

**Select Committee to Inquire into Matters Relating to
the Post-service Work of Mr. LEUNG Chin-man
Hearings for the Hunghom Peninsula incident**

Witness Statement of Dr. Henry CHENG Kar-shun

In this statement I set out my answers in the paragraphs below, the numbering of which corresponds with those in Appendix II of the Select Committee's letter dated 30 September 2009.

“Views on the policy on the cessation of the production and sale of Home Ownership Scheme (“HOS”) and Private Sector Participation Scheme (“PSPS”) flats (“the cessation policy”).

- 1. Views and suggestions, if any, provided to the Government on the cessation policy by the following parties: (a) the developer of the Hunghom Peninsula development and its parent company; and (b) the developer of the Kingsford Terrace development and its parent company.”*

Answer:

(a) The developer of the Hunghom Peninsula development, First Star Development Limited (“FSD”), which is 50% owned by NWS Holdings Ltd (“NWS”) and 50% by Wai Kee Holdings Limited (“Wai Kee”) and their parent company did not give any views or suggestions to the Government on the cessation policy.

(b) The developer of the Kingsford Terrace development and its parent company did not give any views or suggestions to the Government on the

cessation policy. [Please note that this answer is given without prejudice to our concern that questions about the Kingsford Terrace development appear irrelevant to the present inquiry, and considerably widen its scope; and that such objection has been taken at answers 19, 20 and 21]

“Discussion with the Government on options for the disposal of the Hunghom Peninsula development

2. *The relationship of the developer of the Hunghom Peninsula development with (a) New World China Land Limited; and (b) New World Development Company Limited and its subsidiaries.”*

Answer:

Please see [“HCKS-1”] as attached with this statement, which sets out the full ownership of the developer and its relationship between (a) and (b).

- “3. *Details of discussions, including formal and informal meetings, with the Government on the different options for the disposal of the Hunghom Peninsula development, including (a) the parties who participated in the discussion; (b) your role and participation, if any, in the discussion; (c) options proposed to the Government; (d) counter proposals put forward by the developer; and (e) the consideration of the Government’s options by the developer.”*

Answer:

- (a) and (b) I did not personally participate in any formal or informal meetings with the Government on the different options for the disposal of the Hunghom Peninsula development. It was Mr. Stewart Leung Chi Kin who represented the developer in the discussion.

(c) On 2nd July 2002, the developer wrote to the Chief Secretary for Administration, proposing 3 options to the Government for consideration, a copy of the said letter is produced as document ~~1(b)(1)~~^{R19} under Appendix 1 of the Select Committee's letter dated 30th September 2009:-

- (i) Outright buy-out by the Government (as under the PSPS scheme);
 - (ii) Outright buy-out by the Developer;
 - (iii) Conversion for sale in the private property market by the Government, where the developer will work closely with the Government and the developer would be responsible for upgrading the development to a suitable standard and charging the Government for such service and expenses and also act as agent to sell the units in return for a commission or on a profit sharing basis.
- (d) No counter proposal put forward by the developer.
- (e) There were no options proposed by the Government.

“4. Factors taken into account in accepting the Government’s proposal to modify the land lease to allow the developer of the Hunghom Peninsula development to sell the flats in the open market subject to an agreed premium.”

Answer:

Since the Government rejected 2 out of our 3 proposals, the developer was only left with one option, that is the outright buy-out by the developer (which technically means modifying the land lease to allow the developer to sell the units in the open market subject to an agreed premium). If we do not agree to this option, then there is no other choice. Since the start of the development, the developer had already spent a substantial amount of money on the construction of the development (near \$ 2 billion) with interest and expenses building up. For

avoidance of further delay, given the Occupation Permit was due to be issued at the time of our consideration of the matter (subsequently issued on 6 August 2002), it was only commercially sound and sensible to accept this proposal and to move on to try and retrieve the money already incurred.

“Negotiation with the Government in the lease modifications process (including deliberation on the premium) in respect of the Hunghom Peninsula development before December 2003”

“5. The negotiation with the Government in the lease modification process before December 2003, including (a) the parties representing the developer in the negotiation; (b) your role and participation, if any, in the negotiation; and (c) details of the lease modification premium figures proposed by the developer including the justifications for the premium figures.”

Answer:

- (a) Mr. Stewart Leung represented the developer in the negotiation;
- (b) I did not play any role or participate in the negotiation;
- (c) The details of the lease modification premium figures first proposed by the developer can be seen from a letter dated 13th March 2003 from the developer to the Lands Department, a copy of which is produced as document ~~1(c)(1)(8)~~^{R28} under Appendix 1 of the Select Committee’s letter dated 30th September 2009, suggesting to them 3 different sale prices under 3 different calculations:
- (i) HK\$ 2,600/sq.ft = \$522 million (premium);
- (ii) HK\$ 2,700/sq.ft = \$633 million (premium);
- (iii) HK\$2,800/sq.ft = \$746 million (premium).

I understand that all these figures were calculated on the basis and having regard to the market value at the time, taking into consideration of units in the neighboring area. Further, as this development was of a PSPS nature, discount must be given to the fact that they will not be as valuable as ordinary private development, due to the unsatisfactory lay-out and design constraints and shortcomings in general.

The Government did not respond to the developer's proposal as set out above and as a result of the severe effects of SARS in 2003, the property market plummeted and caused a wide scare in the Hong Kong financial market, all property values were greatly reduced.

The developer was anxious to recover all money incurred in the development and upon receiving legal advise, the developer issued a writ of summons against The Secretary for Justice and the Housing Authority on 25th July 2003.

As the property market was not showing any sign of improvement, the developer wrote to the Department of Justice on 5th November 2003, marked "without prejudice" proposing a reduced premium of \$700 million due to the falling market, a copy of which is produced as document ~~H(e)(ii)(2)~~^{R41} under Appendix 1 of the Select Committee's letter dated 30th September 2009.

On 12th November 2003, the Department of Justice wrote back emphasizing that the Government would like to come to a speedy, commercial settlement of the developer's claims and also the modification premium for the Hunghom Peninsula development. On the other hand, the developer was also informed that even though the Government was eager to settle the matter with FSD, they were under a mandate to endeavour to resolve the dispute through mediation as they were not empowered to resolve the dispute through direct negotiations, therefore they were unable to make a counter-offer until the commencement of the mediation. A copy of the said letter is produced as document ~~H(e)(ii)(3)~~^{R42} under Appendix 1 of the Select Committee's letter dated 30th September 2009.

- "6. The party who initiated the halt of the negotiation with the Government in end March 2003 and alternative options considered by the developer***

when the negotiation with the Government came to a halt.”

Answer:

Neither of the parties initiated the halt of the negotiation with the Government in end March 2003 and there was no alternative options considered by the developer when the negotiation with the Government came to a halt.

“7. Discussion, if any, between the developer and the Government in respect of the disposal of the Hunghom Peninsula development during the period after the halt of the negotiation in end March 2003 and before the mediation in December 2003.”

Answer:

As mentioned in Answer 5 (c) above, the developer wrote to the Department of Justice on 5th November 2003 offering a premium figure of \$700 million. This proposal was welcomed by the Government, but due to certain mandate, the Government referred the matter for mediation which started around the first week of December 2003.

“8. Discussion, if any, between the developer and Mr. LEUNG Chin-man on the disposal of Hunghom Peninsula development before December 2003.”

Answer:

Since I did not participate in any discussion as aforesaid, so the person to better answer this question would be Mr. Stewart Leung Chi Kin. I personally did not have any discussion with Mr. Leung Chin-man on the disposal of Hunghom Peninsula before December 2003.

“Litigation on the Hunghom Peninsula development initiated by the developer in July 2003 against the Hong Kong Housing Authority (“HA”) and the Government

“9. Reasons for the developer to file the Writ of Summons against HA and the Government in July 2003.”

Answer:

The developer was anxious to recover their losses and money already spent on the development at the time, and was not getting any solutions or response from the Government as to how to resolve this matter. We therefore sought legal advice as to how to recover our losses. Before filing the Writ of Summons against HA and the Government in July 2003, the developer obtained legal advice from Mr. Michael Thomas, Q. C, S.C. (the ex- Attorney General of Hong Kong), and upon the advise of Mr. Thomas, the developer decided to proceed with litigation.

“10. Discussion, if any, between the developer and Mr. LEUNG Chin-man relating to the litigation.”

Answer:

As far as I am aware there was never any discussion between the developer and Mr. Leung Chin-man regarding the litigation.

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

“11. Details of the mediation with the Government on the disposal of the Hunghom Peninsula development in December 2003, including (a) the parties representing the developer in the mediation; (b) your role and participation, if any, in the mediation; (c) details of the premium figures proposed by the developer and the justifications; (d) the party who proposed the premium of \$864 million; and (e) the factors taken into account in making the decision to conclude the mediation with the premium of \$864 million.”

Answer:

- (a) Mr. Stewart Leung Chi Kin headed a team of people representing the developer in the mediation;
- (b) I did not play any role or participate in the mediation;
- (c) & (d) I am not in a position to give details as to the premium figures by the developer. But as to the understanding of how the developer came up with the proposed figure of HK\$864 million, I can briefly state that:

Since the developer's previous offers to the Government before the halt of the negotiation back in March 2003 and November 2003 as set out in paragraph 5 (c) above, the developer revised its offer when mediation began. The developer came up with a new figure of HK\$900 million, revised and calculated on the basis of taking into account the market value and trend of neighboring units, full analysis of the records of sale and purchase transactions in the vicinity of the Hunghom Peninsula development between November 2002 and December 2003. Discounts were also given for the draw back of the development being a PSPS. After further negotiation and upon the developer realizing that the lease modification would result in the loss of 100 car-park spaces being used for conversion into a club house, calculating at HK\$360,000 for each car-park space (i.e. $100 \times \text{HK\$}360,000 = \text{HK\$}36 \text{ million}$), thereby deducting a total of HK\$ 36 million from HK\$900 million, that a final figure of HK\$864 million was arrived at.

- (e) The final figure of HK\$864 million was agreed by both parties, as it was commercially acceptable to both sides as a compromise and was in line with the market value at the time.

“12. Reasons for concluding the negotiation with the Government on the lease modifications without a settlement of the claim for damages.”

Answer:

These are two separate issues. The mediation was only centered on the premium to be paid by the developer for the lease modifications. The Government did not want to negotiate for settlement of the claim for damages at the same time as the negotiation for premium during this mediation. It was also the understanding between the parties that the developer’s claim for damages can still be open for negotiation in the future.

This intention was made clear at the start of the mediation and I refer to the formal Notes of Understanding of the Mediator dated 21st January 2004, at paragraph 3 : *“The Claimant and the Respondents both agreed that the mediation be brought to the end for the time being, whilst door is left opened for further negotiation on the amount of loss and damage claimed by the Claimant in High Court Action No. 2761 of 2003, through mediation or otherwise.”* A copy of the 2 pages relating to the Notes of the mediator is produced as document ~~1(c)(ii)(8)~~ R3(C) under Appendix 1 of the Select Committee’s letter dated 30th September 2009.

“13. Discussion, if any, between the developer and Mr. LEUNG Chin-man on the disposal of the Hunghom Peninsula development during the mediation process.”

Answer:

I personally did not have any discussion with Mr. Leung Chin-man on the disposal of the Hunghom Peninsula development during the mediation process. I am not in a position to answer for other people who were involved in the mediation.

“Drawing up of the provisions for inclusion in or deletion from the modified land lease in respect of the Hunghom Peninsula development

“14. The provisions proposed by the developer for inclusion in or deletion from the modified land lease, including the reasons concerned.”

Answer:

I cannot answer this question as I was not involved or informed of this matter.

“15. Discussion, if any, between the developer and Mr. LEUNG Chin-man on matters relating to the drawing up of the modified land lease.”

Answer:

I was not involved in these matters nor did I have any discussion with Mr. Leung Chin-man on matters relating to the drawing up of the modified land lease.

“The developer’s plan to redevelop the Hunghom Peninsula

“16. The time (a) when the developer first planned to redevelop the Hunghom Peninsula development; and (b) when the developer first indicated its intention or plan to the Government to redevelop the Hunghom Peninsula development.”

Answer:

(a) After having concluded the premium negotiation with the Government, Wai Kee, the other 50% owner of FSD, decided to sell their interest as they wanted

to cash back the money already spent in developing Hunghom Peninsula, and since NWS have the first right of refusal to acquire such an interest if Wai Kee decides to sell to any third party as stipulated under clause 7.03 relating to the “Transfer or Charging of Shares” in the Shareholders’ Agreement dated 28th July 2000, between NWS and Wai Kee and other parties.

Clause 7.03 states, “. Any proposal by a Shareholder to sell or transfer any interest of any nature in any Share for the time being owned by it shall be subject to the Shareholder having first notified the Company and made an offer to sell such Share to the other Shareholders on the same or more favourable terms. Any such offer shall specify both the identity of the proposed transferee and the terms of the proposed sale, and shall remain open for acceptance (in whole but not part only) for one month and if not accepted by the other Shareholders within such period shall be deemed to have been refused. If any such offer is not accepted, the proposing vendor shall be at liberty to sell such Share to a third party within two months of such refusal but not on more favourable terms than those at which they were so offered”.

Wai Kee informed NWS soon after the conclusion of the mediation that they have received an offer from another property developer, namely, Sun Hung Kai Properties Limited (“SHKP”) to buy out their entire 50% interest for a consideration of around HK\$500 million, and according to Clause 7.03 of the Shareholder’s Agreement between NWS and Wai –Kee as set out above, Wai Kai offered the first right of refusal to NWS. Having considered the offer, NWS declined to purchase the remaining 50% of the interest in FSD.

NWS considered that the price of HK\$500 million was too high and also the property market was still very unstable after SARS. Further, as the development was of a PSPS nature, it would not be easy to try and sell all the units in the open market without having to spend more money on upgrading the whole project. With all the above reasons, NWS decided to decline such an offer so as not to put the company at an even higher financial risk than its existing 50% holding of FSD.

In February 2004, after NWS declined to buy out Wai Kee’s 50% interest in FSD, Wai Kee then went onto sell their interest to SHKP.

It was in fact SHKP who suggested redeveloping the Hunghom Peninsula development and we accepted their proposal.

(b) On 29th November 2004, NWS and SHKP made a joint public announcement for the redevelopment of Hunghom Peninsula.

“17. Reasons for the developer to redevelop the Hunghom Peninsula development.”

Answer:

Commercial reasons decided by both NWS and SHKP based on the fact that the development being of a PSPS nature was not attractive in the private property market. The costs for upgrading the interior and exterior of the development to make it marketable and attractive would cost more or less the same as redeveloping, and on that basis, the developer considered that it would be more sensible and commercially worthwhile to redevelop.

“18. Discussion including formal and informal meetings relating to the redevelopment of the Hunghom Peninsula between the developer and/or the parent company of the developer with (a) the Government; and (b) Mr. LEUNG Chin-man.”

Answer:

Once SHKP came into the picture, they took over as Project Manager of the development, so all the discussion, formal or informal meetings with the Government were handled by them, so I am not in a position to say who they had meetings with.

“Mediation with the Government on the disposal of the Kingsford Terrace development and the sale of the residential flats of Kingsford Terrace to HA

“19. The relationship of the developer of the Kingsford Terrace development with (a) New World China Land Limited; and (b) New World Development Company Limited and its subsidiaries.”

Answer:

May I ask with respect, what is the relevance of this question to the subject-matter of the inquiry? As at present advised, I respectfully decline to answer the question on the ground that it is outside the scope of the subject-matter of the inquiry.

“20. The mediation with the Government on the disposal of the Kingsford Terrace development, including (a) the parties representing the developer of Kingsford Terrace in the mediation with the Government; (b) your role and participation, if any, in the mediation; and (c) details of the premium figures proposed by the developer of Kingsford Terrace.”

Answer:

May I ask with respect, what is the relevance of this question to the subject-matter of the inquiry? As at present advised, I respectfully decline to answer the question on the ground that it is outside the scope of the subject-matter of the inquiry.

“21 Discussion including formal and informal meetings relating to the disposal of Kingsford Terrace development between the developer of Kingsford Terrace (or its parent company) and (a) the Government; or (b) Mr. LEUNG Chin-man.”

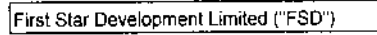
Answer:

May I ask with respect, what is the relevance of this question to the subject-matter of the inquiry? As at present advised, I respectfully decline to answer the question on the ground that it is outside the scope of the subject-matter of the inquiry.

Dr. Henry CHENG Kar-shun
30 October 2009

1999

100% owned by Wai Kee Holdings Limited ("Wai Kee")
(Listed Company on the HK Stock Exchange Stock Code: 610)

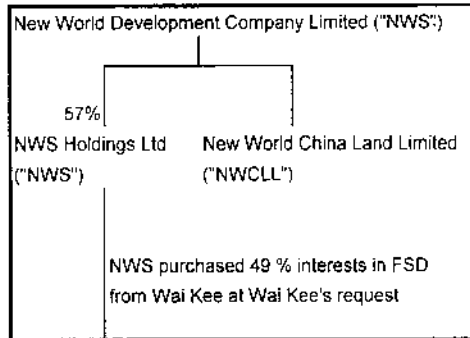


Oct-99

FSD's tender for Hunghom Peninsula ("Development") was accepted.

31/3/2000

FSD applied to Lands Dept for the Pre-sale consent for the Development.



Jun-00

Announcement of suspension of Sales of Home Ownership Scheme ("HOS").

6/8/2002

Occupation Permit of the Development was issued by Building Authority.

20/11/2002

Pre-sale consent of the Development was granted by Lands Dept (which was 4 months after the issuance of Occupation Permit and 31 months after FSD first made the application)

21/11/2002

Letter of Compliance of Land Grant was issued by Lands Dept.

22/11/2002

FSD and Lands Dept started discussion on lease modifications.

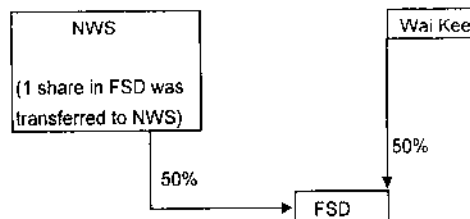
13/3/2003

FSD wrote to Lands Dept suggesting 3 different sale prices under 3 scenarios, namely, (i) HK\$522 million if flats were to be sold at HK\$2,600 per sq. ft.; (ii) HK\$633 million if flats were to be sold at HK\$2,700 per sq. ft.; (iii) HK\$746 million if flats were to be sold at HK\$2,800 per sq. ft.

25/7/2003

FSD issued a Writ of Summons against Housing Authority & Secretary for Justice ("HCA 2761/2003").

Jul-03



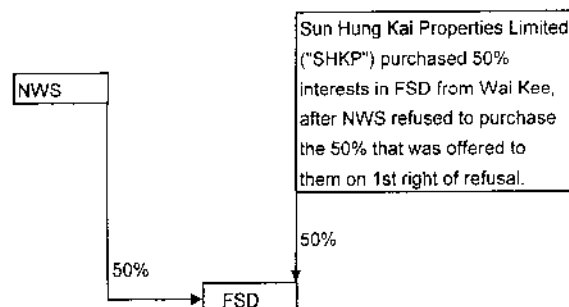
30/10/2003

Parties' representatives had agreed to refer the matter to mediation.

Dec-03

Parties finally agreed on a premium of HK\$864 million for proposed lease modification to convert Hunghom Peninsula PPS into private development.

Feb-04



29/11/2004

Press Announcement by SHKP and NWS for development of the Development