

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

**Further Information provided by the Administration
in response to the Appendix to the Clerk to Select Committee's letter
of 14 April 2009**

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

1. SC(2) Paper Nos. T19(C), T21(C), T34(C)
(Administration's reference: THB 35, THB 37 and
THB 124)

The above papers reveal that on 20 May 2003, the New World Development Company Limited ("NWDCL") (the parent company of the developer of the Hunghom Peninsula development) served, via their solicitor, a notice of claim for damages for the delay of the Hong Kong Housing Authority ("HA") in nomination of purchasers upon issue of the Consent to Sell for the Hunghom Peninsula Private Sector Participation Scheme ("PSPS") flats. Please provide correspondence and/or documents between the Administration and NWDCL relating to the latter's notice of claim.

Transport and Housing Bureau ("THB")'s response : The following documents are relevant :

- ^{T156} ~~THB-250~~ - Letter dated 20 May 2003 from developer's solicitors to the Chief Executive, the Secretary for Housing, Planning and Lands ("SHPL"), the Housing Authority and the Lands Department. The letter dated 10 June 2002 referred in paragraph 23 of the letter has already been provided under ~~THB-113~~.
- ^{T157} ~~THB-251~~ - Letter dated 12 June 2003 from the then Administrative Assistant to SHPL to the developer's solicitors.

^{T156}
~~THB-250~~

^{T108}
~~THB-113~~

^{T108}
^{T157}
~~THB-251~~

2. SC(2) Paper Nos. T21(C), T51(C), and T106
(Administration's reference : THB 37, THB 164, and
THB 135

In SC(2) Paper No. T21(C), paragraph 4 of the attachment to the document (i.e. the email dated 27 June 2003 from Mr John CORRIGALL to Mr Vincent WS TONG) had been obliterated. In SC(2) Paper No. T51(C), it was mentioned that Mr CORRIGALL advised in his email dated 27 June 2003 that the Government had settled a couple of cases at 50% premium. The Transport and Housing Bureau ("THB") advises vide SC(2) paper No. T106 that the two precedent cases of lease modifications with developers where land premium had been reduced by 50% as mentioned paragraph 4 of the email attached to SC(2) Paper No. T21(C) are a development at Fuk Lo Tsun Road, Kowloon City, Kowloon and a development at Tak Fung Street, Hung Hom, Kowloon. Please provide the names of the developers concerned and a summary of these two cases including the following details:

- (a) the circumstances and the factors taken into account leading to the agreement on reducing the premium by 50%, including the assessment of the full modification lease premium by the Lands Department ("LD") and the proposals made by the developers;
- (b) whether an agreement on the lease modification premium was reached between LD and the developers through mediation or through other means; and
- (c) the relevance of these cases to the Hunghom Peninsula development.

Lands Department ("LandsD")'s response :

- (a) and (b) The two precedent cases where 50% premium was accepted as mentioned in paragraph 4 of the email attached to ~~THB-37~~ are summarized as follows:*

T21(C)

Lease modification for a development at Fuk Lo Tsun Road, Kowloon City, Kowloon

In this case, the lot owner initiated court action against the Director of Lands in 2000 on the interpretation of the lease conditions as to whether a lease modification was required for redevelopment of the site into a composite residential and commercial building with private and public carparks. In 2001, the owner proposed to settle the court action by paying 50% of the premium for the lease modification. Having regard to legal advice on the merits of the Government's case in the court action and after deliberation, the Government accepted the owner's settlement proposal. The issue was then resolved. Agreement on the lease modification premium was reached by negotiation. The lot owner when the agreement was reached was Lucky Hing Shing Estate Company Limited. Based on the information presently available to LandsD, there is no evidence to show that the lot owner is related to the developer of the Hunghom Peninsula development or its affiliated companies.

Lease modification of Gross Floor Area ("GFA") Definition Clause to Exempt Curtain Wall from GFA Calculation for a development at Tak Fung Street, Hung Hom, Kowloon

In this case, the lot owners disagreed with LandsD on the necessity to modify the lease for GFA exemption for curtain wall. They did not accept LandsD's premium offer for the lease modification and initiated court action against Government in 2001 on the necessity of the lease modification. In 2002, the owners made a premium offer for settlement of the lease modification dispute. Taking into account the legal advice on the merits of the Government's case in the court action and having regard to other consideration, LandsD decided to reject the offer and made a counter offer with a

premium figure (equivalent to 50% of the market value premium assessed) for the lease modification. Agreement on the lease modification premium was reached by negotiation. The lot owners when the agreement was reached were Elbe Office Investments Limited, Rhine Office Investments Limited and Hutchison Hotel Hong Kong Limited. Based on the information presently available to LandsD, there is no evidence to show that the lot owners are related to the developer of the Hunghom Peninsula development or its affiliated companies.

(c) *Relevance of the two precedent cases to the Hunghom Peninsula case:*

The two precedent cases were examples of LandsD having settled premiums at 50% of the increase in value in special circumstances. The two cases involved circumstances where Government's ability to require a lease modification was in doubt.

3. SC(2) Paper Nos. T65(C) and T67(C) (Administration's reference : THB 180 and THB 182)

SC(2) Paper No. T65(C) reveals that at the Senior Directorate's Meeting ("SDM") on 13 October 2003, LD suggested to settle with the developer of the Hunghom Peninsula development the lease modification at 50% premium following previous precedent cases. The Financial Services and Treasury Bureau ("FSTB") objected to the suggestion on the ground of significant revenue implications and proposed to resolve the case through arbitration. Certain legal advice given in paragraph 6 of the document had been obliterated. SC(2) Paper No. T67(C) which contains an extract of the minutes of SDM on 20 October 2003 reveals that the latest proposal suggested by FSTB was to seek the developer's agreement to settle the case by way of third party mediation. Please advise/provide:

- (a) the reasons why FSTB's suggestion of resolving the case through arbitration was not pursued; and
- (b) whether the reasons referred to in (a) above included the legal advice which had been obliterated from SC(2) Paper No. T65(C); and if yes, a summary of the legal advice in question.

THB's response : The suggestion of resolving the case through arbitration was not pursued because there was no provision in the land lease contract for arbitration. The obliterated legal advice read "there was no provision in the contract for arbitration. He advised that we should seek to settle the case by way of third party mediation."

4. SC(2) Paper Nos. T13 (LegCo paper No. CB(1)469/04-05(01)) and T67 (Administration's reference : THB 76)

In SC(2) Paper No. T13, the Housing Planning and Lands Bureau advised the Panel on Housing of the Legislative Council that "*the letters dated 31 January 2004 and 11 February 2004 were the first indications that the developer might be contemplating redevelopment of the Lot (the Hunghom Peninsula).*" On 5 July 2004, LD wrote to the solicitor of the developer reminding the developer that any redevelopment which did not accord with the Master Layout Plans and Approved Landscaping Proposals would require a lease modification (SC(2) Paper No. T67 (Administration's reference : THB 76)). Please advise the reasons why LD had to wait until 5 July 2004 to write to the developer to remind it of the above requirement.

LandsD's response : By the letters dated 31 January 2004 and 11 February 2004 (see ~~THB 64~~^{T55} and ~~THB 68~~^{T59}), the developer's solicitors requested to seek further modifications to the Conditions of Sale (including, inter alia, deletion of a Special Condition requiring development and redevelopment to accord with the approved Master Layout Plans and Approved Landscaping Proposals) which were above and beyond those forming the subject of the formal agreement although the letters did not disclose the reason for seeking further modifications. LandsD

~~THB 64~~ T55
~~THB 68~~ T59

considered that the further modifications proposed by the developer were not necessary to achieve the mutual aim of modifying the Conditions of Sale to allow the developer to sell the residential units of the Hunghom Peninsula into the private market, and rejected the request vide its letter dated 12 February 2004 (see ~~THB 71~~^{T62}) to the developer's solicitors. Subsequently, upon noting from news media coverage that the developer proposed to redevelop the lot, LandsD issued a further letter on 5 July 2004 (see ~~THB 76~~^{T67}) to the developer's solicitors reminding them that any redevelopment which did not accord with the Master Layout Plan and Approved Landscaping Proposals would require a lease modification.

~~THB 71~~^{T62}

~~THB 76~~^{T67}

5. SC(2) Paper No. T128 (Administration's reference : THB 139)

In item 2(c)(ii) of SC(2) Paper No. T128, THB advises that Mr LEUNG Chin-man was the Deputy Secretary for Housing (1) from 25 September 1997 until 25 August 1999. Mr LEUNG chaired the PSPS Tender Board meeting on 20 January 1998 as Acting Secretary for Housing to consider the second tender of the site for the Hunghom Peninsula development, and the meeting agreed to re-tender the site. At the third tender exercise, the PSPS Tender Board at its meeting on 27 July 1999 agreed to award the tender to First Star Development Limited. Please advise the name and the capacity of the official who chaired the PSPS Tender Board meeting on 27 July 1999.

THB's response : The Private Sector Participation Scheme Tender Board meeting to consider the third tender exercise was held on 17 September 1999 (instead of 27 July 1999 which was a clerical error in ~~THB 139~~^{T138}). The Chairman of that Tender Board meeting was Mr Dominic WONG Shing-wah in his capacity of the then Secretary for Housing.

6. SC(2) Paper No. T49(C) (Administration's reference : THB 162)

In relation to SC(2) Paper No. T49(C), please provide the email of 9 April 2003 referred to in the email dated 11 April 2003 from Mr John CORRIGALL to Mr LEUNG Chin-man

relating to the disposal of the Hunghom Peninsula development.

THB's response : The email of 9 April 2003 is provided by LandsD at ~~THB-252~~^{T158}. The email in the second sheet of ~~THB-173~~^{T58(c)} which was dated 10 April 2003 (11:11 hours) has identical content.

T158
~~THB252-~~
~~THB-173~~
T58(c)

7. SC(2) Paper No. T112(C) (Administration's reference : THB 227)

SC(2) Paper No. T112(C) reveals that the Director of Lands had a meeting with Mr Stewart LEUNG Chi-kin on matters relating to the redevelopment of Hunghom Peninsula development. Please advise/provide:

- (a) the reasons for charging the developer of the Hunghom Peninsula a premium for the lease modification for the removal of the partition walls and fixtures and/or any other alteration works;
- (b) in connection with (a) above, whether the developer had paid a premium and the amount of the premium paid; and
- (c) the relevant documents and records in relation to (a) and (b) above.

LandsD's response :

(a) and (c) LandsD took the position that any proposals by the developer for alteration and additional works which were not catered for in the lease modification of February 2004 would require a further lease modification and would be subject to the payment of a premium. The following relevant records are attached:

- ~~THB-253~~^{T159} – Letter dated 11 March 2005 from LandsD to the developer's solicitors;
- ~~THB-254~~^{T160} – Letter dated 24 March 2005 from

T159
~~THB-253-~~
T160
~~THB-254~~

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the developer's solicitors to LandsD;

- ~~T161~~
~~THB-255~~ – Letter dated 18 May 2005 from LandsD to the developer's solicitors;
- ~~T162~~
~~THB-256~~ – Letter dated 27 June 2005 from the developer's solicitors to LandsD;
- ~~T163~~
~~THB-257~~ – Email of 23 July 2005 from the then Director of Lands to the then Deputy Director (General) and the then Deputy Director (Specialist) of Lands Department copied to others;
- ~~T164~~
~~THB-258~~ – Letter dated 18 July 2005 from LandsD to the developer's solicitors; and
- ~~T165~~
~~THB-259~~ – Letter dated 9 August 2005 from LandsD to the developer's solicitors.

~~T161~~
~~THB-255~~

~~T162~~
~~THB-256~~

~~T163~~
~~THB-257~~

~~T164~~
~~THB-258~~

~~T165~~
~~THB-259~~

(b) and (c) *The developer applied for a lease modification in November 2005, which was intended to facilitate major upgrading works including removal of partition walls for amalgamation of residential units, etc. However, the basic terms had not been agreed and in January 2006, the developer decided not to proceed with that proposal. Subsequently, the developer submitted a much smaller scaled upgrading proposal by abandoning the idea of amalgamation of residential units. The lease modification for this proposal was agreed at a premium of \$36.99 million. The relevant modification letter dated 13 November 2007 is attached (as ~~THB-260~~). T166*

~~T166~~
~~THB-260~~

8. SC(2) Paper Nos. T24(C) and T115(C) (Administration's reference : THB 41 and THB 246)

In SC(2) Paper No. T24(C), the loose minute of 28 July 2003 from Secretary for Housing, Planning and Lands ("SHPL") to the Chief Executive, SHPL recommended that LD should re-open negotiation with the developer of the

Hunghom Peninsula and seek a settlement with them on a 50% premium basis based on a full premium of \$1,516 million as at July 2003. In SC(2) Paper No. T115(C), it is revealed that the settlement figure of \$1,150 million approved by the Executive Council ("ExCo"), was arrived at through a deduction of the developer's extra costs claim of \$167 million and a 70/30 split of a premium at \$1,812 million. Please advise :

- (a) the basis of assessment of the premium figure of \$1,812 million;
- (b) the reasons for recommending a settlement at a premium based on a 70/30 split instead of a 50/50 split to the ExCo; and
- (c) the reasons for reverting to the 50/50 split in the mediation despite the ExCo decision to settle at \$1,150 million which was arrived at via a 70/30 split.

THB, Financial Services and Treasury Bureau ("FSTB") and LandsD's response :

- (a) *The premium figure of \$1,812 million was assessed on the basis equating to the increase in value conferred resulting from the lease modification.*
- (b) *The reasons for recommending a settlement at a premium based on 70/30 split had been explained in an email dated 20 November 2003 (9:26 a.m.) from the then Assistant Secretary for Financial Services and the Treasury (Treasury) to the then Deputy Director (Specialist) of LandsD, which was copied to the then Deputy Secretary for Financial Services and the Treasury. The email was provided to the Select Committee in ~~THB-246~~. T115(C)*
- (c) *On the recommendation of the mediation team and the then PSH, the then SHPL made the decision to accept the modification premium offer of \$864 million from the developer. The relevant document and the rationale for accepting the offer can be found in ~~THB-47~~.^{T29(C)} The premium figure accepted was the result of the*

T115(C)

~~THB-246~~

T29(C)

~~THB-47~~

mediation and not based on a 50:50 split. The analysis made in LandsD's email of 24 December 2003 to the then PSH attached to THB 47 merely pointed out what percentage the premium offer of \$864 million would represent under various assessments.

9. SC(2) Paper No. T116(C) and T117(C) (Administration's reference : THB 247 and THB 248)

In SC(2) Paper No. T116(C), it is revealed that Mr Anthony ROBERTSON sent an email to Mr LEUNG Chin-man on 25 November 2003 urging Mr LEUNG "to get the necessary authority to allow settlement at 50/50 with credit to New World for the amount of damages agreed as a result of the mediation." On 10 December 2003, Mr John CORRIGALL informed Mr LEUNG that "...the chances of NW increasing their offer significantly to be very slim and of their offering a global sum at or in excess of the ExCo approved figure of \$1,150 million for settlement virtually nil. This means we shall almost certainly have to seek SHPL's authority if a settlement is to be reached." (SC(2) Paper No. T117(C)) Please provide copies of Mr LEUNG's response to the above two emails and all other documents or records of communication relating to his matter such as memos, minutes/notes of formal/informal meetings, file minutes/notes, emails, and fax messages, between Mr LEUNG and LD; those between Mr LEUNG and his supervisor and his subordinates; and those between Mr LEUNG and other bureaux/departments.

THB's response : There is no file record to suggest that Mr LEUNG had responded to the two emails mentioned. Documents identified to be related to this matter have been provided to the Select Committee in earlier batches of THB's responses.

10. SC(2) Paper Nos. T47(C), T51(C), T55(C), T57(C), T58(C) and T128 (Administration's reference : THB 153, THB 164, THB 170, THB 172, THB 173, and THB 139)

Certain information has been obliterated in SC(2) Paper Nos. T47(C), T51(C), T55(C), T57(C) and T58(C). THB advises vide SC(2) Paper No. T128 that the obliterated

information is related to legal advice on the viability for HA to nominate a single purchaser for all PSPS flats at the Hunghom Peninsula development. Please provide (a) a summary of the legal advice in question to facilitate the Select Committee's inquiry; (b) what decision was made and/or action taken by the Government as a result of the legal advice; and (c) whether and to what extent the legal advice was followed or adopted in the decision so made and/or action so taken.

THB's response : Please see response to item 12 below.

SC(2) Paper Nos. T65(C) and T128 (Administration's reference : THB 180 and THB 139)

Certain information has been obliterated in SC(2) Paper Nos. T65(C). THB advises vide SC(2) Paper No. T128 that the obliterated information is legal advice on the assessment of the possible legal means to settle the dispute with the developer of the Hunghom Peninsula development. Please provide (a) a summary of the legal advice in question to facilitate the Select Committee's inquiry; (b) what decision was made and/or action taken by the Government as a result of the legal advice; and (c) whether and to what extent the legal advice was followed or adopted in the decision so made and/or action so taken.

THB's response : Please see response to item 12 below.

12. SC(2) Paper Nos. T154 and T116(C) (Administration's reference : THB 244 and THB 247)

Certain information has been obliterated in SC(2) Paper No. T116(C). THB advises vide SC(2) Paper No. T154 that the obliterated information contains legal advice on the legal merits of the Government's case in the pending legal proceedings with the developer. Please provide (a) a summary of the legal advice in question to facilitate the Select Committee's inquiry; (b) what decision was made and/or action taken by the Government as a result of the legal advice; and (c) whether and to what extent the legal advice was followed or adopted in the decision so made and/or action so taken.

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THB's response : The summaries of legal advice requested for items 10 to 12 above are provided at ~~THB-261~~^{T167}. We have endeavoured to provide as much details about the obliterated legal advice as possible while avoiding to divulge information that might prejudice the position of the Government and/or the Hong Kong Housing Authority in the pending legal proceedings initiated by the developer. The Administration's position on most of these issues have already been explained in papers prepared by the then Housing, Planning and Lands Bureau for the joint meeting of the LegCo Panel on Housing and Panel on Planning, Lands and Works (see paragraphs 10 to 13 of ~~THB-6~~^{T27} and paragraphs 3 to 8 of ~~THB-7~~^{T28}).

T167
~~THB-261~~
(bilingual)

THB-6 T27
THB-7 T28

Note:

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

Document Nos. which are underlined are those provided in previous submissions.

Transport and Housing Bureau
May 2009