

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

Witness statement of Mr TONG Wing-shing

I, TONG Wing-shing, was the Business Director and Deputy Director of the Housing Department (“HD”) during the period between 16 October 2000 and 31 July 2005, after which I started my pre-retirement leave and subsequently retired from the HD. (The major duties and responsibilities of my last few postings at the HD before my retirement are set out in the **Annex**). In preparing this witness statement, I set out the questions raised by the Select Committee and then provide my answers to the best of my knowledge and belief.

As the matter being inquired into took place about six years ago, this statement is based on my recollection of the relevant events from the perspective of my various former capacities with the benefit of reviewing some of the relevant file records at the HD. If there were documents relevant to this statement which were provided earlier by the Administration, I will simply quote their reference numbers as assigned by the Administration without enclosing an additional copy with this statement.

Discussion on options for the disposal of the Hunghom Peninsula development under the repositioned housing policy announced in November 2002

Q1 Formulation of the policy on the cessation of the production and sale of Home Ownership Scheme and Private Sector Participation Scheme (“PSPS”) flats including (a) the responsible parties; (b) your role and participation in formulating the policy; and (c) views from other parties including other policy bureaux, the Hong Kong Housing Authority (“HA”), and the real estate sector

A1 It is my understanding that the policy on the cessation of the production and sale of Home Ownership Scheme (“HOS”) and PSPS flats was formulated before March 2003 when I began getting involved in the subject matter. I was not involved in the formulation of the policy on the cessation of the production and sale of HOS and PSPS flats, since it was not within my scope of work at that time.

Q2 Discussion on the disposal of the Hunghom Peninsula development at meetings of the Steering Committee on Land Supply for Housing, the Housing, Planning and Lands Bureau, and the Senior Directorate Meetings (“SDMs”), including your role and participation in these meetings

A2 As I was not the subject officer, I did not participate in the relevant discussions on the disposal of the Hunghom Peninsula development at the meetings of the Steering Committee on Land Supply for Housing, the Housing, Planning and Lands Bureau (“HPLB”) and the SDMs. However, I recall that my attendance at the HPLB meeting and the SDM on 5 September 2002 ^{(T52(c))} and 20 January 2003 ^{(T53(c))} respectively at which the disposal of the Hunghom Peninsula development was discussed, was for discussion of other issues that were within the purview of the then BD(D) and DD(C).

Q3 The factors taken into account when making the decision to dispose of the Hunghom Peninsula development through negotiation with the developer to allow it to sell the flats in the open market subject to payment of a lease modification premium

A3 It was my belief that at the material time the Administration had considered the following factors when making the decision to dispose of the Hunghom Peninsula development through negotiation with the developer to allow it to sell the flats in the open market subject to payment of a lease modification premium:

- (i) to reduce the number of “overhung” subsidized home ownership flats;
- (ii) to avoid an upfront cash payable by the HA for the purchase of the PSPS flats;
- (iii) to generate an immediate revenue to the Government from the lease modification; and
- (iv) to avoid possible contractual disputes with the developer of the Hunghom Peninsula development.

I was made aware of these factors because during the period between 16 September 2002 and 5 October 2002 when the subject officer was on leave, I doubled up his post in addition to my own duties.

Q4 The role of Mr LEUNG Chin-man, the former Director of Housing, in the decision on how to dispose of the Hunghom Peninsula PPS flats after the repositioned housing policy announced in November 2002

A4 It was an usual procedure that important policy papers were cleared by Mr Leung Chin-man, the then Permanent Secretary for Housing, Planning and Lands (Housing)/Director of Housing before issue for discussion at high level meetings. I believe that papers relating to the disposal of the Hunghom Peninsula PPS flats after the repositioned housing policy announced in November 2002 were no exception. Apart from this understanding, I am not aware of and do not recall any particular participation of Mr Leung in deciding the disposal option of the Hunghom Peninsula PPS flats.

Negotiation with the developer of the Hunghom Peninsula development in the lease modification process

Q5 Your role and participation in the negotiation with the developer of the Hunghom Peninsula development in the lease modification process

A5 I did not participate in the negotiation with the developer of the Hunghom Peninsula development (“the Developer”) in the lease modification process.

Q6 Discussion at the SDMs on the determination of the premium and the revised premium figures during the negotiation with the developer of the Hunghom Peninsula development from January to March 2003, and discussion on the various disposal options and the premium figures after the halt of negotiation in end March 2003

A6 My participation commenced at around end of March 2003 when the negotiation between the Lands Department (“LD”) and the Developer halted. Thereafter, SDMs had discussions on how to move forward and deliberations on various disposal options for the Hunghom Peninsula development, including the proposal to re-open negotiation with the Developer. Brief notes and minutes of the SDMs concerned are found in THB 26 to 39, THB124 and THB 170 to 187.

(T10(c) to T23(c), T34(c) and T55(c) to T72(c))

Mediation with the developer on the disposal of the Hunghom Peninsula development (including deliberation on the premium) and its claim for damages in December 2003

Q7 Your role and participation in the mediation with the developer of Hunghom Peninsula development

A7 The Government Mediation Team (as stated in A9 below) was formed by representatives from the LD, the Department of Justice (“DoJ”) and the HA/HD and I was HA/HD’s representative taking care of the interest of the HA.

Q8 Mr LEUNG Chin-man’s role and participation in the mediation with the developer of Hunghom Peninsula development

A8 I remember on 31 October 2003, Mr Leung Chin-man informed Mr John Corrigan and me by an e-mail (see THB 245) ^(T114CC) that he had completed the first communications with the Developer about the proposed mediation. He also sought the agreement of the Secretary for Housing, Planning and Lands (“SHPL”) on the scope of authority of the Government Mediation Team, i.e. the Team led by Mr John Corrigan would decide on the settlement amount (with the assistance of the mediator), if it fell at or above the bottom line endorsed by the Executive Council (“ExCo”). In the event that the Team intended to settle at an amount falling below the bottom line, the Team should refer the matter to SHPL for decision. Mr Leung did not attend any meeting of the mediation when the mediation took place between 8 December 2003 and 23 December 2003, but was kept informed of its progress and outcome from time to time by the Government Mediation Team through Mr John Corrigan. Mr Leung was involved in making the final recommendation to accept the Developer’s offer to SHPL.

Q9 Composition of the mediation team and the reporting line of the team

A9 For the purpose of the mediation, Mr John Corrigan, the former Deputy Director (Specialist) of the LD, led a team of Government representatives consisting of the following members from the LD, HA/HD and DoJ :-

LD:

Mr Anthony Robertson
(Assistant Director/Legal (Kowloon and Conveyancing))
Ms Susan Ku
(Senior Estate Surveyor/Valuation 3)

HA/HD :

Myself, Mr TONG Wing-shing
(Deputy Director (Business Development & Construction))
Ms Peggy Chan
(Chief Estate Surveyor (Private Sector Participation
Scheme & Tenant Purchase Scheme)) (for the mediation
sessions on 8, 9 and 12 December 2003 only)
Mr N.M. Chan
(Chief Manager/Business Development) (for the mediation
sessions on 17 and 23 December 2003 only)
Ms Handa Lam
(Assistant Legal Advisor)
Mr Santiago Chuen
(Senior Finance Manager/Business Management &
Support (2)) (for the mediation session on 23 December 2003
only)

DoJ :

Mr Greg Payne
(Senior Government Counsel)
Mr Enzo Chow
(Government Counsel)

(collectively “the Government Mediation Team” or simply “the Team”)

The Government Mediation Team ultimately reported to SHPL to whom ExCo had delegated the requisite authority to conclude a settlement with the Developer.

Q10 The mediation strategies and the parties involved in the formulation of the strategies

A10 The initial strategy of the Team was to seek a global settlement of the premium for the lease modification and the legal action that the Developer had commenced against the Government and the HA. However, at the later stage of the mediation, the Team found that it was not possible to resolve the issues relating to the claim for damages made by the Developer, and that the Developer was unwilling to increase its \$864 million premium offer. With the Developer's agreement to proceed with the lease modification only, the Team decided to close the mediation and to seek authority to settle the lease modification alone at a premium of \$864 million which was the last offer made by the Developer. The mediation strategies were formulated collectively by members of the Government Mediation Team.

Q11 The party who proposed the premium of \$864 million, and the factors taken into account in making the decision to reach an agreement with the developer at this premium figure

A11 The premium of \$864 million was proposed by the Developer, and the factors that were taken into account in making the decision to reach an agreement with the Developer at this premium figure are detailed in the LegCo Panel Paper CB(1)1160/03-04(01) at THB 7. (T28)

Q12 Reasons for concluding the negotiation on the lease modification without a settlement of the claim for damages from the developer

A12 The main reason for concluding the negotiation on the lease modification without a settlement of the claim for damages from the Developer was that the Team and the Developer held very different views in respect of the liability and the quantum of damages and failed to resolve them at the mediation. The Team believed at the material time that the questions of damages could either be the subject of further negotiation or be resolved through litigation. However, the conclusion of the negotiation of the lease modification would effectively put a limit on the time the Developer could claim to have suffered losses and thus cap 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.

Communication with the developer of the Hunghom Peninsula development

Q13 Records of formal and informal discussions relating to the disposal of the PSPS flats in the Hunghom Peninsula development including but not limited to emails, fax messages, correspondence, records or notes of oral communication, minutes, and any records of informal meetings : (a) between you and the developer; (b) between you and the parent company of the developer; and (c) between you and Mr LEUNG Chin-man

A13 Since my pre-retirement leave in August 2005, I have not had access to any records of formal or informal discussions relating to my work in the disposal of PSPS flats in the Hunghom Peninsula development. I have, however, recently reviewed the materials submitted to the Select Committee by the Transport and Housing Bureau and am of the view that, as far as matters related to me are concerned, relevant records have been provided to the Select Committee.

TONG Wing-shing
7 May 2009

**Posting of Mr TONG Wing-shing
for the period from 16 October 2000 to 31 July 2005**

Period	Post Title	Main duties and responsibilities
16.10.2000 to 31.12.2002	Business Director (Development) ("BD(D)")	To assume overall responsibility and accountability for the development and construction projects of the Housing Department
1.1.2003 to 2.3.2003	Deputy Director (Construction) ("DD(C)")	To assume overall responsibility and accountability for the development and construction projects of the Housing Department
3.3.2003 to 5.4.2004	Deputy Director (Business Development and Construction) ("DD(BD&C)") {Doubling up the post of Deputy Director (Business Development) in addition to DD(C)}	To assume overall responsibility and accountability for the development and construction projects of the Housing Department, and, among other duties, to handle the disposal of the overhung subsidized ownership flats
6.4.2004 to 31.7.2005	Deputy Director (Development and Construction) ("DD(DC)")	To assume overall responsibility and accountability for the development and construction projects of the Housing Department, and, among other duties, to handle the disposal of the overhung subsidized ownership flats