

**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 Mr. Stewart LEUNG Chi-kin

In this statement I set out my answers in the paragraphs below, the numbering of which corresponds with those in Appendix I 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. *Your views and suggestions on the cessation policy provided to the Government, if any.*

Answer:

I did not suggest or provide any views on the cessation policy to the Government.

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

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

developer.

Answer:

- (a) The parties involved included the developer First Star Development Limited (“FSD”), which is jointly owned by NWS Holdings Limited (“NWS”) and Wai Kee Holdings Limited (“Wai Kee”) on one side and the Government on the other side; I attach herewith a copy of a table showing the chronology of events and also the full ownership of FSD throughout its history, marked as [“SLCK-1”].
- (b) My role was one of the representatives on the developer’s side;
- (c) On 2nd July 2002, the developer wrote to the Chief Secretary for Administration, proposing 3 options to the Government for consideration. The copy of the said letter is produced as document ^{R19}~~(b)(1)~~ under Appendix 1 of the Select Committee’s letter dated 30th September 2009 to Dr. Henry Chan Kar Shun:-
- (1) Outright buy-out by the Government (as under the PSPS Scheme);
 - (2) Outright buy-out by the Developer;
 - (3) 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.
3. *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 the above 3 proposals put forward by FSD, the developer was only left with the remaining option, which 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 HK\$2 billion) with interest and other costs building up. For avoidance of further delay, given the Occupation Permit was soon 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 move on to try and recover the money already incurred.

4. *Formal and informal discussions, if any, between you and Mr. LEUNG Chin-man on the options for the disposal of the Hunghom Peninsula development, and the relevant records of discussions.*

Answer:

Further to FSD's letter to the Government dated 2nd July 2002 and after the issue of the Occupation Permit of the development on 6th August 2002, a meeting was held on 10th August 2002 between Mr. Leung Chin-man (the new Permanent Secretary for Housing, Planning and Lands from July 2003) and his colleagues and the developer for Hunghom Peninsula development. I attended the meeting for the developer together with some of my staff, which was held in Mr. Leung Chin-man's office in Murray Building. The meeting was in relation to the options that we proposed to the Government and as far as I can remember, the meeting was quite brief and no notes were taken at the time and I have no recollection as to the precise details of the discussions between the 2 sides.

Negotiation with the Government in the lease modification 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) your role and participation in the negotiation; and (b) details of the lease modification premium figures proposed by the developer including the justification for the premium figures.*

Answer:

- (a) I represented the developer to negotiate with the Government in the lease modification process before December 2003 together with my team of staff;
- (b) The developer first raised the lease modification premium figures with the Government by a letter dated 13th March 2003 to the Lands Department, a copy of which is produced as document ~~HC(1)(8)~~^{S28} under Appendix 1 of the Select Committee's letter dated 30th September 2009 to Dr. Henry Cheng Kar Shun, suggesting to them 3 different sale prices under three sets of calculations:
- (i) at HK\$2,600/sq. ft = HK\$522 million (premium);
- (ii) at HK\$2,700/sq.ft = HK\$633 million (premium);
- (iii) at HK\$2,800/sq.ft = HK\$746 million (premium).

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 the as-built development constraints and shortcomings in accordance with the PSPS standard.

The Government did not respond to the developer's proposal as set out above and as a result of the severe effects of SARS, which killed a total of 299 people in 2003, a sad and scary piece of history that Hong Kong people will never forget. The property market hit rock bottom and the disease triggered wide panic in the Hong Kong and Asian financial markets, all property values in Hong Kong were

greatly reduced.

The developer was anxious to recover all money incurred in the development and upon receiving legal advice, 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" offering a reduced premium of HK\$700 million for them to consider, a copy of which is produced as document ~~4(e)(ii)(2)~~^{R41} under Appendix 1 of the Select Committee's letter dated 30th September 2009 to Dr. Henry Cheng Kar Shun.

On 12th November 2003, the Department of Justice wrote back to the developer, stressing that the Government would like to come to a speedy, commercial settlement with the developer in relation to the claims and also the modification premium for the Hung Hom Peninsula development. At the same time, the developer was told 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 and they were therefore unable to make a counter-offer until the commencement of the mediation. A copy of the said letter is produced as document ~~4(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. *Formal and informal discussions, if any, between you and Mr. LEUNG*

Chin-man on the disposal of Hunghom Peninsula development during the negotiation process, and the relevant records of discussions.

Answer:

As far as I can recall, during the negotiation process up to the end of March 2003, there were no formal or informal discussions between Mr. LEUNG Chin-man and myself on the disposal of Hunghom Peninsula development.

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

8. *Details of the mediation with the Government on the disposal of the Hunghom Peninsula development in December 2003, including (a) your role and participation in the mediation; (b) details of the lease modification and the premium figures proposed by the developer and the justifications; (c) 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) I headed a team of people representing the developer in the mediation;
- (b) & (c) Since the developer's last proposal back in November 2003 before the halt of the negotiation as set out in paragraph 5 (b) above, the developer revised its offer at the start of the mediation by coming up with a new figure of HK\$900 million, 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 between the 2 sides and the developer upon learning that the lease modification would result in the loss of around 100 car-park spaces being used for conversion into a club house, and calculating the car-park space to be worth HK\$360,000 each (100 x 360,000) and deducting a total of HK\$36 million from the proposed HK\$900 million, we arrive at HK\$864 million.

- (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.

As requested by the Select Committee's letter to Dr. Henry Cheng Kar Shun dated 30 September under Appendix 1 at paragraph 1 (c) (i) and (ii) , I understand that he has already produced a bundle of all the relevant documents relating to the (i) "*negotiation on the lease modification (including deliberation on the premium) in respect of the Hunghom Peninsula development before December 2003*" and (ii) "*mediation on the disposal of the Hunghom Peninsula development (including deliberation on the premium) and claim for damages in December 2003.*" (R21-R46 , R3(C))

9. ***Reasons for concluding the negotiation with the Government on the lease modification without a settlement of the claim for damages.***

Answer:

These were 2 separate issues. The mediation was only for determination for 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 the premium during the mediation.

However, it was the understanding from both parties that future negotiation on the part of the developer's claim for damages would still be open. This intention was made clear and can be seen from the formal Notes of Understanding of the mediator, which states at paragraph 3, that "*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.”. Copy of the 2 pages relating to the Notes of the mediator dated 21st January 2004 is produced as document 1(c)(ii)(8) under Appendix 1 of the Select Committee’s letter dated 30th September 2009 to Dr. Henry Cheng Kar Shun.

- 10. Formal and informal discussions, if any, between you and Mr. LEUNG Chin-man on the disposal of Hunghom Peninsula development during the mediation process, and the relevant records of discussions.*

Answer:

As far as I can recall, I did not have any formal or informal discussions with Mr. LEUNG Chin-man on the disposal of Hunghom Peninsula development during the mediation process.

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

- 11. The provisions proposed by the developer for inclusion in or deletion from the modified land lease, including the reasons concerned.*

Answer:

The provisions that the developer proposed for inclusion in or deletion from the modified land lease was mainly in relation to the provisions for the existing PSPS development to be converted into one of private housing for sale, which ultimately would require all the existing PSPS elements to be deleted and all private housing requirements to be included.

- 12. Formal and informal discussion, if any, between you and Mr. LEUNG Chin-man on matters relating to the drawing up of the modified land lease,*

and the relevant records of discussion.

Answer:

As far as I can recall, I did not have any formal or informal 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

13. *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 redevelop the Hunghom Peninsula development to the Government.*

Answer:

- (a) After concluding the premium negotiation with the Government, Wai Kee, the other 50% owner of the developer FSD, decided to sell their interest as they wanted to cash back the money already spent in developing Hunghom Peninsula and they were not optimistic about the property market at that time. NWS, being the other shareholder in FSD, have the first right of refusal to acquire Wai Kee's interest in the event of sale or transfer of share to a third party by Wai Kee.

Wai Kee informed NWS that they received an offer from Sun Hung Kai Properties Limited ("SHKP") to buy out their entire 50% interest in FSD for a consideration of HK\$500 million and offered to us the first choice of acquiring the same interest at the same price. Having carefully considered the offer, NWS declined to purchase the remaining 50% interest of FSD from Wai Kee.

NWS declined on the basis that the asking price of HK\$500 million was excessive as the property market was still very uncertain after SARS. The

draw-back of the development being a PSPS, it would not be easy to try and sell all the existing units in the open market without having to spend more money and time to upgrade the whole development. It was therefore considered not wise for NWS to further invest in a project that already hold a 50% interest and at the same time still struggling to decide how to upgrade such a badly designed PSPS development to make it commercially worthwhile to be sold on the private property market.

In February 2004, after NWS rejected Wai Kee's offer to acquire their 50% interest in FSD, they then went on to sell their interest to SHKP.

It was in fact SHKP who suggested redeveloping the Hunghom Peninsula development and we did not object to such a proposal.

- (b) On 29th November 2004, NWS and SHKP issued a joint public announcement on the redevelopment of the Hunghom Peninsula development.

14. Reasons for the developer to re-develop the Hunghom Peninsula development.

Answer:

Commercial reasons decided by both NWS and SHKP based on the fact that the development being originally of a PSPS, the lay-out and building materials used were extremely unattractive in nature, and would need a great deal of upgrading and other cosmetic works to be done before one can seriously consider selling 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.

15. *Formal and informal discussion, if any, between you and Mr. LEUNG Chin-man on matters relating to the redevelopment of Hunghom Peninsula, and the relevant records of discussions.*

Answer:

As far as I can recall, I did not have any formal and informal discussion with Mr. LEUNG Chin-man on matters relating to the redevelopment of Hunghom Peninsula.

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

16. *The mediation with the Government on the disposal of the Kingsford Terrace development, including (a) your role and participation, if any, in the mediation; and (b) 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.

17. *Formal and informal discussions, if any, relating to the disposal of Kingsford Terrace development between you and Mr. LEUNG Chin-man, and the relevant records of discussions.*

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.

Stewart LEUNG Chi-kin
30th October 2009

1999

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

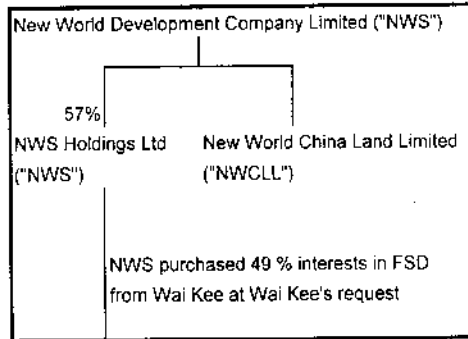


Oct-99

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

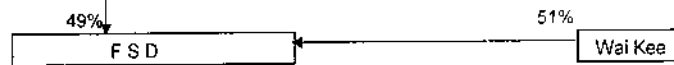
31/3/2000

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



Jun-00

NWS purchased 49% interests in FSD from Wai Kee at Wai Kee's request



2001

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.

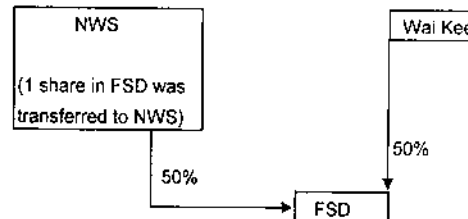
13/3/2003

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



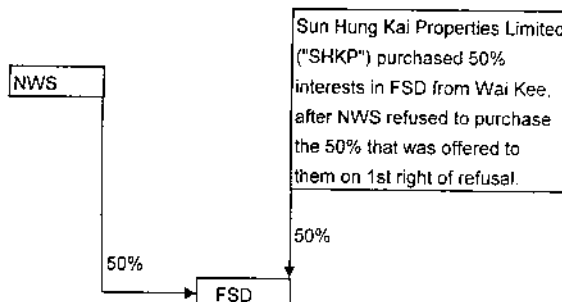
30/10/2003

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

Dec-03

Parties finally agreed on a premium of HK\$884 million for proposed lease modification to convert Hunghom Peninsula PSPS into private development.

Feb-04



29/11/2004

Press Announcement by SHKP and NWS for relopment of the Development