

THE HONG KONG HOUSING AUTHORITY

Memorandum for the Strategic Planning Committee

**Disposal of Hunghom Peninsula
Private Sector Participation Scheme Flats**

PURPOSE

This paper informs Members of the outcome of the negotiation with the developer, namely First Star Development Limited, on the disposal of Hunghom Peninsula Private Sector Participation Scheme (PSPS) flats.

BACKGROUND

2. The Hunghom Peninsula PSPS project comprising 2 470 flats, with total gross floor area about 144 300m², 494 car parking spaces and shopping facilities was completed in November 2002. The developer holds the legal title to the lot and to the flats and owns the car parking spaces and commercial facilities.
3. Under the subject PSPS Land Grant, the flats are to be sold only to purchasers nominated by the Housing Authority(HA). The HA was named in the agreement as the party to nominate purchasers within a period of 20 months from the date of the Consent to Sell, which was issued in November 2002 and was obliged to purchase the flats at a guaranteed price of \$1.914 billion if it failed to make the nominations by July 2004.
4. Following the change in housing policy to cease the production and sale of subsidized home ownership flats indefinitely and to terminate the PSPS in November 2002, the Government and HA had explored several possible options to dispose of these PSPS flats. On 5 March 2003, this Committee endorsed a number of options to dispose of the surplus HOS/PSPS flats which included negotiation with the developers of the two remaining PSPS projects.

OPTIONS

5. One of the options was for the HA to buy back the PSPS flats and put them up for sale in the open market. This option is constrained by the fact that the PSPS site is owned by the developer, whose agreement is pre-requisite for any proposal requiring modifications to the lease. This is complicated by the co-existence of the developer's commercial facilities and car parking spaces within the development. Further, this ran contrary to the Government's policy of no direct intervention of the property market.

6. Another option was for HA to buy back these flats for conversion into public rental housing. Again, this was not recommended because the flats are not suitable for conversion. These flats are excessive in size as well as in provision standard far exceeded that of the existing rental units.

NEGOTIATION WITH DEVELOPER

7. Since the developer holds both the legal title of the lot and the flats in question, allowing the developer to sell in the flats in the open market subject to payment of a lease modification premium is the most logical and pragmatic way to dispose of these flats. The Government had commenced preliminary negotiations with the developer in January 2003 in order to obviate the need for the HA to pay the guaranteed price to purchase the flats. However both sides were unable to reach any agreement. In July 2003, the developer initiated litigation against the Government and the HA, alleging breaches of the relevant terms of Land Grant of the project and claiming damages.

8. After taking into account the various policy, legal and financial considerations and re-considered various options, the Government had decided that a negotiation team comprising representatives from the Department of Justice, Lands Department and Housing Department be formed to re-open negotiation with the developer by way of mediation with a view to settling the matter. The mediation was concluded in December 2003 before an independent mediator, who is accredited by the Hong Kong International Arbitration Centre. A formal agreement on the lease modification was reached in January 2004.

OUTCOME OF NEGOTIATION

9. Government has reached an agreement with the developer to modify the Conditions of Sale to allow the 2 470 flats to be sold in the open market. The developer has agreed to give up its right to receive the payment

of a guaranteed price at \$1.914 billion from the HA for failing to nominate purchasers for the 2 470 flats under the PSPS conditions and will, in addition, pay a premium of \$864 million to the Government for the lease modification to allow it to dispose of the flats in the open market. The conditions of grant restrict the private residential development on the lot to about 144 300 m² and the modification will not change this.

10. Taking into account the imminence of the deadline for the HA to buy back the flats due in July 2004, the ongoing litigation brought by the developer against the Government and the HA as well as the various restrictions under the PSPS Land Grant, the Government considers that the outcome of the mediation is the best possible deal. If we had not clinched a deal, the Government would forego \$864M, the HA would have to pay \$1.914 billion and left with 2 470 flats which are not suitable for conversion to public rental housing.

11. The parties are still working on issues relating to the dispute over the alleged damages. The conclusion of the modification should effectively put a cap on the amount of damages that the Government and the HA might have to pay in the event of their being found liable in the litigation.

12. Upon the finalization of the lease modification for this PSPS project, we will propose to open negotiation for the only remaining PSPS project in Ngau Chi Wan. We will report the outcome of the negotiation to this Committee when ready.

INFORMATION

14. This paper is prepared for Members' information.

Miss Amy KWONG
Secretary, Strategic Planning Committee
Tel. No.: 2761 7394
Fax No.: 2761 0019

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(Business Development Division)

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