictions on Mr LEUNG's application which included confining his appointment to NWCL only, and restricting him from being involved in any business of NWCL that was connected with Hong Kong. The additional work restrictions would ensure insulation of Mr LEUNG's previous service in the Government and his proposed work in NWCL.

5.82 Mrs KWOK informed the Select Committee that she had not considered the Hunghom Peninsula case in assessing Mr LEUNG's application. She noted from the information provided by PLB that the subsidiary companies of NWDCL had submitted building plans submissions of the Hunghom Peninsula project. However, she said that the public concern over the Hunghom Peninsula case was about the negotiation of lease modification premium with the developer. Her recollection was that Mr Michael SUEN, the then SHPL, had spoken on the matter on behalf of the Government, and she had not associated Mr LEUNG with the case, nor did it come to her mind that Mr LEUNG was the then PSH/D of H. Although she noted that NWDCL was the parent company of NWCL, her assessment of the application had not covered Mr LEUNG's previous dealings with NWDCL because Mr LEUNG had stated in the application form that he would not be involved in the business of the parent company of NWCL. This was in accordance with the practice under the existing Control Regime. Moreover, none of the consulted policy bureaux had made reference to the Hunghom Peninsula case in their replies. In response to the Select Committee, Mrs KWOK said that had the relevant branches mentioned Mr LEUNG's involvement in the Hunghom Peninsula case, she would have raised the matter with her supervisor.

5.83 Mrs KWOK completed Assessment B of Part III of Mr LEUNG's application form. In assessing the application from the perspective of the AO Grade Management, she took into account Mr LEUNG's last three years (instead of the alternative period of the last six years) of active government service. As to the reason why Mrs KWOK had based her assessment of the shorter period of three years, she told the Select Committee that in considering post-service work applications from directorate civil servants, the assessing parties would generally focus on the duties of the applicants in their last three years of active government service. It was already over six years since Mr LEUNG served as D of B at the time he made the application, and his

service as D of B had already been assessed by PLB. Therefore, she had chosen three years as the basis for the AO Grade Management's assessment. When formulating the views of the AO Grade Management, she had made reference to the information provided by Mr LEUNG in the application form, as well as the information, assessment and views given by the relevant policy bureaux. She had also considered the senior positions that Mr LEUNG had held in the Government and the duties of those positions.

5.84 Mrs KWOK had read the memorandum dated 26 May 2008 from WB to CSB, in which WB advised that as Mr LEUNG's prospective employer was engaged in the business of real estate development, construction and management, Mr LEUNG's application for post-service work, on account of the relevance of his former responsibilities as D of B, might give rise to a public perception issue even though his prospective employer's business was outside Hong Kong. Mrs KWOK instructed Mrs Carrie WONG to consult WB again on whether it had objection to the application. CSB asked for WB's view again on 17 June 2008 and at the same time disclosed the "no objection" stance of HB and PLB to WB. Mrs KWOK explained that as WB's reply had not provided an overall recommendation on the application, it was necessary to clarify its position and ascertain whether the public perception concern raised could be addressed by imposing restrictions and conditions on the application. The disclosure of the stance of HB and PLB was merely to provide additional information for WB's reference. In any event, HB had copied its "no objection" reply dated 5 June 2008 to PLB and WB. Mrs KWOK stressed that CSB had no intention to exert pressure on WB for its support for Mr LEUNG's application. Consulted parties were expected to give comments on the application from their respective purview, and CSB would take note of the different views expressed and convey them to ACPE and SCS for consideration. As to why CSB had not conveyed WB's dissenting views to PLB and HB, Mrs KWOK pointed out that as PS(H)/D of H and PS(PL) had provided clear views on Mr LEUNG's

application, there was no need to seek their views again or to forward WB's views for their reference.

5.85 As advised by Mrs KWOK, she had not raised doubts over the information provided by Mr LEUNG in item 25 of his application form (regarding how the offer of outside work arose), that is "*Introduced by a family friend*". According to Mrs KWOK, item 25 only provided background information on the application. She added that CSB would follow up with the applicant for verification of the information provided in the application form in case of doubt or if an item was left blank. She said that the Control Regime operated under an honour system, and an applicant was required to make a declaration in the application form that he had provided full and accurate information; an applicant would be subject to sanctions if he provided false information or withheld material information.

Evidence obtained from Mr Andrew WONG

5.86 Mr Andrew WONG informed the Select Committee that he came to know Mr LEUNG through their work in the Government over the years and his previous contacts with Mr LEUNG were mainly work-related. He said that he received the submission on Mr LEUNG's application prepared by Mrs Sharon YIP, Principal Assistant Secretary (Appointments) from Mrs Sarah KWOK's office on 7 or 8 July 2008. In vetting the application, he took into account the policy objective of the Control Regime and the specific assessment criteria in CSB Circular No. 10/2005. He went through the views of different parties and considered their analysis. He also considered and agreed with the recommendations made by officers in CSB. Mr WONG endorsed the submission by putting down the word "*Supported*" and passed it to Miss Denise YUE on 8 July 2008. Mr WONG said that he had not discussed Mr LEUNG's application with officers in CSB. He believed that if his staff came across any difficulties in vetting the application, they

would have come to him for advice. If Mrs Sarah KWOK had encountered difficulties, she would have consulted him as well.

5.87 Mr WONG said that since PSCS is the Head of the AO grade, he is responsible also for giving comments on applications from directorate AOs by completing Assessment B of Part III of the application form. In practice, Mr WONG had delegated this latter aspect of work to Mrs Sarah KWOK under the division of work between them as both were responsible for the management of the more senior members of the AO grade.

5.88 In considering Mr LEUNG's application, Mr WONG said that he noted the following points: the major business of NWCL was in the Mainland, Mr LEUNG's proposed appointment was to oversee NWCL's business in the Mainland only; Mr LEUNG would be physically based in a major city in the Mainland, and would not be involved in the business of NWCL's parent company or subsidiaries. Hence, he considered that Mr LEUNG's application would unlikely constitute any conflict of interest. Mr WONG had also considered Mrs Sarah KWOK's assessment of the application as the Head of the AO grade, which was that there did not appear to be any apparent conflict of interest between Mr LEUNG's application and his former government duties. Given Mr LEUNG's former senior positions in the Government, Mr WONG agreed with the recommendation made by officers in CSB for imposing the four additional work restrictions on the application to mitigate the negative perception arising from the application.

5.89 Mr WONG told the Select Committee that although the issue of deferred reward was not directly dealt with under the existing Control Regime, according to the assessment criteria set out in CSB Circular No. 10/2005, officials responsible for assessment would consider whether an applicant's previous duties, the decisions he had made and policies he had participated in formulation could benefit his prospective employer.

5.90 As regards the Hunghom Peninsula case, Mr WONG said that the matter had not been considered by CSB or the relevant bureaux when processing Mr LEUNG's application, and thus it was not mentioned in the submission to SCS. Mr WONG told the Select Committee that he had indeed not associated the Hunghom Peninsula case with the application when considering Mr LEUNG's application. He knew that the then HPLB was responsible for handling the Hunghom Peninsula case. He remembered Mr Michael SUEN handling the case as SHPL, but it did not occur to him that Mr LEUNG Chin-man was probably involved. In response to further questions of the Select Committee, Mr WONG agreed that when considering Mr LEUNG's application, it should have come to his mind that Mr LEUNG, as the then Permanent Secretary for Housing, Planning and Lands (Housing), might have been involved in the Hunghom Peninsula case. In response to the Select Committee's request for further information after the hearing, Mr WONG clarified that at the time when he considered Mr LEUNG's application, he did not know about Mr LEUNG's involvement in the Hunghom Peninsula case. He only came to know of Mr LEUNG's involvement after it was reported by the media in early August 2008. According to the information provided by Mr WONG, when he served as Director of Administration from August 2000 to March 2004, he attended the Policy Committee ("PC") meeting held on 24 October 2002, which Mr LEUNG also attended in his capacity as the then PSH/D of H. At the meeting, the comprehensive market-oriented housing policy was discussed. In the paper submitted for discussion at the meeting, there was a reference to the fact that the two PSPS projects of Hunghom Peninsula and Kingsford Terrace were awaiting disposal, but these matters were not discussed at the meeting. Mr WONG also attended the Senior Officials' Meeting held on 13 February 2004 at which it was mentioned that the sale of the Hunghom Peninsula flats had attracted lots of commentaries and Mr Michael SUEN gave a brief report on the sale of these flats. Mr LEUNG was not present at that meeting.

5.91 Mr WONG admitted to the Select Committee at the hearing that he was not sufficiently meticulous and thorough in processing Mr LEUNG's application. He informed the Select Committee that since Mr LEUNG's case, his colleagues had been more careful when processing applications. He also said that had any bureaux consulted mentioned the Hunghom Peninsula case in their response to CSB, CSB would have considered Mr LEUNG's involvement in the case and whether his taking up of the post-service work with NWCL would involve any conflict of interest. Mr WONG told the Select Committee that he would take personal responsibility for having failed to assess Mr LEUNG's application from every angle in order to assist Miss YUE to make the decision.

Evidence obtained from Miss Denise YUE

5.92 Miss Denise YUE said that she and Mr LEUNG Chin-man were members of the AO grade in the civil service. She was Mr LEUNG's supervisor during the period from November 1995 to July 1997 when she was the Secretary for Trade and Industry and Mr LEUNG was Director of the Toronto Economic and Trade Office. Besides, both Mr LEUNG and Miss YUE had served on the AO Recruitment Board in 1983.

5.93 On 8 July 2008, Miss YUE received a written submission prepared by Mrs Sharon YIP on Mr LEUNG's application to take up appointment with NWCL as Executive Director. The submission, issued via Mrs Sarah KWOK and Mr Andrew WONG, set out the information on Mr LEUNG, his approved post-service work, details of the prospective employment, the assessment of the relevant parties within the Government, the advice tendered by ACPE, and CSB's final recommendation for approval of the application subject to the standard work restrictions and the imposition of four additional work restrictions.

The information and views provided by the relevant parties were as follows:

- (a) HB of THB recommended approval of the application without sanitization subject to the standard work restrictions.
- (b) WB of DEVB advised that NWCL and NWDCL were not the listed contractors of WB but NWS, a subsidiary of NWDCL, through other companies, owned nine companies which were listed contractors and had 13 outstanding public works contracts. WB was of the view that as Mr LEUNG's prospective employer was engaged in the business of real estate development, construction and management, Mr LEUNG's proposed appointment, on account of the relevance of his former responsibilities as D of B from October 1999 to June 2002, might give rise to a public perception issue although his prospective employer's business was conducted outside Hong Kong.
- (c) PLB of DEVB pointed out that BD had no contractual dealings with NWCL or NWDCL but there were building plans submissions for development projects, such as the Hunghom Peninsula and the Tsim Sha Tsui New World redevelopment which were made under BO by the subsidiary companies of NWDCL.
- (d) Approval had been given in February 2008 to a similar application from another D8 directorate civil servant to take up a full-time paid appointment with NWCL subject to the standard work restrictions and a set of additional work restrictions.

- (e) The AO Grade Management considered that there did not appear to be any apparent conflict between Mr LEUNG's proposed appointment and his former duties.
- (f) NWCL was the property flagship of NWDCL in the Mainland, and its business covered development projects of residential estates, service apartments, offices and shopping centres, hotels and resorts which were based in large Mainland cities. CSB's view was that the proposed appointment would unlikely constitute problems of conflict of interest as: (i) Mr LEUNG had left the posts of D of B and PSH/D of H for six years and over two years respectively, and he had no previous dealings with NWCL; (ii) NWCL dealt with property development in the Mainland and Mr LEUNG would be responsible for overseeing the company's business in the Mainland only; and (iii) both WB and PLB had no business connection with NWCL. Nonetheless, given Mr LEUNG's former senior positions in the Government, the full-time basis of the proposed appointment, and the need to address the public perception issue, CSB considered it desirable to impose additional work restrictions on the appointment.
- (g) ACPE had been consulted on the application and it agreed with CSB's recommendation for imposing the four additional work restrictions.
- (h) Mrs YIP, Mrs KWOK and Mr WONG had all given support for Mr LEUNG's application.

5.94 Miss YUE approved Mr LEUNG's application on the same day with the imposition of the standard and the four additional work restrictions.

5.95 As regards the factors that she had taken into account when considering Mr LEUNG's application, Miss YUE said that the key factors for consideration included the policy objective of the Control Regime; whether there was any real or potential conflict of interest between Mr LEUNG's former government duties and the proposed work; and whether his taking up of the proposed work was likely to give rise to negative public perception. She had also taken into account the specific considerations set out in paragraph 7 of CSB Circular No. 10/2005, the views expressed by the concerned parties within the Government including the public perception issue raised by the WB, and the advice given by ACPE. Miss YUE concluded that Mr LEUNG's proposed appointment would unlikely constitute problems of real or potential conflict of interest, but there might be some negative public perception. She decided to approve the application with four additional work restrictions over and above the standard work restrictions.

5.96 Miss YUE said that she had considered that the proposed appointment would unlikely constitute problems of real or potential conflict of interest having regard to the business nature of the prospective employer, which was in real estate development in the Mainland, and the duties of Mr LEUNG who would be based in a major city in the Mainland. Miss YUE noted that Mr LEUNG had stated in his application that NWCL's parent company was NWDCL, but that he would not be involved in any way in the business of the parent company or any subsidiaries of NWCL.

5.97 With regard to the public perception issue involved in Mr LEUNG's application, Miss YUE said that she considered that there was a need to mitigate possible negative public perception that might

ensue by imposing work restrictions in addition to the standard ones. She also considered that such additional work restrictions would further ensure that Mr LEUNG would not be involved in any business of his prospective employer that was connected with Hong Kong, and that the prospective employer would not have an unfair advantage over its competitors through obtaining classified or sensitive information that Mr LEUNG might have acquired during his government service or through any influence that he would still have with serving officers in the Government or any pressure that he would be able to bring upon serving officers in the Government in any discussion between his prospective employer and the Government.

5.98 As regards Mr LEUNG's involvement in the Hunghom Peninsula case, Miss YUE stated in her written statement to the Select Committee that NWCL had nothing to do with the Hunghom Peninsula case in which Mr LEUNG was involved, and therefore it did not occur to her that it would be a relevant factor in considering Mr LEUNG's application. At the public hearings, Miss YUE admitted that in vetting and approving Mr LEUNG's application, the Hunghom Peninsula case was not in her mind and she had not associated the application with the Hunghom Peninsula case. If the matter had come to her mind, she would have considered the application afresh, requested the relevant bureaux and departments to assess Mr LEUNG's involvement in the case, and sought ACPE's views on the application again. When the media reported in August 2008 on the appointment of Mr LEUNG by NWCL and drew attention to his involvement in the Hunghom Peninsula case, Miss YUE realized that she had not been thorough enough in processing his application and had omitted to consider his involvement in the Hunghom Peninsula case. She had made an apology to the public for the great concern this omission had caused.

5.99 As to whether or not Mr LEUNG should have mentioned his involvement in the Hunghom Peninsula case in his application,

Miss YUE said that she considered that Mr LEUNG had provided the information required by the application form under the existing Control Regime, but it would have been more helpful to those involved in assessing and approving his application if Mr LEUNG had provided information on his involvement in the Hunghom Peninsula case in his application.

5.100 As to how the protection of the public interest and the protection of a directorate civil servant's right²⁶ to pursue post-service employment and freedom to choose his occupation should be balanced against each other if there was a conflict between the two, Miss YUE told the Select Committee that while she would endeavour to strike an appropriate balance between the two, in the event of conflict, the former should take precedence. If she should decide to restrict a former directorate civil servant from taking up, in whole or in part, the employment applied for, the restriction must be no more than was necessary to protect the public interest and other legitimate rights. As the decision authority, she must consider the circumstances of each application and weigh up all the relevant factors, including the public interest and the individual's right to work and freedom of choice of occupation, before coming to a decision. There was no set formula or method. Miss YUE stated that she would not approve an application if it would give rise to real conflict of interest. If she thought that an application would give rise to potential conflict of interest (which might lead to negative public perception) or give rise to negative public perception or embarrass the Government even if there was no potential conflict of interest, she would consider whether the potential conflict of interest and/or negative public perception and/or embarrassment to the Government might be sufficiently addressed by imposing additional work restrictions. If so, she would likely approve the application with

²⁶ Please refer to footnote 3 of paragraph 2.3.

additional special work restrictions; and if not, she would likely reject the application.

5.101 On whether public suspicion about deferred reward could be included in the assessment of post-service work applications, Miss YUE was of the view that cases of deferred reward, if substantiated, would amount to corruption practices and must be reported to the authorities. She said that while public suspicion of deferred reward was not an explicitly stated factor in CSB Circular No. 10/2005 for consideration, the factors of public suspicion of conflict of interest and embarrassment to the Government taken broadly would be wide enough to include public suspicion of deferred reward.

5.102 The employment contract dated 1 August 2008 signed between Mr LEUNG and NWCL did not specify the duties of the appointment, and it contained a clause under which NWCL could transfer Mr LEUNG to work in any subsidiary or associated company of NWCL and those of its holding company. In relation to this, Miss YUE said that as the Control Regime operated under an honour system and Mr LEUNG had declared in his application that the information provided was accurate, she did not think that there was any need to ask Mr LEUNG to provide a copy of the employment contract he signed with NWCL. Miss YUE told the Select Committee that the absence of specification of the duties in Mr LEUNG's employment contract with NWCL did not constitute a breach of the terms of the approval of the application, as there was no requirement for the applicant's duties to be specified in the employment contract. There was also no requirement for the draft employment contract to be enclosed with the application for approval. The mere inclusion of a transfer clause in itself and Mr LEUNG's signing the contract without notifying CSB would not constitute a breach of the terms of the approval. This was because there was no requirement under the existing system for the terms of approval to be included in an applicant's employment contract, and an applicant was not required to notify CSB of

the actual terms of his employment contract. However, CSB would request a successful applicant to notify his prospective employer of the terms of approval for his application. After consulting the Department of Justice ("DoJ"), Miss YUE said that so long as NWCL did not exercise its right of transfer or Mr LEUNG did not agree to be transferred, Mr LEUNG would not be in breach of the terms of the approval. Furthermore, Miss YUE also told the Select Committee that the case record of Mr LEUNG's appointment with NWCL was open for public inspection, and the public and the media would act as watchdogs should Mr LEUNG do anything improper.

5.103 As regards the answer of "*Introduced by a family friend*" for item 25 of the application form (regarding how the offer of outside work arose), Miss YUE said that she had not raised the matter nor discussed Mr LEUNG's application with any of her staff. She explained that the Control Regime operated by way of an honour system under which applications for post-service work were assessed and decided based on the information provided by the applicants in the application form. As Mr LEUNG had made a declaration in section (E) of Part II of the application form that the information provided was full and accurate, and had also confirmed that he had read CSB Circular No. 10/2005, she had accepted the information provided²⁷. She added that there were few applications in the past in which applicants were required to provide supplementary information on particular items. Nevertheless, she stressed that applicants who wilfully gave false information or withheld any material information in the application form would be subject to sanctions.

²⁷ According to the information provided by the Administration, the CSB officials involved in processing Mr LEUNG Chin-man's application did not notice anything that caused them to raise doubts on the accuracy of the information provided by Mr LEUNG and hence did not take further steps to verify the information.

5.104 On the number of applications which Miss YUE had handled, she informed the Select Committee that she had handled about 180 to 200 post-service work applications in the past three years. The answers of "family friend", "friend" or "personal friend" for item 25 of the application form were found in less than 10% of the cases²⁸. The majority of the applicants had stated in the application form that they were approached by the prospective employer. A small portion of the applicants stated that they directly approached the prospective employer, while some applicants stated that they got the job through open recruitment or headhunters. She considered that item 25 was only for background information, to see whether his job had been acquired through open recruitment, headhunters or some other contacts.

Observations of the Select Committee

5.105 As the policy bureau responsible for the overall management and development of the civil service, CSB is also the authority which formulates the policy on post-service employment of civil servants and the Control Regime. CSB has the important role of gatekeeper in the vetting and approval of post-service work applications from directorate civil servants. It should have a thorough understanding of the policy objective of the Control Regime and, in vetting and approving an application, should adhere to and fully implement the policy objective in order to make a sound and fair decision.

²⁸ According to the further information provided by the Administration after the hearings, during the period from 24 January 2006 to 21 April 2009, Miss Denise YUE had handled 182 applications, comprising 96 processed under the new arrangement and 86 under the old arrangement governing post-service work of directorate civil servants. The breakdown of the answers for the item (relating to how the offer of the work/appointment arose) is as follows: (a) introduced by a family friend (2 cases); (b) introduced by a friend/personal friend (13 cases); (c) self-initiated (including self-employment) (19 cases); (d) approached by the prospective employer (120 cases); (e) through headhunters (5 cases); (f) through open recruitment (14 cases); and (g) through other contacts (9 cases).

5.106 On the vetting and approval of Mr LEUNG's application, the Select Committee notes that even though WB had raised the public perception concern, CSB did not place any importance on the warning. Instead, it told WB that HB and PLB had taken the stance of "no objection" on Mr LEUNG's application. The Select Committee considers it inappropriate for CSB to have done so. Regardless of the motive, what CSB did would have the effect of exerting pressure on WB. The Select Committee also notes that due to their over-reliance on the honour system, the responsible officials in CSB had accepted at face value the information provided by Mr LEUNG in the application form without requiring him to provide supplementary information and/or verifying the information provided, thereby preventing themselves from acquiring all the relevant information needed to assist SCS to make a decision on the application.

5.107 The Select Committee is concerned that notwithstanding that the Government had reviewed and introduced changes to the Control Regime to address public concern about the post-service work of a directorate civil servant responsible for housing policies in 2004, Mr LEUNG's case reflects that CSB has failed to learn its lesson from the incident. In the assessment of Mr LEUNG's application in 2008, CSB did not adhere to and fully implement the relevant policy objective and ended up approving Mr LEUNG's application, thus giving rise once again to public controversy and causing embarrassment to the Government. The Select Committee considers that the Bureau had failed to fulfil its responsibility.

5.108 On the performance of Mrs Sarah KWOK, the Select Committee observes that her assessment of the application from the perspective of the AO Grade Management covered only the shorter period of Mr LEUNG's last three years of service. Having regard to the senior positions of Mr LEUNG in the Government, the Select Committee considers that Mrs KWOK should have taken six years as the basis for

assessment of the application. Moreover, her assessment of Mr LEUNG's application had not taken full account of the six key factors set out in CSB Circular No. 10/2005 but had only focused on the business of NWCL. The Select Committee is of the view that Mrs KWOK, as a senior officer in the AO grade, should be experienced in assessing public perception and thus should have been capable of making a sensible assessment of Mr LEUNG's application. However, the Select Committee finds it regrettable and unacceptable that Mrs KWOK had paid no regard to the alert given repeatedly by WB on the public perception issue and claimed that there was no scientific formula for measuring public perception, had even instructed Mrs Carrie WONG to ascertain with WB whether it had any objection to Mr LEUNG's application, and had failed to make an effective assessment of the public perception issue to assist SCS in approving the application.

5.109 As regards Mr Andrew WONG's performance, the Select Committee notes that according to Mr WONG, he was not aware of Mr LEUNG's involvement in the Hunghom Peninsula case when considering the application. However, the Select Committee notes that when Mr WONG served as Director of Administration, he knew that the then HPLB was in charge of the Hunghom Peninsula case and was also aware that Mr LEUNG was PSH/D of H at that time. Mr WONG agreed at the hearings that he should have thought of Mr LEUNG's involvement in the Hunghom Peninsula case, but the case had not come to his mind when he considered the application of Mr LEUNG. The Select Committee considers that Mr WONG should have thought of Mr LEUNG's involvement in the Hunghom Peninsula case, and yet it did not occur to him that Mr LEUNG could have been involved in the case. This is a serious oversight on the part of Mr WONG in handling Mr LEUNG's application.

5.110 The Select Committee further notes that Mr WONG did not take into full consideration the six key factors set out in CSB Circular

No. 10/2005 when assessing Mr LEUNG's application. He had confined the consideration of public perception issue to the real or potential conflict of interest problem associated with the applicant's previous government duties and his prospective work. It is difficult to understand how Mr WONG could have paid so little regard to the alert given by WB on the public perception issue when he claimed that he had gone through the views of the relevant bureaux and considered their analysis. The Select Committee is of the view that he should have drawn Miss Denise YUE's attention to the alert instead of merely putting down the word "*Supported*" on the submission. The Select Committee deeply regrets that as PSCS with 26 years' experience in the AO grade, Mr WONG did not have the sense of responsibility and alertness which he should possess, nor had he provided reliable and solid support to assist Miss YUE in processing Mr LEUNG's application.

5.111 Regarding the performance of Miss Denise YUE, the Select Committee considers that the ultimate responsibility rests with her as the approving authority. She must ensure that all post-service work applications from directorate civil servants meet the policy objective of the Control Regime, and take into full consideration the six key factors set out in CSB Circular No. 10/2005. Miss YUE was aware of the public perception concern raised by WB on Mr LEUNG's application. She should have realized that given his participation in the formulation and execution of major housing and land policies while in government service, his post-service employment with real estate organizations would give rise to a public perception issue and the public suspicion about the employment involving a potential conflict of interest. In approving the application, Miss YUE focused her attention only on the business of NWCL and the execution of Mr LEUNG's duties being in the Mainland. In her view, the proposed appointment would unlikely constitute problems of conflict of interest and might only give rise to some negative public perception, which she thought could be reduced by the imposition of four additional work restrictions over and above the standard work

restrictions. Yet, the approval given for Mr LEUNG to take up the employment with NWCL aroused public controversy as it is known to the public that Mr LEUNG was involved in the Hunghom Peninsula case. This indicates an obvious gap between Miss YUE's assessment and the views of the public. The Select Committee considers that Miss YUE, being a Principal Official under the Accountability System, had not demonstrated political sensitivity in handling Mr LEUNG's application. She had failed to grasp public sentiments and understand public expectations and concerns. She had committed a grave error of judgment and had not discharged her role as the final gatekeeper of the Control Regime.

5.112 Miss Denise YUE told the Select Committee that she would endeavour to strike a proper balance between the protection of the public interest and the protection of a directorate civil servant's right to pursue post-service employment and freedom of choice of occupation, and that the former would take precedence over the latter if there was a conflict between the two. Miss YUE also said that the six key factors for consideration set out in CSB Circular No. 10/2005 were sufficiently broad to cover the consideration of public suspicion of deferred reward. Nevertheless, in approving Mr LEUNG's application, she had failed to associate it with the Hunghom Peninsula case, nor had she taken note of the possibility of public concern about deferred reward. The Select Committee deeply regrets that as reflected in Mr LEUNG's case, Miss YUE had neither given precedence to the protection of the public interest nor upheld the approval criteria of the Control Regime, resulting in the Government's credibility being damaged.

General observations of the Select Committee on the processing of Mr LEUNG Chin-man's application for employment with New World China Land Limited by the officials involved

Failure to consider the Hunghom Peninsula case

5.113 In response to the Select Committee as to whether they had considered the Hunghom Peninsula case when vetting and approving Mr LEUNG's application, the officials who attended the hearings gave an almost stereotyped answer that they had not associated Mr LEUNG's employment with his involvement in the Hunghom Peninsula case. In particular, Mr Thomas CHAN (who took over from Mr LEUNG as PSH/D of H in 2006) and Mr Andrew WONG (who was Director of Administration from 2000 to 2004) should, in their respective posts, have had knowledge of Mr LEUNG's involvement in the Hunghom Peninsula case. The Select Committee has to point out that there had been wide media coverage about Mr LEUNG's involvement in the disposal of the Hunghom Peninsula flats and the sale of these flats to the developer at a lease modification premium which was considered too low by the public. It was also known to the public that the developer concerned belonged to the same group of companies as NWCL. In the view of the Select Committee, it is incredible that the officials concerned had not associated Mr LEUNG's application with the Hunghom Peninsula case during the vetting and approval process.

Different understanding of the assessment criteria and narrow perspective of the public perception issue

5.114 Miss Denise YUE told the Select Committee at the hearings that CSB Circular No. 10/2005 did not use expressions such as "deferred reward". Interpreted from a broad perspective, the six key factors set out in the circular could include public suspicion of deferred reward. However, the Select Committee notes that other officials involved in the

processing of Mr LEUNG's application had a different understanding. Mrs Sarah KWOK and Mrs Susan MAK told the Select Committee that public suspicion of deferred reward was not listed as a specific consideration among the six key factors. They had apparently not considered the factor of deferred reward. This shows that Miss Denise YUE and the officials responsible for assessing Mr LEUNG's application had different understandings of the assessment criteria.

5.115 The Select Committee is also concerned that most of the officials involved in the processing of Mr LEUNG's application had assessed public perception from a narrow perspective. They had only considered that Mr LEUNG's duties with NWCL would be carried out in the Mainland and he would not be involved in the business of NWDC. They had however neglected the fact that NWCL is a subsidiary company of NWDC and the business interests are inseparable. Because of this, most of the officials overlooked the possibility that the approval of Mr LEUNG's application might give rise to negative public perception. Only the officials in WB adopted a broad perspective in vetting and assessing the application and raised the public perception concern.

5.116 The Select Committee has to point out that the public takes a common sense view of the jobs and duties to be taken up by directorate civil servants in their post-service employment. The public has no knowledge about an applicant's past service records with the Government or the details of his official contacts and dealings, nor would they look into an applicant's relationship with his prospective employer. The public may have a negative perception of a post-service work application if it suspects conflict of interest or other impropriety. In processing Mr LEUNG's application, the officials concerned had not adopted a common sense approach and had failed to consider the public perception issue from a broad perspective, resulting in an obvious gap between the officials' assessment of and the public's views on the issue. Therefore,

the routine measures adopted, i.e. imposing additional work restrictions, could by no means address public concern.

Inconsistent processing practices

5.117 The Select Committee is concerned that officials of different policy bureaux and branches adopt different practices in assessing post-service work applications from directorate civil servants. In processing Mr LEUNG's application, officials in WB had collated information and conducted file research before making analysis and recommendations; officials in PLB, while having conducted research on the application, had only provided the relevant information to CSB without making any analysis of or giving their views on the application; and officials in HB had processed the application based on superficial information and subjective judgment, but had not undertaken file research or consultation. The Select Committee considers that this suggests that some officials were not serious enough in processing the application. The Government should adopt enhanced measures to ensure that the vetting and approving officials would act in a conscientious and dutiful manner and implement the Control Regime and its policy objective effectively.

Over-reliance on the honour system

5.118 The vetting and approving officials advised the Select Committee that the Control Regime operates under an honour system whereby the officials concerned would usually accept the information provided in the application form, so long as the applicant had declared in the form that he had read CSB Circular No. 10/2005 and confirmed that the information provided in the form was full and accurate. The Select Committee has to point out that when making an application, the applicant should provide full and accurate information in a frank and honest manner, and comply truthfully with the requirements of the

Control Regime. In considering post-service work applications from directorate civil servants, the vetting and approving authority should search for information and give objective and independent consideration to the facts and circumstances concerned, and where necessary, require the applicants to provide further information. On the other hand, CSB should also closely monitor the approved cases. In Mr LEUNG's case, the officials concerned had accepted at face value the information provided by Mr LEUNG in the application form without asking for further information or clarification, and they also left it to Mr LEUNG to take the initiative to report to CSB any changes to his approved application. This shows that the officials involved in the vetting and assessment process overly relied on the honour system.