

**Select Committee to Inquire into Matters Relating to
the Post-service Work of Mr LEUNG Chin-man**

**Information provided by the Administration
in response to the letter from the Clerk to the Select Committee
dated 23 January 2009
(as at 10 February 2009)**

Transport and Housing Bureau's ("THB") remarks: In response to the Select Committee's further questions in relation to the Hunghom Peninsula project and other housing and land policies, we are providing below further information and documents. As the questions cover a wide scope and a considerable period of time, a large quantity of records are involved and it has taken us some time to identify and collate the relevant documents. With the lapse of time, the bureau and the department have undergone re-organisation in different stages and many officers handling the relevant subjects at the material time have left the Government, but we have endeavoured to provide the most relevant information on the basis of our records to assist the work of the Select Committee. We have included additional documents that could not be identified in the last reply owing to time constraint or were not related to the previous set of questions. We will provide the Select Committee with the outstanding information or additional documents as soon as we have completed our search. If the Select Committee has any further questions, we would be happy to provide additional information.

2. Information on Hunghom Peninsula development

*Document No.
(Only English
available unless
otherwise specified)*

- (a) Apart from the information which has been provided to the Select Committee, all other documents or records relating to Hunghom Peninsula development such as memo, minutes/notes of formal/informal meetings, file minutes/notes, emails, fax messages, correspondence, records of internal communication and/or exchange of views, between Mr LEUNG Chin-man and New World Development Company Limited or its subsidiaries; those between Mr LEUNG and his supervisors and his subordinates; those between Mr LEUNG and other bureaux/departments; and

THB's response : The following documents are relevant -

*Document No.
(Only English
available unless
otherwise specified)*

- ~~T107~~
• ~~THB-112~~ – Letter of 2 July 2002 from First Star Development Limited to the then Chief Secretary for the Administration (“CS”); ~~THB-112~~ T107
- ~~T108~~
• ~~THB-113~~ : Letter of 10 June 2002 from First Star Development Limited to the then Director of Housing referred to in paragraph 3 of ~~THB-112~~; ~~T107~~ ~~THB-113~~ T108
- ~~T109~~
• ~~THB-114~~ : Letter of 17 June 2002 from Supertime Holdings Ltd to the then Director of Housing subsequent to ~~THB-113~~; ~~THB-114~~ T109
- ~~T110~~ ~~T108~~
• ~~THB-115~~ : Letter of 21 June 2002 from Business Director/Allocation and Marketing of Housing Department (“BD/AM”) to First Star Development Limited / Supertime Holdings Limited as reply to ~~THB-113~~ and ~~THB-114~~; ~~THB-115~~ T110
- ~~T111~~ ~~T108~~ ~~T109~~
• ~~THB-116~~ : Loose Minute of 25 September 2002 from Assistant Director/Policy Support (“AD/PS”) to the then Secretary for Housing, Planning and Lands (“SHPL”) via Mr LEUNG Chin-man as the then Permanent Secretary for Housing (“PSH”); ~~THB-116~~ T111
- ~~T112~~
• ~~THB-117~~ : Reply letter of 3 October 2002 from Mr LEUNG Chin-man on CS’s behalf to First Star Development Limited; ~~THB-117~~ T112
- ~~T31(c)~~
• ~~THB-118~~ : Memo of 1 April 2003 from the then Director of Lands to PSH; ~~THB-118~~ T31(c)
- ~~T32(c)~~
• ~~THB-119~~ : Memo dated 18 August 2003 from Department of Justice (“DoJ”) to Housing Department (“HD”) marked for the attention of PSH while Mr LEUNG was on leave; ~~THB-119~~ T32(c)
- ~~T113~~
• ~~THB-120~~ : Memo dated 25 August 2003 from ~~THB-120~~ T113

*Assistant Legal Adviser of HD ("ALA") to PSH
while Mr LEUNG was on leave;*

- ^{T114}~~THB-121~~ : *Email dated 25 August 2003 (4:46 pm) from ALA to Senior Architect/Business Development ("SA/BD"), and an email dated 25 August 2003 (4:40 pm) from SA/BD to PSH while Mr LEUNG was on leave;* ~~THB-121~~ T114
- ^{T33(c)}~~THB-122~~ : *Loose Minute of 22 October 2003 from PSH to the CS. The obliterated information refers to legal advice relevant to the Developer's claim in the pending legal proceeding. The information is subject to legal professional privilege ("LPP") and the disclosure of which may prejudice the interests of the Government / Housing Authority in the pending legal proceedings with the Developer;* ~~THB-122~~ T33(c)
- ^{T115}~~THB-123~~ : *Email dated 7 November 2003 (5:06 pm) from Senior Government Counsel ("SGC") of DoJ to Deputy Director (Business Development and Construction) of HD ("DD(BD) and (C)"), email dated 6 November 2003 (15:11 hours) from PSH to SGC, email dated 5 November 2003 (4:16 pm) from SGC to PSH and an officer of Finance Branch of the Financial Services and the Treasury Bureau and email dated 5 November 2003 (15:40 hours) from SGC to officers of HD and Lands Department (LandsD).* ~~THB-123~~ T115

- (b) Whether meetings had been held between Mr LEUNG Chin-man and the Secretary for Housing, Planning and Lands before or after the Senior Directorate's Meetings held between April to July 2003. If yes, please provide the details and the relevant records.

THB's response : There is no record of any meeting between Mr LEUNG and the then SHPL before or after

Senior Directorate's Meeting ("SDMs") between April and July 2003 on Hunghom Peninsula.

- (c) Detailed account on the role and participation of Mr LEUNG Chin-man in the Hunghom Peninsula incident including but not limited to the following:
- (i) Drawing up of the provisions in the land lease for the site for Hunghom Peninsula development;
 - (ii) Granting of the land lease to the developer of Hunghom Peninsula,
 - (iii) Approval of building plans of or modification of plans to the Hunghom Peninsula development;
 - (iv) Formulation of the policy of cessation of the production and sale of Home Ownership Scheme and Private Sector Participation Scheme ("PSPS") flats;
 - (v) Formulation of the options for the disposal of the Hunghom Peninsula PSPS flats ("the disposal options");
 - (vi) Discussion of the disposal options in the Government, the Hong Kong Housing Authority (HA) and the Legislative Council;
 - (vii) Making of the decision to dispose of the Hunghom Peninsula PSPS flats through lease modification with the developer to enable the latter to sell the PSPS flats in the open market;
 - (viii) Negotiation with the developer in the lease modification process during the period from January to March 2003, including the drawing up of the negotiation strategy, setting of the premium and revised premium, etc.;

- (ix) Mediation with the developer in the lease modification process during the period from April to December 2003, including the drawing up of the strategy for re-opening the negotiation with the developer, setting of the premium and revised premium, etc. in particular during the discussion of various disposal options at the Senior Directorate Meetings chaired by the Secretary for Housing, Planning and Lands;
- (x) Making of the decision to accept the final premium offer from the developer in December 2003;
- (xi) Drawing up of the provisions to be included or deleted in the modified land lease; and
- (xii) The developer's plan to demolish Hunghom Peninsula, including whether Mr LEUNG was aware of the developer's plan during the negotiation and mediation process on the lease modification, and the discussion with the developer on the demolition plan.

THB's response : Given the large amount of information involved, we need more time to compile our response. We will endeavour to provide the requested information to the Select Committee as soon as practicable.

- (d) In relation to in THB34 (i.e. SC Paper No. T18(C), please provide the following information:
 - (i) who prepared the Briefing Notes for PS(H) for the Senior Directorate's Meeting on 9 June 2003;
 - (ii) the paper on analysis of options referred to in the Briefing Notes;
 - (iii) the notes/ record of the discussion at the Briefing

for PS(H).

THB's response : On 2(d)(i), the briefing notes were prepared by Mr NM Chan (then Chief Manager/Business Development of Housing Department).

On 2(d)(ii) and (iii), the briefing notes served to provide the then PSH with an update on the latest situation on Hung Hom Peninsula for his attendance at the Senior Directorate's Meeting. They reported the outline of a paper on "analysis of options" which was under preparation. The paper was considered by the Senior Directorate's Meeting on 16 June 2003 and is provided at ~~THB-124~~^{T34(C)}. There are no other records or notes of another meeting or a "briefing" as such.

~~THB-124~~ T34(C)

^{T34(C)}
Certain information in ~~THB-124~~ has been obliterated. Those in the third line of paragraph 1 and second line of paragraph 8 are names of a Senior Counsel and a Counsel from whom the legal advice was obtained and is irrelevant to the subject of the inquiry. For the rest of paragraph 8 and Annex B, the information has been obliterated as it refers to legal advice which is subject to legal professional privilege and the disclosure of which may prejudice the interests of the Government / HA in the pending legal proceedings with the Developer.

- (e) Apart from the Senior Directorate's meeting on 9 June 2003, whether Briefing Notes had been prepared for PS(H) for the other Senior Directorate's meetings held between 14 April 2003 and 28 July 2003; if so, please provide the Briefing Notes and the notes/record of the discussion at the Briefing.
- (f) Apart from THB27, THB29, THB31, THB32, THB33, THB35, THB36, THB38 and THB39 (i.e. SC Paper

Nos. T11(C), T13(C), T15(C), T16(C), T17(C), T19(C), T20(C), T22(C) and T23(C)) which are extracts of minutes of Senior Directorate's Meetings, whether there is any other minutes of and/or discussion papers for the Senior Directorate's Meetings about the Hunghom Peninsula development. If yes, please provide the details and relevant documents and records.

THB's response : Yes, there are additional papers in relation to items 2(e) and (f), but given the large amount of information involved, we need more time to compile our response. We will endeavour to provide the requested information to the Select Committee as soon as practicable.

- (g) THB 43 (i.e. SC Paper No. T25(C)) shows that Mr LEUNG Chin-man "would not want to be involved in the process of negotiation save that the team finds it necessary to go below the bottom line, in which case reference would need to be made to SHPL (who will want to consult me on the matter)". Please explain how Mr LEUNG could advise SHPL if he did not keep himself updated on the matter.

THB's response : Records show that the subject officer reported the progress of the negotiation to Mr LEUNG through emails and at Senior Directorate Meetings from time to time. Hence, it appears that Mr LEUNG should be aware of the progress. If the Select Committee considers it necessary, the Administration would be happy to forward the enquiry to Mr LEUNG for further advice.

- (h) Whether the provisions specifying that HA is to nominate eligible purchasers to purchase the flats from the developer concerned within a specified period (in the case of the Hunghom Peninsula, the specified period is 20 months from the date of the issue of the Consent to Sell), and that HA is obliged to purchase the flats at the guaranteed purchase price in the event that

flats are unsold at the end of the specified period, are standard provisions which are applicable to the land leases of other PSPS developments.

THB's response : Yes, these are standard provisions.

- (i) Breakdown of the calculation of the premium and justifications of the premium amount stated in the papers provided by the Administration, such as THB16, THB18, THB20, THB28, THB37 and THB41 (i.e. SC(2) Paper Nos. T1(C), T3(C), T5(C), T12(C), T21(C) and T24(C)), and the precedent cases of lease modifications with developers where land premium has been reduced by 50%.

LandsD and THB's response : A breakdown of the major components in deriving the premium is at T128(C) ~~THB-125~~. The figures varied from time to time to reflect the changing market situation and the latest information available for estimation.

~~THB-125~~ T128(C)
(bilingual)

The following are those precedent cases where 50% premium was accepted as mentioned in paragraph 4 of the memo attached to ~~THB-37~~ :

T21(C)

- *Lease Modification for a development at Fuk Lo Tsun Road, Kowloon City, Kowloon (the owner initiated court action against Government on the interpretation of the lease conditions) in June 2002.*
 - *Lease Modification of GFA Definition Clause to Exempt Curtain Wall from GFA Calculations for a development at Tak Fung Street, Hung Hom, Kowloon (the owner initiated court action against Government on the necessity to modify the lease for GFA exemption for curtain wall) in July 2002.*
- (j) Correspondence from the New World Development Company Limited relating to the premium offered for

the lease modification, with details on the breakdown and justifications from the developer.

LandsD and THB's response : The relevant correspondences are enclosed:

- ~~THB-133~~ ^{T117} : Letter of 20 December 2002 from First Star Development Limited to LandsD; ~~THB-133~~ T117
- ~~THB-134~~ ^{T35(C)} : Memo enclosing a letter dated 20 February 2003 from First Star Development Limited to LandsD; ~~THB-134~~ T35(C)
- ~~THB-126~~ ^{T118} : Letter dated 13 March 2003 from First Star Development Limited to LandsD. ~~THB-126~~ T118

- (k) Minutes/notes of formal and informal meetings, and records of exchange of views between the Lands Department and the developer of Hunghom Peninsula on the lease modification and premium discussion, including the meetings on 16, 20 January and 13 February 2003 referred to in THB18 (i.e. SC(2) Paper No. T3(C)).

LandsD's response : ~~The~~ records provided by LandsD are enclosed at ~~THB-127~~ ^{T119} (Loose Minute of 11 February 2003 from Senior Estate Surveyor/Valuation 3 of LandsD ("SES/V3") to Deputy Director/Specialist of LandsD ("DD/S"), File Note on 17 February 2003 by SES/V3, Loose Minute of 17 February 2003 from SES/V3 to DD/S, File Note on 12 March 2003 by SES/V3 and Loose Minute of 24 March 2003 from SES/V3 to DD/S.)

~~THB-127~~ T119

- (l) The circumstances leading to the Lands Department coming to its latest view on the premium for the lease modification in THB37 (i.e. SC(2) Paper No. T21(C)), and the reason why the view given by the Lands Department in T21(C) was different fundamentally from that given in THB18 (i.e. SC(2) Paper No. T3(C))

and THB20 (i.e. SC(2) Paper No. T5(C)), as well as those quoted at the Senior Directorate's Meeting on 14 April 2003 (THB27 and 28, i.e. SC(2) Paper Nos. T11(C) and T12(C)).

LandsD's response : The view of LandsD on the premium in ~~THB18, 20, 28~~^{T3(C), T5(C), T12(C)} was on the basis of premium equating to the increase in value conferred. It should be noted that contrary to the norm in lease modifications, the position of Government and Housing Authority in this case is weak because the developer could argue that it is solely Government's initiative to ask the developer to take on the additional risks in changing the contract that they would have been rather happy to have seen through to completion and the developer should not pay a price to help the disposal of flats when it has already suffered alleged damages from the breach of contractual obligation by Government and the Housing Authority. Allowing the developer to take a cut in the premium could be seen as compensating the additional risks to be borne by the developer, and this is the negotiation baseline proposed in THB37.

T21(C)

- (m) Information showing that New World Development Company Limited "do not wish to change" and just "want their guaranteed price and a return on their commercial and carparks" in relation to the email dated 27 June 2003 attached to THB37 (i.e. SC(2) Paper No. T21(C)).

LandsD's response : It appears that the information was the assessment by the officer concerned on the position of the Developer. We are unable to locate further information in connection with it.

- (n) In relation to THB 40 which is a memo dated 26 July 2003 from AD(LA) to DD(C) attaching the Writ of Summons issued by the developer of Hunghom Peninsula (i.e. SC(2)) Paper No. T38), please provide

the following information :

- (i) the Defense filed by HA and the Secretary of Justice as the 1st and 2nd Defendants in the legal proceedings;

THB's response : The following documents are provided –

- ~~THB-128~~ ^{T120} – Amended Statement of Claim of the Plaintiff (First Star Development Limited) filed on 5.8.2005 ~~THB-128~~ T120
- ~~THB-129~~ ^{T121} – Amended Defence of the 1st Defendant (HA) filed on 14.10.2005 ~~THB-129~~ T121
- ~~THB-130~~ ^{T122} – Amended Defence of the 2nd Defendant (The Secretary for Justice on behalf of the Government) filed on 14.10.2005 ~~THB-130~~ T122

The documents relate to pending legal proceedings awaiting adjudication and are subject to the sub judice rule. The Select Committee is kindly advised not to make reference to the merits of the parties' respective cases to avoid any risk of prejudice to the adjudication of the proceedings.

- (ii) documents / records relating to the discussion between AD(LA) and DD(C) on the Writ of Summons;

THB's response : There is no document / record on discussion between AD(LA) and DD(C) on the Writ of Summons. Around that time, there is an Email ~~THB-131~~ ^{T36(c)} dated 1 August 2003 (5:29 pm) from AD(LA) to DD(C) attaching a summary of the legal views on the merits and assessment of the case, which is subject to LPP and the disclosure of which may prejudice the interests of the Government / HA in the pending legal proceedings with the Developer. ~~THB-131~~ T36(c)

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- (iii) minutes of meetings / records recording the discussion within and among the relevant bureaux / departments after service of the Statement of Claim by the developer.

THB's response : Given the large amount of information involved, we need more time to compile our response. We will endeavour to provide the requested information to the Select Committee as soon as practicable.

- (o) The ownership of First Star Development Limited, i.e. the developer of Hunghom Peninsula, and details in the changes of the company's ownership.

*THB's response: A table showing the changes in ownership and directorship of First Star Development Limited is provided at ~~THB-132~~
T123.*

~~THB-132~~ T123
(bilingual)

Note:

Document Nos. which are shaded and bold are graded as "Confidential".