

**Legislative Council Select Committee to study  
Mr Leung Chun-ying's involvement as a Member of the Jury  
in the West Kowloon Reclamation Concept Plan Competition  
and related issues**

Statement by Mr Eric Andrew Johnson  
for the hearing on 17 March 2012

From early August 2001, I was the Principal Assistant Secretary in the then Planning and Lands Bureau ("the Bureau") of the Government Secretariat assigned as the Competition Co-ordinator for the West Kowloon Reclamation Concept Plan Competition ("the Competition") organized by the Bureau. I left the Bureau when I proceeded on pre-retirement leave at the end of December 2003.

2. I understand from the Summons issued to me on 12 March 2012 that the Select Committee requires from me a written statement on its major areas of study, with particular reference to the conduct of the Competition, the mechanism and procedure for dealing with conflict of interest and the adjudication process. I propose to address those matters in the context of several questions raised by Members of the Legislative Council at the meeting held immediately after the House Committee meeting on 24 February 2012.

3. The conduct of the Competition during my time as Competition Co-ordinator covered the operation of the Technical Panel and the Competition Jury ("the Jury"), matters related to conflict of interest, the adjudication of entries and the publication of the Report of the Jury.

4. The Competition took place a decade ago. I might not be able to recall exactly or in detail actions taken or words spoken at any particular time but I shall try to assist Members as best I can. I am grateful to the Home Affairs Bureau for allowing me access to papers I worked on at the time.

**Background**

5. The background to the Competition has been set out comprehensively in two papers prepared for the House Committee meeting on 24 February 2012. These are the Background Brief prepared by the Legislative Council Secretariat and an Information Paper submitted by the Home Affairs Bureau.

6. On 8 August 2001, I assumed the post of Principal Assistant Secretary (Special Duties) in the Bureau. I was responsible to the Secretary for Planning and Lands for co-ordinating the Competition. I had a small team to assist me.

7. The Competition was well under way at that point. The Jury, to be chaired by Lord Rothschild, and the Professional Advisor, Mr Lacy, had been appointed. The Competition Document establishing the rules and conduct of the Competition, including the membership of the Jury and the Technical Panel, had been issued. Registrations of interest in entering the Competition had been received and the Bureau was awaiting receipt of competition entries.

8. My immediate tasks were to devise procedures for the secure and proper handling of entries and for declarations of interest, together with work programmes for the Technical Panel and the Jury, in consultation with the Professional Advisor and the Jury Chairman. The objective was to ensure that arrangements were in place for fair and efficient handling and adjudication of the entries.

9. Preparation for the adjudication process included devising a layout for departmental appraisal of entries, servicing the Technical Panel and drafting its report to the Jury and organizing and servicing the Jury meetings. My team then organized a media conference at which the winning entries were unveiled, a prize presentation and publicity. With input from the Professional Advisor, I drafted the Report of the Jury for jurors' consideration. The report was later published on the Competition website. These efforts were aimed at ensuring that the adjudication of entries and announcement of results were conducted in keeping with international best practice for competitions of this nature.

10. The following paragraphs address the conduct of the Competition, the mechanism and procedure for dealing with conflict of interest and the adjudication process in the context of several questions raised in recent weeks by Members of this Council.

### **Why were there no minutes of the Jury's discussions?**

11. The question has been asked as to why there were no minutes taken of the Jury's discussions. This is relevant to the adjudication process.

12. For this Competition, the Government appointed an independent jury of distinguished persons who would be entrusted with conducting the adjudication of entries with impartiality and integrity. It is in keeping with such an arrangement that the jury should be able to conduct its deliberations in closed session and that its verdict should be respected.

13. The Competition Document subsequently provided that the assessment process would be carried out in strict confidence (paragraph 33 of the document) and that the decisions of the Jury would be final (paragraph 32).

14. Accordingly, as far as I can recall, there was no expectation that the discussion in the Jury on the adjudication of entries and related

matters would be minuted. I believe it was well understood by all concerned that such discussion would remain private. Hence, no minutes were taken. Moreover, as far as I can recall, I was not asked or advised by any juror or the Professional Advisor or within the Administration to minute the Jury's discussion.

15. The Report of the Jury, while respecting the confidentiality of the assessment process, recorded in general terms what the Jury discussed in going about its work. This included an explanation of the Jury's adjudication criteria, the process it used to select the prize winning entries and its opinion of the merits of those entries.

**Why does the Report of the Jury not mention jurors' completion of conflict of interest declarations?**

16. The question has been asked as to why the Report of the Jury did not mention jurors' completion of conflict of interest declarations.

17. The completion of declaration of interest forms by the Jury, or indeed by the Technical Panel, was not a requirement in the Competition Document. It was imposed separately as a supplementary requirement by the Competition Organizer. Accordingly, in drafting the Report of the Jury, I opted not to include reference to the completion of declarations.

18. The draft of the Report was circulated for consideration by members of the Jury. If any of the ten jurors had responded requesting that mention be made that they had submitted declarations to the Competition Organizer, I would have been prepared to reconsider and possibly draft additional text for Jury members' further consideration. In the event, no comments were received from any juror on this aspect.

19. I might usefully add that, as far as I can recall, I drafted and finalised the Report of the Jury, in consultation with the jurors and the Professional Advisor, without referring the draft to anyone more senior in the Bureau. I was mindful throughout that the Report was the independent Jury's report and not the Administration's report.

20. Members of the Technical Panel informed the Jury through their report that they had completed conflict of interest declarations. I was content with that as the Technical Panel reported to the Jury and discussion of the Panel's report was part of the Jury's work programme.

**Why was the declaration of interests not sought from Jury members much earlier?**

21. The question has been asked as to why the declaration of interests was not sought from Jury members much earlier. This is related to the matter of establishing a process for the declaration of interests, which led up to issue of the declaration form.

22. The Competition Document is silent on the question of making declarations of interest. It was nonetheless important that this question be addressed in the light of the ineligibility, anonymity and confidentiality provisions in paragraphs 16, 25 and 33 of the document.

23. I sought advice from the Professional Advisor in early October 2001, setting out my team's initial thinking as follows:

- (a) Paragraph 16 (of the Competition Document) provides that members of the Technical Panel, their immediate family members, their employees, their close professional associates and any company of which they are a director or major shareholder are ineligible to enter the competition. The composition of the Panel is stated in the Competition Document and the onus is therefore on the prospective participant to check whether he is an immediate family member, employee or close professional associate of any Panel member, so that he does not enter the competition when ineligible. As regards directorships and majority shareholdings, it seems reasonable to assume that the Panel member knows what his companies are doing and that the onus should therefore be on him to ensure that none of them enters the competition.
- (b) We are considering nonetheless whether we should require Panel members to declare whether they are aware that any of their immediate family members, employees or close professional associates, or any company of which they are a director or major shareholder, has entered the competition. This could be done with or without tabling a list of participants (drawn from the information in the sealed envelopes) for members to examine. If we proceed on the basis of tabling a list of participants, that carries the risk of Panel members revealing to others who has entered the competition.
- (c) Paragraph 25 (of the Competition Document) provides for submission materials not to identify any of the participants or their teams, consultants or associates and paragraph 33 provides for entries to be identified only by serial numbers during the assessment process. It may therefore be argued that there is no need for any declarations of interest because members (of the Technical Panel) will not know and cannot come to know the identity of any participant. However, we might then reach the point of announcing the winning participants before a potential conflict of interest became known. This would be undesirable.
- (d) It is also possible that a participant may make known to a member of the Technical Panel information about his entry. He may also seek to gain favourable consideration of it. Though paragraph 33 is intended principally to forestall premature public disclosure, we consider that it should apply equally to private disclosure to a member of the Panel. It seems to us that, in the event of such

disclosure, the Technical Panel member concerned should declare the matter and that the entry concerned should be disqualified. If the law appears to have been broken, other action may also be necessary. We are therefore considering whether we should explicitly require members of the Technical Panel to declare any private disclosure to them of information about an entry by the participant concerned.

I added shortly afterwards:

- (e) On further reflection, we are inclined not to pursue the question of requiring members of the Technical Panel to declare any private disclosure to them of information about an entry by the participant concerned ((d) above). We believe that, in practice, we would have difficulty verifying information given in a declaration of this nature. We also believe that the members of the Panel fully understand that they should not entertain attempted discussion of the details of entries to the competition.

I envisaged similar rationale applying to the declaration arrangements for the Jury.

24. Mr Lacy replied as follows:

"I think it is not an imposition on Technical Panel members, Jury members, or anyone officially connected with the competition to declare whether or not their association with a contestant or a business represents a conflict of interest, either real or implied. I would be happy to review such cases on an individual basis if your group feels it would be helpful. Normally, all Jurors and Technical Panel members are expected to sign a binding agreement of confidentiality and conflict of interest notification, such as the one you have developed."

25. The proposed policy approach to declaration of interests and a draft declaration form were then submitted to the Independent Commission Against Corruption for advice, in terms broadly similar to my request for advice from Mr Lacy, on 18 October 2001.

26. Briefly, the ICAC advised that the declaration arrangements should apply to the Jury and the Professional Advisor in addition to the Technical Panel. The ICAC recommended that, to facilitate declaration and to check eligibility, entrants' consent be sought to waive the confidentiality and anonymity restrictions of the Competition Document.

27. I replied to the ICAC agreeing to apply the proposed declaration arrangements to everyone participating in the decision-making at both the technical assessment and adjudication stages of the competition. I did not go along with the ICAC's recommendation of seeking entrants' consent to waive confidentiality and anonymity provisions so that

declarations could be made with knowledge of entrants' identities. I considered this to be problematic. Some entrants might give consent, whereas others might not. The confidentiality and anonymity provisions were essential to the impartial conduct of the adjudication process. I informed the ICAC that we preferred to proceed on the basis of a declaration to the best of the declarant's knowledge.

28. Having considered the advice of the Professional Advisor and the ICAC, I decided to proceed with requiring Technical Panel members to declare whether they are aware that any of their immediate family members, employees or close professional associates, or any company of which they are a director or major shareholder, has entered the Competition. The declaration form was finalised and deployed for use by the Technical Panel in November and December 2001.

29. As far as I can recall, members of the Technical Panel did not experience any particular problems in completing the declarations. In the light of this experience, I asked Lord Rothschild on 11 February 2002 for approval to apply similar arrangements to the Jury. His clearance to proceed was given on 12 February. Thus there was quite a lengthy process to go through before I was in a position to issue a declaration form to the Jury.

30. The declaration form was issued to all jurors on Thursday, 21 February 2002 as part of a package of information and material that they were to absorb and deal with before the first meeting on Monday, 25 February. I requested return of the completed declaration by Saturday, 23 February, so that I could have an initial review of them with Lord Rothschild and Mr Lacy in the afternoon of Sunday, 24 February, with a view to identifying any problems. In the event, eight of the ten jurors' declarations were to hand at that time and, upon examination, appeared to pose no problems. Two declarations, including that from Mr Leung Chun-ying, remained outstanding at the time.

31. As far as I can recall, no juror sought further advice from me on how to interpret or complete the form.

32. The purpose of the second item on the Jury's agenda on Monday, 25 February 2002, "*Conflict of interest declarations*", was to chase jurors who had missed the deadline of 23 February for return of declaration forms and to provide a second opportunity - the first opportunity having been on Sunday, 24 February - for consideration by the Chairman of any potential conflict of interest declared in any of the forms.

33. The two outstanding declaration forms were handed to me at the meeting, including that of Mr Leung Chun-ying, dated that same day, 25 February. I had a quick look at the two forms to see whether any company had been named at (b) or (e) of the form, as that could signal a potential conflict of interest. As with the other eight declarations, no such entries appeared and, if I recall correctly, I reported to the

Chairman that all appeared to be in order as regards potential conflicts of interest. The Jury then moved on to the next agenda item.

### **How was Mr Leung Chun-ying's declaration form handled?**

34. The question has been asked as to how Mr Leung Chun-ying's declaration form was handled.

35. The Jury had a full agenda on Monday, 25 February 2002, considering the Report of the Technical Panel, working out its adjudication process, lunching with the Secretary for Planning and Lands, viewing the West Kowloon Reclamation Area and having a third session of viewing the entry presentation boards. As secretary to the Jury, I attended all of these sessions. On Tuesday and Wednesday, 26 and 27 February, the Jury spent the whole working day on the adjudication of entries. I was in attendance throughout. I believe though that my team and I worked considerably longer hours than the Jury on those two days, as we had a multitude of organizational matters to attend to in keeping everything running smoothly and preparing for the following day's agenda. Against this background, it was not until I returned to my office in the evening of Wednesday, 27 February, after the Jury had finalised its provisional list of winning entries, that I found time to revisit the set of declaration forms.

36. Firstly, however, I opened the sealed envelopes submitted by the entrants on the Jury's provisional list of prize-winning entries. I saw that one of these entrants had listed "DTZ Debenham Tie Leung Limited" as one of its project team members. I associated this reference with Mr Leung Chun-ying, as the Bureau had written to him at that company. I looked at Mr Leung's declaration form and saw that the name of the entrant concerned had not been declared in either section (b) or (e) of the form. This being the case, it appeared to me that, on the face of it, there was an undeclared conflict of interest. Moreover, Mr Leung had declared in the form that, "I am not a director or major shareholder of any company;".

37. I immediately went to report the matter to the Secretary for Planning and Lands, Mr John Tsang, but he had left the office. I reported the matter to him first thing the next morning on Thursday, 28 February. I cannot recall exactly what Mr Tsang said at the time, but he treated the matter as serious and, if I recall correctly, tried to reach Mr Leung by telephone but was unable to reach him at the first attempt. After that I had to leave because I needed to reach the City Hall to speak with Lord Rothschild before the scheduled 9.30 a.m. start of the Jury's final meeting.

38. On arrival at the meeting room, and before the Jury meeting started, I informed Lord Rothschild that there was a problem with one of the entries provisionally selected for a prize in that a company apparently closely linked with Mr Leung Chun-ying was among the

participants involved in that entry and this relationship was not reflected in the contents of Mr Leung's declaration form. In addition, Mr Leung had declared that he was not a director or major shareholder of any company.

39. Lord Rothschild took Mr Leung (and myself) aside for a short discussion outside of the meeting. Ten years on, I cannot recall exactly what was said at the meeting. However, as far as I can recall, in general terms, it involved Lord Rothschild seeking elaboration from Mr Leung as to how the apparent conflict of interest had arisen and Mr Leung, in turn, seeking to explain to Lord Rothschild his difficulty in understanding how the situation could have arisen.

40. The three of us then returned to the Jury meeting room. What followed formed part of the Jury's discussion of the entry concerned and for that reason was not minuted. As far as I can recall, Lord Rothschild opened the meeting and gave Mr Leung the opportunity to speak. Mr Leung took the opportunity to repeat his difficulty in understanding how the situation of apparent conflict could have arisen. He would look into the matter further and provide further information to me on his company directorships. Thereafter, the issue for the Jury was what to do with the entry concerned. The Jury very quickly reached a consensus that the entry concerned should be disqualified.

**What follow up action was taken by the Government pursuant to Mr Leung Chun-ying's declaration?**

41. The question has been asked as to what follow up action was taken by the Government pursuant to Mr Leung Chun-ying's declaration.

42. As mentioned, I reported the problems with Mr Leung's declaration to the Secretary for Planning and Lands on Thursday, 28 February 2002. I also reported to him after the Jury meeting of that morning that the entry concerned had been disqualified by the Jury and that Mr Leung would be writing to the Bureau to provide further information.

43. Mr Leung provided the further information in his letter of 11 March 2002, recently released to Members by the Home Affairs Bureau. I cannot recall whether I informed the Secretary for Planning and Lands of the receipt and contents of Mr Leung's letter, but I believe that I must have done because the letter was important and it followed up an issue I had been briefing him on. I wrote to Mr Leung on 23 March 2003 acknowledging receipt of his letter.

44. After some time spent on drafting the Report of the Jury, I wrote to Lord Rothschild on 15 May 2002 to the effect that Mr Leung had supplied the further information agreed upon when the matter was discussed at the Jury meeting on 28 February 2002 and that I (as Competition Co-ordinator) considered that no further action need be



taken in connection with this matter (the context being limited to the business of the Jury and Lord Rothschild's role as Chairman).

**Why did the Competition Organizer not check the contents of entrants' sealed envelopes earlier for potential conflicts of interest?**

45. The question has been asked as to why the sealed envelopes submitted by the entrants to the Competition were not opened at an early stage to check the documents inside for potential conflicts of interest.

46. The sealed envelopes were to contain a copy of the acknowledged duplicate of the completed registration form and updated information on all participants in the project team. The envelopes remained sealed while being held in the Bureau for safe keeping.

47. Members will note from the consideration given to the approach to declaration of interests – paragraph 23 above refers - that I considered whether to require Technical Panel members to make a declaration of interests based on sight of a list of participants named in papers from the sealed envelopes. This would have removed doubt over who might have entered the competition and reduced the possibility of a Panel member claiming no prior knowledge that someone had entered. However, this would have run the risk of members revealing to third parties who had entered the competition. The Competition Organizer might then come to be accused of failing properly to protect the anonymity of the participants. I decided not to run that risk.

48. I was content with the onus being on the prospective participant to check whether he had any of the relevant relationships with any member of the Technical Panel, so that he did not enter the competition when ineligible. With regard to directorships and majority shareholdings, the member of the Technical Panel was assumed to be aware of the activities of his companies, if any, and the onus was therefore on him to ensure that none entered the competition. I considered this to be a reasonable assumption.

49. It was encouraging to note in that context that one member of the Technical Panel supplemented his declaration with copies of internal company circulars that he had issued five months earlier, informing his staff members that he had been appointed as a member of the Technical Panel for the Competition and advising them to refrain from entering the Competition, because if he learned of any such entry, he would be duty bound to disclose it and the entry would probably be disqualified.

**Why does the Report of the Jury not elaborate on the reasons for the disqualification of 13 entries?**

50. The question has been asked as to why the Report of the Jury does not elaborate on the reasons for the disqualification of 13 entries. This matter is related to the adjudication process.

51. Paragraph 19 of the Report of the Jury noted that 13 entries were disqualified for failing to meet the competition requirements in specific non-technical respects, without further elaboration. The individual reasons for disqualification were considered to be governed by the provisions of paragraph 33 of the Competition Document. These provide among other things for the assessment process to be carried out in strict confidence, and oblige the Competition Organizer not to disclose the details of the assessments. In keeping with these provisions, entrants unsuccessful through disqualification were not notified of the reasons for their unsuccessful entries.

52. If any of the jurors had responded to the draft Report of the Jury by requesting that more detailed explanations be given for the disqualifications, I would have prepared an expanded paragraph 19 elaborating on the reasons in general terms. In the event, none of the jurors commented to that effect.

53. A related question that has been asked is whether unsuccessful entrants were informed that their entries were unsuccessful.

54. The winning entries were announced live on the competition website and widely publicised in Hong Kong and around the world. The Competition Document provided in paragraph 35 only for the winners to be notified in writing. I therefore considered it unnecessary to write individually to other entrants to advise them that they were unsuccessful, as they would already have realised this.

55. This concludes my statement.

*Eric Johnson*