

香港特別行政區政府
The Government of the Hong Kong Special Administrative Region

房屋及規劃地政局
香港花園道美利大廈



**Housing, Planning and Lands
Bureau**

Murray Building, Garden Road,
Hong Kong

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3 January 2005

Clerk to LegCo Panel on Housing
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong
(Attn: Miss Odelia Leung)

Dear Miss Leung,

**Legislative Council Panel on Housing
Lease Modification for Hunghom Peninsula**

I wrote to you on 10 December 2004 enclosing copy of 16 letters between the Lands Department and the developer's solicitor concerning the lease modification for Hunghom Peninsula. The Honourable Ronny Tong has written to the Secretary for Housing, Planning and Lands seeking clarifications on a number of points arising from that exchange of correspondence. For the benefit of Members, I enclose the Honourable Ronny Tong's questions and our reply. Grateful if you would arrange their circulation to Members. Thank you for your assistance.

Yours sincerely,

(Miss Joey LAM)
for Secretary for Housing, Planning and Lands

Certain Questions in respect of the disclosed correspondence on Hung Hom Peninsula

14th December 2004

Hon Ronny Tong Ka-wah SC

1. (a) Prior to 17th January 2004, who first raised the question of lease modification?
(b) At that time, did the Developer say what it intended to do with Hung Hom Peninsula and to whom of the Government did the Developer say this?
2. Were there any meetings prior to 17th January 2004 and if so, what are the details of such meeting(s)?
3. (a) Did the Developer suggest the deleted conditions set out in the letter of 17th January 2004?
(b) If yes, is there a document recording this and did the Developer explain why?
(c) If not:-
 - (i) why did the Government suggest deleting Special Condition clause 6(c)?
 - (ii) why did the Government suggest changing the provisions about the carparks in the 1st and 2nd Schedules?
4. (a) Who raised the consideration of \$864m?
(b) How was this figure arrived at?
(c) Is the letter of 17th January 2004 a record of a concluded negotiation rather than a first offer on the issue?
5. The letter of 19th January 2004 from the Developer's solicitors suggested there

were negotiations and correspondence prior to 17th January 2004. Why did the Government not disclose these despite the Developer's recent public announcement that it would not take any objection to disclosure of all correspondence?

6. The letter of 20th January 2004 from the Developer's solicitors referred to a previous letter from Mr. Robertson of the Lands Department dated 15th January 2004. Why is this letter not produced?
7.
 - (a) The letter of 31st January 2004 referred to a telephone conversation between one Mr. Stewart Leung of the Developer and Mr. Robertson of the Lands Department whereby an oral agreement was struck. What are the details of this agreement?
 - (b) The Developer by this letter asked for the deletion of further conditions including in particular, Special Condition No. 11(a) and (b). Did the Developer explain why these needed to be deleted? Did the Government ask why such deletions were necessary?
8. The letter of 4th February 2004 suggested the Developer had been communicating directly "with the Government and HA":-
 - (a) Who in the Government and HA were communicating directly with the Developer?
 - (b) What were the details of such communications?
9. The letter of 11th February 2004 suggested that there was an "understanding and fundamental principle" that "the lot shall become a conventional private development lot":-
 - (a) When was this "understanding" reached and by whom?
 - (b) The letter repeatedly refers to "the understanding" and "spirit of the

parties" to convert the lot into a "conventional private development lot/land grants":-

- (i) Does the Government accept there was such "understanding"?
 - (ii) If not, why did the Government never refute such a suggestion?
10. By the letter of 5th July 2004, the Government invited the Developer to apply for lease modification:-
- (a) Did the Government form a view at that time that "redevelopment" of the lot was acceptable despite the widespread public outcry?
 - (b) Did the Government seek legal advice as to its position under the lease modification at any time after the signing of the same, and if so, when?

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30 December 2004

The Honourable Ronny K.W. Tong, SC
Legislative Councillor
Room 601, Citibank Tower
3 Garden Road
Central
Hong Kong

Dear Mr Tong,

Hunghom Peninsula

Thank you for your letter of 14 December 2004 to the Secretary for Housing, Planning and Lands seeking clarifications over the lease modification of Hunghom Peninsula. Our responses to your questions are set out below in the order as they were raised.

Question 1 : Request for Lease Modification

- 1(a) The lease modification was initiated by the Government. Hunghom Peninsula was a Private Sector Participation Scheme (PSPS) development. Under the PSPS, private developers were invited to tender for housing sites on which they were required to build flats conforming to specifications stipulated by the Government. Like other Government land sales, the land title of a PSPS site was vested in the developer, who held legal title to the land lot and owned the entire development. However, under the Conditions of Sale, the developers could not sell the completed flats in the open market, but could only sell the flats to eligible purchasers nominated by the Housing Authority. If no nomination was made for purchase of the flats, the Housing Authority would be required to purchase them at the guaranteed price set out in the Conditions of Sale 20 months after the issue of the Consent to Sell.

Following termination of the PSPS in the light of the re-positioned housing policy since November 2002, the Housing Authority explored possible options to dispose of the surplus PSPS flats, including the 2 470 flats in Hunghom Peninsula. After thorough examination of various options and associated policy, legal and contractual implications, the Government considered that the most practicable way forward was to seek the developer's agreement to remove the PSPS-related sales restrictions applicable to the flats through a lease modification subject to payment of premium.

- 1(b) It was against this backdrop that the Government initiated the lease modification for Hunghom Peninsula. Throughout the negotiations and subsequent mediation with the developer, the aim was to remove the sales restrictions applicable to PSPS flats so that the developer could sell the flats in the open market. The developer did not indicate that it had any intention to do anything other than this.

Question 2 : Meetings prior to 17 January 2004

- 2 Government commenced negotiations with the developer in late 2002, which did not result in agreement. Government re-opened negotiation with the developer in December 2003 through mediation, which concluded on 23 December 2003. Apart from the two occasions mentioned above, no meetings between the Government and the developer to discuss Hunghom Peninsula had been held.

Question 3 : Details of lease modification

- 3(a) The deleted conditions set out in the offer letter from the Director of Lands to the developer were not suggested by the developer.
- 3(b) Please see the response to Question 3(a).
- 3(c)(i) On the deletion of Special Condition clause 6(c), which required the developer to build and complete a stipulated number of flats of various sizes, it is the normal practice of the Legal Advisory and Conveyancing Office (LACO) to take advantage of modifications to delete Special Conditions which are spent of effect. At the time of lease modification for Hunghom Peninsula, construction of the development including the flats had already been completed and, hence, the obligations under this special condition had already been fulfilled. Special Condition (6)(c) was no longer necessary or relevant.

- 3(c)(ii) As regards provisions of carparking spaces, the change was effected at the suggestion of the developer in order to allow for the provision of a clubhouse as may be permitted under the Special Condition clause (69) which was added by the modification.

Question 4 : Level of Modification Premium at \$864M

- 4(a&b) The modification premium of \$864M was proposed by the developer. The developer's estimate of premium showing the basis of the \$864M, as against the Government's own estimate, is attached. By the close of the mediation, it became clear that the developer was not prepared to offer more than \$864M for the modification.
- 4(c) The terms and conditions of the offer of lease modification set out in the offer letter of 17 January 2004 were based upon the provisional agreement reached in the mediation and with the Government's authorisation to go ahead.

Questions 5 and 6 : Correspondence prior to 17 January 2004

- 5 The copy of correspondence provided to legislators on 10 December 2004 covers the issue in question, i.e. lease modification of Hunghom Peninsula, and reflects what we had agreed and what we had firmly rejected. Some of the correspondence prior to 17 January 2004 was marked "without prejudice and subject to contract and negotiation" or similar. In light of the on-going litigation by the developer against the Housing Authority and the Government, we are considering how such correspondence can be disclosed without prejudice to the parties.
- 6 Please see the response to Question 5.

Question 7 : Further requests from developer

- 7(a) On the telephone conversation referred to in the letter of 31 January 2004 from the developer's solicitor to LACO, no agreement was struck. The suggestion of agreement was unequivocally refuted in the reply dated 3 February. In that letter, LACO made it very clear that it "did not agree to any further modification or that further modification was required".

- 7(b) As to the developer's request for further modification, the only explanations offered by the developer were those as set out in its solicitor's letters to LACO of 31 January and 11 February 2004. The Government formed the view that the proposed additional modifications were unnecessary to achieve the aim of allowing the developer to sell the flats into the private market. This position was spelt out in LACO's letter of 12 February 2004 to the developer's solicitor.

Question 8 : Communication with Developer

- 8(a) The letter of 4 February was prompted by concern that the developer might approach officers in the Housing Department and Lands Department as he had done with Mr Robertson — not on account of any other direct communications between the developer and Government or Housing Authority officers. The LACO letter achieved its intended effect.
- 8(b) Details of the conversation between Messrs Leung and Robertson are set out in LACO's letter dated 3 February 2004, a copy of which has already been provided to you.

Question 9 : Developer's letter of 11 February 2004

- 9(a) The only understanding between the Government and the developer was that after lease modification, the developer could sell the flats in Hunghom Peninsula into the private market. This understanding was reflected in the modification offer set out in the letter from Director of Lands to the developer on 21 January 2004, which was accepted by the developer on 26 January 2004, thereby creating a contract binding both the Government and the developer.
- 9(b)(i) There was no "understanding" as asserted by the letter of 11 February 2004 on the part of the Government or the Housing Authority.
- 9(b)(ii) LACO's letter of 12 February 2004 to the developer's solicitors, in effect, refuted any suggestion of such understanding. It was unnecessary to go further than that letter.

Question 10 : Re-development

- 10 Your questions are premised on the letter dated 5 July 2004 being an invitation to apply for a lease modification. I refer you to the third paragraph of the letter in which it is stated that “should your client wish to proceed with redevelopment which does not accord with the Master Layout Plans and Approved Landscaping Proposals or which, an application should be made to the District Lands Officer, Kowloon West.”
- 10(a) A lease modification to allow for redevelopment was, in principle, acceptable on the basis that if the scheme proposed accorded with the planning intention, it would have been entirely within land administration policy to have processed it. Subsequently, the Administration took the view that consideration should be given, in the event of an application from the developer for a modification to allow for redevelopment of Hunghom Peninsula, to not agreeing to such a modification.
- 10(b) Government had the benefit of legal advice both prior to and subsequent to the signing of the February 2004 Lease Modification.

I hope the above have clarified the outstanding issues. We are copying your letter together with our reply to the Legislative Council Secretariat since other legislators are also provided with copy of correspondence referred to in our letters.

Yours sincerely,

(Miss Joey LAM)
for Secretary for Housing, Planning and Lands

**Lease Modification of Hunghom Peninsula:
Comparison between the two estimates of premium
by the Government and the Developer**

	Government	Developer
Sale proceeds		
2,470 Private Flats	\$4,693M [\$3,021/sq.ft.(gross)]	\$4,349M [\$2,800/sq.ft.(gross)]
Less		
Guaranteed Price payable to developer of the PSPS Flats	\$1,914M [\$1,232/sq.ft.(gross)]	\$1,914M [\$1,232/sq.ft.(gross)]
Allowance for Bulk "Purchase" of all 2,470 Flats in one go by a single developer	\$704M	\$719M
Cost of Upgrading Flats for Private Sale	\$363M	\$387M
Loss of Carparking Spaces for Conversion to Clubhouse	\$24M	\$36M
Interest incurred/foregone	\$261M	\$279M
Marketing Cost	\$123M	\$150M
Plus		
Saving of PSPS Costs *	\$6M	-
Premium	\$1,310M [\$843/sq.ft (gross)]	\$864M [\$556/sq.ft (gross)]

* Savings due to removal of need for bank guarantees, emergency repairs fund, etc. exclusive to PSPS developments