

Information Paper for the Legislative Council Panel on Housing

Report of the Investigation Panel on Accountability in the case of Tin Chung Court, Tin Shui Wai

PURPOSE

To inform Members that the Investigation Panel on Accountability (the Investigation Panel) appointed by the Housing Authority in the case of Tin Chung Court, Tin Shui Wai has completed its report and has submitted the report to the Chairman of the Housing Authority.

BACKGROUND

2. The Investigation Panel consisting of Mr. Philip Nunn, Chairman, Mr. Wan Man-ye, JP, Professor Patrick Lau Sau-shing, Mr. Michael Choi Ngai-min and Dr. Cheng Hon-kwan, GBS, JP, was appointed by the Housing Authority to look into areas of accountability and responsibility for the uneven foundation settlement at Tin Chung Court in Tin Shui Wai. It has held eleven separate meetings and interviewed a considerable number of officers and parties involved in the project. It has also received and reviewed a large amount of documentation.

3. Whilst the investigation was a private investigation instituted by the Housing Authority, the Investigation Panel operated independently of the Housing Authority which did not make any attempt to influence the decisions of the Panel.

4. The Investigation Panel has not attempted to review in any detail the contractual positions of the various parties involved. Neither has it attempted to usurp the position of an arbitrator or judge by making rulings on the legal position between the parties.

5. The Investigation Panel's terms of reference are at Annex A. Findings and recommendations of the Investigation Panel will assist the Housing Authority and the Housing Department to consider and determine disciplinary and legal action against officers and/or parties involved. Actions may also be taken in accordance with the findings and recommendations to prevent the recurrence of similar problems in other projects of the Housing Authority.

RECOMMENDATIONS OF PANEL

6. The recommendations of the Investigation Panel are at Annex B.

REPORT

7. The report is submitted to Members in confidence. While the original intention of the Housing Authority was to make the report public, upon legal advice that,

- (a) findings and conclusions on areas of accountability are contentious and litigious,
- (b) publication of these findings and conclusions will be prejudicial to parties in subsequent legal actions,
- (c) the Housing Authority is bound by contract to resolve differences and disputes with parties involved in private by mediation or arbitration,

only the recommendations in the report have been published. The Chairman of the Investigation Panel supports and agrees to publish only the recommendations. The report has been submitted to the Chief Executive. Members are requested not to comment on the findings and conclusions on areas of accountability which are to be determined eventually by arbitration under contract. The Legal Adviser of the Legislative Council Secretariat has been consulted and shares the view that comment on contractual and legal liabilities of parties should not be made in public.

THE WAY FORWARD

8. The Building Committee of the Housing Authority has endorsed the report. The Housing Department will follow up the recommendations of the Investigation Panel, seek the advice of the Building Committee where necessary and will report to the Building Committee on progress of follow up actions.

BRIEFING

9. This paper is issued for Members' information at the meeting of the Legislative Council Panel of Housing to be held on 17 March 2000.

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Date : 16 March 2000

Terms of Reference of the Panel

- (i) To establish the areas of responsibilities of the officers/parties involved.
- (ii) To identify any areas of negligence of each of the officers/parties.
- (iii) To ascertain whether the laid down procedures and guidelines of various stages have been properly followed with reference to the relevant manual and documents by these officers/parties.
- (iv) To determine whether these officers/parties have exercised their professionalism at a reasonable expectation.
- (v) To recommend to Building Committee (BC) whether disciplinary/legal action should be taken against the officers/parties.
- (vi) To recommend to BC any improvement in procedures/guidelines.
- (vii) The Panel will be empowered to seek specialist consultancy and interview witnesses.

Recommendations of the Panel

- (i) It is recommended to the Building Committee that disciplinary action be considered against B+B, HYA and JMK as a result of their unsatisfactory performance.
 - (ii) The Panel strongly recommends the Housing Authority and the Housing Department to critically examine and address the failings. Even though the failures were “system failures”, the Panel is of the view that the Director of Housing should review the performance of individual officers concerned and to consider and take disciplinary actions as necessary.
 - (iii) The Panel is of the opinion that the Housing Authority should consider legal action under their contracts with B+B and HYA as a result of B+B’s failure to adequately design and construct the foundation works and as a result of HYA’s failure to properly supervise the design and construction of the foundation works.
2. For improvements in procedures, the Panel recommends,
- (i) The Housing Authority must considerably strengthen its control procedures when assuming the role of the Building Authority in ensuring that its developments meet with the requirements of the Buildings Ordinance. Alternatively, the Housing Authority should bring its developments under the control of the Building Authority and use the Building Authority’s own officers to supervise Housing Authority projects.
 - (ii) Consultants for Housing Authority projects should be subject to the same penalties as those applicable to Authorised Persons under the Buildings Ordinance for failure to properly fulfill their obligations.

- (iii) The appointment system for consultants and sub-consultants should be reviewed by the Housing Department. In this case, the appointment of sub-consultants was left largely to HYA and the Housing Department had no interest or control over the services to be provided or on the price to be paid to HYA's sub-consultants. It is the Panel's recommendation that all sub-consultants should be appointed through a fair and transparent tender system administered by the Housing Authority with clear terms of reference. The Housing Department should be particularly wary about allowing in-house employees of consultant's firms to act as specialist sub-consultants.
- (iv) The Housing Department should not only monitor the performance of consultants in terms of cost and time but should also monitor their performance on technical and quality issues.
- (v) The Housing Authority should review its Specifications for piling works as a matter of priority. The Panel would recommend that the review is carried out by an independent consultant.
- (vi) All piling projects should have a suitably qualified and experienced Resident Engineer on site throughout the construction phase to supervise the works.
- (vii) The Housing Authority should review its system of awarding piling contracts on a design and build basis particularly for sites with difficult geotechnical conditions. The design and build system coupled with fixed price contracts provides a great temptation to contractors to cut costs to the detriment of quality.
- (viii) Preliminary piles should be completed before commencement of working piles.
- (ix) A system should be put into place by the Housing Department to ensure that all contract requirements are met for the installation of piles before the pile caps are cast.

- (x) Pre-cast Pre-stressed Concrete (PPC) piles should not be used by the Housing Authority except in exceptional circumstances. If PPC piles are to be used then stringent requirements should be specified for their use.