

Chapter 6 Major housing and land policies which Mr LEUNG Chin-man had taken part in their formulation or execution

6.1 During his last six years of service in the Government, Mr LEUNG Chin-man had served as D of B and PSH/D of H. He was heavily involved in the formulation and implementation of major housing and land policies, some of which had aroused wide public concern. Among these were the Grand Promenade case and the Hunghom Peninsula case.

6.2 This Chapter gives an account of the major housing and land policies and decisions implementing these policies in which Mr LEUNG had taken part while serving as D of B and PSH/D of H. It also sets out Mr LEUNG's exercise of discretionary power in the Grand Promenade case and the Select Committee's observations.

Tenure of office as the Director of Buildings

Responsibilities of the Director of Buildings and the Building Authority

6.3 Mr LEUNG Chin-man took up the post of D of B as head of BD in August 1999. BD was under the then Planning and Lands Bureau which was headed by the then Secretary for Planning and Lands. As D of B, Mr LEUNG's main duties and responsibilities were to oversee and co-ordinate the work of BD in formulating, implementing and reviewing the policies and strategies on private building development and control throughout Hong Kong. He also acted as the main advisor to the Government on these matters.

6.4 By virtue of BO, D of B assumes the role of the Building Authority ("BA"). BA is responsible for the administration of BO and exercising the powers granted to him under the Ordinance for controlling the safety of private buildings. The main duties and powers of BA under BO and its regulations include the approval of plans of new buildings, the regulation of the design and construction of building works, and the implementation of legislation requiring owners to repair their buildings or slopes and remove unauthorized building works ("UBWs"). Under BO, BA's duties may be carried out and exercised by D of B or an officer of BD authorized by D of B. In order to provide flexibility in the control of building development, BO confers discretionary power on BA in areas including approval of building plans, exempting GFA²⁹/site coverage calculations, and granting concessions such as bonus GFA and additional plot ratio and site coverage.

6.5 In performing his statutory duties under BO and its regulations, BA is assisted by staff in BD. BA also has the assistance and advice of the Building Authority Conference ("BAC") and, if necessary, legal advice from DoJ. BAC provides a forum for discussion to enable BA to decide or advise on major controversial issues which require his direction in the course of administrating BO. Mr LEUNG Chin-man, in his capacity as D of B/BA, chaired BAC³⁰ and a number of other committees including the Building Sub-Committee of the Land and Building Advisory Committee, and BD's Senior Directorate Meeting. He was also a member of a number of committees including the Board Meeting

²⁹ This Chapter sets out Mr LEUNG Chin-man's exercise of discretionary power in the Grand Promenade case and in this connection, the term "建築樓面面積" has been adopted as the Chinese equivalent of "gross floor area" in this Report, which is the same as the term used in the Director of Audit's Report No. 45, PAC Report No. 45 and the Report of ICI. In BO, the Chinese equivalent of "gross floor area" is "總樓面面積".

³⁰ BAC members comprise senior officials of BD including the Deputy Director of Buildings, Assistant Director/Legal and Management, Assistant Director of the case concerned, one Assistant Director on rotation as a member, and Technical Secretary/Buildings as secretary. Representatives from other relevant departments are invited to attend BAC to provide advice.

of the Urban Renewal Authority and the Lands and Building Advisory Committee.

Major building control policies in which Mr LEUNG Chin-man was involved during his tenure as the Director of Buildings

6.6 The major building control policies, the formulation or implementation of which Mr LEUNG Chin-man was involved in during his tenure as D of B/BA, are highlighted in the ensuing paragraphs. As the head of BD, Mr LEUNG sought advice, considered the analysis of his subordinates, gave direction and steered in policy research in relation to these policies. In his implementation of the policies, he met with relevant stakeholders, professionals and government officials concerned to solicit their views and support. He also attended meetings of the relevant committees of LegCo to explain the matters and answer questions.

Promoting building safety and timely maintenance

6.7 In early 2000, the then Planning and Lands Bureau set up a task force to devise a comprehensive strategy for the promotion of timely maintenance of buildings, tackling of UBWs and illegal rooftop structures, and control of advertisement signboards. The strategy was subsequently incorporated in the policy initiative on "Developing Hong Kong" put forward in October 2000. BD, as the department responsible for taking forward the initiative, had introduced measures to promote the rehabilitation and maintenance of buildings and tackle the problem of UBWs.

Promoting green and innovative buildings

6.8 Another important policy initiative under the "Developing Hong Kong" was to revamp the Buildings Regulations with the objective to modernize and increase the flexibility of the regulations to remove barriers and facilitate innovative building designs and construction of green buildings. Proposals to promote green and environmentally friendly buildings included the provision of green features (e.g. balconies and communal sky gardens), and providing incentives to developers to construct green buildings (e.g. giving fast-track plan approval, exempting green facilities from GFA calculation, granting extra floor area for green methods of construction upon payment of premium, and giving open commendation for outstanding green buildings). In this connection, Mr LEUNG Chin-man, as D of B, had set up a Working Group on Incentives for Environmentally Friendly and Innovative Buildings and chaired various meetings which resulted in the issuance of Joint Practice Notes 1 and 2³¹ in 2001 and 2002 respectively and through which the initiative of exemption of green features from GFA calculation was adopted.

Review of the Buildings Ordinance

6.9 The Administration carried out a comprehensive review of BO and its regulations in 2000. As D of B, Mr LEUNG was involved in the formulation of relevant measures which were incorporated into legislative amendments proposed by the Administration in June 2002 in order to rationalize the building control regime, facilitate law enforcement and

³¹ Joint Practice Note 1 issued in 2001 set out the criteria and conditions for exempting the first package of green and innovative features from GFA and/or site coverage calculations under BO. Green and innovative features included, among others, balconies, wider common corridors and lift lobbies, communal sky gardens and communal podium gardens. In February 2002, Joint Practice Note 2 was issued to advise on the second package of incentives to promote green and innovative buildings, including non-structural prefabricated external walls, utility platforms, and mail delivery rooms with mailboxes.

improve services to the public. Major proposed amendments included the introduction of a minor works control system, providing for the registration and control of geotechnical engineers, clarifying the party responsible for removal orders of UBWs, and empowering BA to issue warning notices on UBWs and register the notices in the Land Registry.

Tenure of office as the Permanent Secretary for Housing, Planning and Lands (Housing) and Director of Housing

Responsibilities of the Permanent Secretary for Housing, Planning and Lands (Housing) and Director of Housing

6.10 Mr LEUNG Chin-man took up the post of PSH/D of H in July 2002, which was his last posting before he ceased active government service in January 2006. As PSH/D of H, Mr LEUNG assisted SHPL to formulate and review government policies and strategies on the development of public and private housing, and supported him in working with LegCo and HA³². Mr LEUNG was responsible for steering and co-ordinating government departments/bureaux in the implementation of housing policies and programmes. He liaised with HKHS, Urban Renewal Authority and private developers in the provision of housing, co-ordinated the activities of government departments to ensure an adequate supply of land to meet the demand for housing, and monitored the residential property market. As D of H, Mr LEUNG directed and supervised HD in all areas of its work including the development, construction, allocation, management and sale of public and government subsidized housing, and all other related activities including attending the meetings of HA's key committees. D of H is vested with statutory powers under the Housing Ordinance (Cap. 283) ("HO") including the stipulation of terms and conditions of sale for flats

³² Please refer to footnote 10 of paragraph 3.24.

sold by HA (e.g. HOS flats) and flats in respect of which HA is authorized to nominate purchasers (e.g. PSPS flats).

Major housing policies in which Mr LEUNG Chin-man was involved during his tenure as the Permanent Secretary for Housing, Planning and Lands (Housing) and Director of Housing

6.11 A brief account of Mr LEUNG's participation in the formulation and execution of major housing policies when he was PSH/D of H is given below.

Disposal of overhung Home Ownership Scheme and Private Sector Participation Scheme flats after the announcement of the re-positioned housing policy

6.12 SHPL made a statement on housing policy at the LegCo meeting on 13 November 2002 to re-position the Government's housing policy. The re-positioned housing policy aimed at facilitating the efficient operation of the property market and restoring public confidence in it. It covered a package of nine new measures one of which was the cessation of the production and sale of flats under HOS and PSPS. This meant the Government had to deal with the disposal of some 25 000 overhung HOS and PSPS flats. The case of the two PSPS projects of Hunghom Peninsula and Kingsford Terrace will be discussed in Chapter 7. HD set up a task force to consider the disposal of the overhung HOS and PSPS flats. Recommendations relating to the disposal of the overhung HOS and PSPS flats were discussed at the Senior Officials' Meeting of HD³³ chaired by Mr LEUNG Chin-man, and

³³ Senior Officials' Meeting is a regular in-house meeting of HD to discuss matters under its purview. PSH/D of H is the Chairman and its members include the Deputy Directors and some Assistant Directors.

the Senior Directorate Meeting³⁴ chaired by SHPL and of which Mr LEUNG was a member.

Divestment of retail and car-parking facilities by the Hong Kong Housing Authority

6.13 To enable HA to withdraw from commercial operations and focus its resources on its core functions as a provider of subsidized public housing, and to help it to meet its short and medium term funding requirements, the Executive Council ("ExCo") decided in July 2003 that the Government should seek HA's agreement in principle to divest it of its retail and car-parking facilities, and keep the net proceeds from the divestment. HA subsequently agreed to divest itself of 180 retail and car-parking facilities through the public listing of The Link REIT. The first public listing scheduled for December 2004 was postponed due to an application for judicial review by two public rental housing ("PRH") tenants against HA's statutory power to divest itself of its assets. The exercise was re-launched after the conclusion of legal proceedings at the Court of Final Appeal in July 2005, and The Link REIT was listed in November 2005.

6.14 To take forward the divestment exercise, HD set up the Commercial Properties Divestment Steering Committee which was responsible for overseeing the preparation and administration of the scheme for divestment of commercial properties for approval by HA and giving direction on policy issues. Mr LEUNG chaired the Committee, steered the discussion and made decisions on matters discussed. He also participated in the discussion of the subject matter as a member of the Supervisory Group on Divestment, the Listing and Logistics Committee, the Search Committee, and the Strategic Partner Selection Committee of HA. Moreover, Mr LEUNG attended meetings of the relevant Panels of

³⁴ Senior Directorate Meeting was a regular in-house meeting of the then HPLB to discuss matters relating to the policy areas of the Bureau.

LegCo to present the divestment scheme and respond to questions raised by Members.

Regulation of the sales arrangements and provision of information in the sales descriptions of private uncompleted first-hand residential properties

6.15 When Mr LEUNG served as PSH/D of H, HB had worked in conjunction with LD, the Consumer Council, the Estate Agents Authority and the Real Estate Developers Association to introduce initiatives to strengthen the regulation of sales arrangements and information to be provided in the sales materials of private uncompleted first-hand residential properties. In the development of the policy initiatives, Mr LEUNG directed and advised subject officers on significant issues and represented HB in discussions with the trade and relevant stakeholders.

Policies relating to the provision and maintenance of public rental housing

6.16 During his tenure as PSH/D of H, Mr LEUNG was involved in the formulation and implementation of important policies relating to the provision and maintenance of PRH, including the review of domestic rent policy for PRH in 2001. The review was suspended from 2002 to 2005 on account of judicial review proceedings initiated by some tenants concerning HA's decision to defer the rent review of its estates, and resumed in 2006. The review resulted in the introduction of a new rent adjustment mechanism to adjust PRH rent according to an income index reflecting changes in PRH household income levels. As PSH/D of H and Chairman of the Senior Officials' Meeting, Mr LEUNG was briefed on the position of the review and the legal proceedings. He attended meetings of HA and the relevant Panel of LegCo to report on the development of the court cases and the findings of the Ad Hoc Committee on Review of Domestic Rent Policy. Other policies in which

Mr LEUNG were involved included the Marking Scheme introduced in August 2003, under which PRH tenants who committed specified misdeeds in their residing estates would be liable to be given penalty points which could result in the tenancy of the subject household being terminated. They also included the Total Maintenance Scheme announced in 2005 to implement a new maintenance strategy for PRH estates. Mr LEUNG supervised and gave policy directions and advice to the subject officers in the implementation of these policies.

The Grand Promenade Case

6.17 The foregoing shows that Mr LEUNG Chin-man was heavily involved and provided steer in the formulation of major housing and land policies which had significant impact on the public as well as the real estate sector during his service as D of B and PSH/D of H. In his capacity as BA, Mr LEUNG was vested with discretionary powers under BO in the control and regulation of building developments. One of the cases where he had exercised such powers was the Grand Promenade development in Sai Wan Ho.

6.18 As BA, Mr LEUNG Chin-man had exercised discretionary power in granting GFA concessions to the developer of the Grand Promenade development. As the case aroused grave public concern, the Select Committee considers it necessary to examine whether there was any connection between Mr LEUNG's discretion exercised in the Grand Promenade case and the post-service work which he had taken up with real estate organizations, and whether there would be a conflict of interest.

6.19 The Select Committee notes that the Audit Commission ("Audit"), PAC and ICI had conducted inquiries into the Grand Promenade case on issues under their respective ambits and published

reports containing their findings, observations, conclusions and recommendations³⁵. The Select Committee has made reference to these reports and has also obtained information on the case from the Administration. Having regard to the thorough inquiries conducted and the extensive information already available, the Select Committee considers it unnecessary to conduct hearings to take evidence from witnesses, and has decided to carry out its study on the basis of the above materials.

Mr LEUNG Chin-man's decisions made under the discretionary power conferred on the Building Authority in the Grand Promenade case

6.20 The developer of the Grand Promenade development is Yieldway International Limited, a company under Henderson Land group of companies ("Henderson Group"). The Grand Promenade developer bought the site through tender at a premium of \$2,430 million in January 2001 and completed the residential development in April 2005.

6.21 In his capacity as BA, Mr LEUNG Chin-man had exercised the discretionary power conferred upon him under BO to make a number of decisions in relation to the applications made by the Grand Promenade developer. The decisions aroused great public concern. The following provides a brief description of the background and result of these decisions made by Mr LEUNG.

Exclusion of the public transport terminus from and inclusion of the marine police operational area in the Gross Floor Area calculation

6.22 The lease conditions for tender of the site provided for a minimum domestic GFA for the development but were silent on the

³⁵ For details of the inquiries into the Grand Promenade case conducted by Audit, PAC and ICI, please refer to the Director of Audit's Report No. 45, PAC Report No. 45 and the Report of ICI.

maximum permissible GFA. On the other hand, while the developer was required to provide at the site Government Accommodation comprising a public transport terminus ("PTT") and a marine police operational area ("MPOA"), the tender conditions had not specified whether the Government Accommodation should be accountable for GFA. Before the sale of the site, in reply to prospective tenderers' enquiries, LD cited BD's advice that the Government Accommodation "*shall be included*" in the GFA calculation. After the sale of the site, Mr LEUNG Chin-man decided at the BAC on 22 October 2001 and agreed to the developer's request to exclude PTT from the GFA calculation under regulation 23(3)(b) of the Building (Planning) Regulations ("B(P)R")³⁶. Mr LEUNG also decided to include MPOA in the GFA calculation. Mr LEUNG's decision at that time was made having regard to a number of considerations including the absence of clear requirements or guidelines on whether PTT should be accountable for GFA, and he considered that the provision of PTT on the site was in the public interest.

Granting of bonus areas in accepting the developer's suggestion on the dedication of areas for public passage

6.23 After the sale of the site, the developer claimed that PTT had to be extended to the "Reserved Areas" on the ground floor to provide extra space for constructing MPOA and proposed that the reserved areas encroached by PTT be dedicated for public passage. The developer further proposed dedicating a strip of land at the south-eastern boundary

³⁶ B(P)R 23(3)(b) (Provisions supplementary to regulations 19, 20, 21 and 22) specifies that in determining GFA for the purposes of regulations 20, 21 and 22, BA may disregard any floor space that he is satisfied is constructed or intended to be used solely for parking motor vehicles, loading or unloading of motor vehicles, or for refuse storage chambers, refuse storage and material recovery chambers, material recovery chambers, refuse storage and material recovery rooms, refuse chutes, refuse hopper rooms and other types of facilities provided to facilitate the separation of refuse to the satisfaction of BA, or for access facilities for telecommunications and broadcasting services, or occupied solely by machinery or equipment for any lift, air-conditioning or heating system or any similar service.

as public passage to facilitate access to PTT. In return, the developer asked for bonus areas for the dedication of the two areas³⁷.

6.24 At the BAC on 1 August 2001, Mr LEUNG Chin-man agreed to grant bonus areas to the developer in return for the dedication of the two areas for public passage. BD approved the building plans and granted the bonus areas on 1 September 2001. In view of the concern expressed by LD, another BAC was held on 23 April 2002 to reconsider the dedication of areas. BAC upheld Mr LEUNG's decision after discussion and the factors considered included its being in the public interest to accept the dedication of areas since the redesigned PTT was more environmentally friendly and more open for public use.

Classification of the site as a Class C site

6.25 Prior to the sale of the site, BD considered that the site was a Class B site. In order to give the site a Class C status³⁸, LD included a 4.5 metre wide strip of land along the south-eastern site boundary making it clear that the area was to be developed as a street. BD pointed out that this area should be demarcated as a non-building area and open for public passage at all times, and should be excluded from the site area in plot ratio and site coverage calculations. The lease conditions for the tender of the site had not specified the classification of the site, nor stated that the non-building area be excluded from the site area in plot ratio and site coverage calculations.

³⁷ Under B(P)R 22(1) a developer may dedicate areas of the site for public passage if BA agrees to accept. In compensation, the developer may be awarded bonus plot ratio of five times the GFA if the area dedicated is on the ground floor. The calculations of bonus site coverage and bonus plot ratio are stipulated in B(P)R 22(1)(a) and (b).

³⁸ According to B(P)R, a Class B site is a corner site that abuts on two streets neither of which is less than 4.5 metres wide. The site is not regarded as abutting on two streets unless at least 40% of the boundary of the site abuts on the streets. A Class C site is a corner site that abuts on three streets none of which is less than 4.5 metres wide. The site is not regarded as abutting on three streets unless at least 60% of the boundary of the site abuts on the streets. The maximum plot ratio permitted for a domestic building on a Class B site is 9, whereas that on a Class C site is 10.

6.26 After the sale of the site, the developer submitted building plans on the basis of a Class C site, and considered that the non-building area should not be excluded from the site area coverage as another strip of government land in the south-eastern boundary of the site which provided an access road of more than 4.5 meters wide to the marine fuelling stations was a street. At the BAC on 1 August 2001, Mr LEUNG Chin-man agreed that the access road referred to by the developer was a street and decided that the site was a Class C site. The developer was not required to exclude the non-building area from the site area in the plot ratio and site coverage calculations.

Granting of exemption areas for green features and other amenities

6.27 In 2000, the Administration introduced a "green and innovative building" policy with the objective, among others, of encouraging green features (such as balconies, sky gardens, wider corridors and lift lobbies) and amenity and communal facilities (such as refuse storage and material recovery chambers) by the developers in their building projects. Mr LEUNG Chin-man as BA had exercised the discretionary power under section 42 of BO³⁹ and B(P)R 23(3)(b) to exempt such features/facilities from the GFA calculation in the Grand Promenade development upon the developer's application.

The result of decisions made by Mr LEUNG Chin-man in exercising the discretionary power

6.28 The decisions made by Mr LEUNG Chin-man in exercising the discretionary power in his capacity as BA had increased the GFA in the Grand Promenade development. As a result of Mr LEUNG's

³⁹ Subsection (1) of section 42 of BO on the BA's powers of exemption provides that where in the opinion of BA special circumstances make it desirable to modify the provisions of the Ordinance, he may permit modifications upon the application.

discretionary power exercised in respect of site classification, exemption of PTT and granting of bonus areas, the developer had gained a total extra GFA of 19 937 square metres⁴⁰. Moreover, by virtue of Mr LEUNG's exercise of the discretionary power conferred to BA under section 42 of BO and B(P)R 23(3)(b), the developer was granted exemption of GFA of some 66 000 square metres for the provision of green features, amenity and communal facilities. These concessions had increased the bulk, height and density of the development. The Government's original planning parameters for the site were for the development to comprise five 37-storey residential blocks of 1 480 units, a maximum permissible domestic GFA of 107 950 square metres, and a total GFA of 126 116 square metres. The resultant development consisted of five 61 to 64-storey residential blocks of 2 020 units, a total actual domestic GFA of 135 451 square metres, and a total GFA of about 200 000 square metres⁴¹.

Observations of the Select Committee

6.29 The objective of the Select Committee's study on the Grand Promenade case is to examine whether there was any connection between the exercise of discretion by Mr LEUNG Chin-man in his capacity as BA in the Grand Promenade case and the post-service work which he had taken up with real estate organizations, and whether there would be a conflict of interest. The Select Committee notes that Mr LEUNG had granted GFA concessions to the developer of the Grand Promenade

⁴⁰ According to the Report of ICI, the breakdown is as follows: (a) 1 940 square metres for the decision on site classification (the site was regarded as a Class C site instead of a Class B site, which resulted in the GFA being calculated at times 10 rather than times 9); (b) 7 297 square metres for the exclusion of PTT from GFA calculation; and (c) 10 700 square metres for the dedication of the Reserved Areas and the strip of land at the south-eastern boundary of the site for public passage.

⁴¹ As set out in paragraph 10.28 of the Report of ICI, the total GFA constructed was about 200 000 square metres. This figure is reached by adding the exempted areas to the total actual domestic GFA of 135 451 square metres. Not including the PTT over 35 000 square metres were exempted under B(P)R 23(3)(b). This figure is the result of normal application of the regulation. The PTT was also exempted under the same regulation, and amounted to 7 297 square metres. In addition, over 31 000 square metres were exempted by virtue of section 42 of BO.

development under the discretionary power conferred on BA, and the developer was a company under the Henderson Group. The information obtained by the Select Committee in the course of its study does not suggest that the four organizations related to the real estate sector with which Mr LEUNG Chin-man had taken up post-service work i.e., HKHS, TCL, Fineland and NWCL, had connection with the Henderson Group.

6.30 The Select Committee considers that given that Mr LEUNG had exercised the discretionary power in his capacity as BA in controlling and regulating building developments during his government service, and the nature and areas of the discretionary power he exercised were closely related to the real estate sector, including approval of building plans (including the application for revisions), determination of whether and when occupation permits were to be issued to new buildings, issue of orders for demolition of unauthorized or dangerous buildings or building works, approval of applications for change in use of buildings, and approval of applications for GFA exemption (which might result in an increase of the GFA of the development concerned)⁴², his taking up of post-service work with real estate organizations would indeed impact on the public's confidence in the fairness and impartiality of BA in his exercise of discretionary power.

⁴² It is pointed out in paragraph 10.19 of the Report of ICI that "*the one instance in which we [ICI] think the discretion was wrongly exercised was in the decision to exclude the GFA of the PTT from calculation*", and it is stated in paragraph 10.20 that "*although the discretion was wrongly exercised no blame rests upon Mr Leung or upon those advising him at the BAC*".