

CONFIDENTIAL

By Hand

MEMO

From Secretary for Planning and Lands

Ref. _____ in PLB(CR) 51/57/15

Tel. No. 2848 2568

Fax. No. 2845 3489(open) 2869 0167(CR)

Date 18 October 2001

To Commissioner, ICAC

(Attn: Corruption Prevention Department)

Your ref. _____ in _____

Dated _____ Fax. No. _____

Total Pages _____

West Kowloon Reclamation Concept Plan Competition Declarations of Interest

I am writing to seek your views on the question of declarations of interest by members of the Technical Panel assessing entries to the West Kowloon Reclamation Concept Plan Competition (the competition).

Background

2. The West Kowloon Reclamation Concept Plan Competition is an international competition to find the best conceptual designs for the integrated arts, cultural and entertainment district that the Government intends to see developed on the reclamation. Full information on the competition is contained in the Competition Document attached. This contains, among other things, the General Conditions and the Competition Brief. The document is also available from the competition website at www.plb.gov.hk/competition. The deadline for entries has passed and the competition has attracted 161 entries. The next step is for a Technical Panel to undertake a technical assessment of the entries by mid December 2001 as preparation for consideration of the entries by the Jury in February 2002.

3. The Technical Panel comprises three departmental heads and seven other persons appointed in a personal capacity from relevant professional and advisory fields in the private sector, as shown in Annex 1 to the Competition Document. The Jury is entirely non-official, as shown in paragraph 8 of the General Conditions. The competition also has a Professional Advisor based in the USA.

4. The competition is open to all qualified planners and architects, as defined by the requirements in existence in their respective place of practice, who registered for participation by 8 June 2000. Such a person may enter as an individual or as the representative of a company or project team. Full information on all of the persons participating in the entry has to be provided in a sealed envelope attached to the inner wrapper of the entry.

5. Provisions concerning ineligibility, anonymity and confidentiality have been included in the Competition Document to preserve the integrity and impartiality of the competition. These are as set out in paragraphs 16, 25 and 33 of the General Conditions.

Competition
Document not
attached to
Appendix 2(i)

Areas of potential conflict of interest

6. We wish to ensure, as far as possible, that we maintain a fair and level playing field and that we are not faced with question marks over a winning entry because of any perceived conflict of interest which might arise after the winning participants are identified. We are therefore considering whether to supplement the ineligibility, anonymity and confidentiality provisions of the Competition Document with requirements for declarations of interest and, if so, on what basis. The arrangements for declarations of interest by members of government advisory boards and committees, though a useful reference, normally apply to situations where the project proponent's identity is known to the committee. This is not the case with entries to the competition.

7. Paragraph 25 of the General Conditions 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 might therefore be argued that there is no need for any declarations of interest because members of the Technical Panel (and the Jury) will not know and cannot come to know the identity of any participant during the assessment process.

8. On the other hand, paragraph 16 of the General Conditions provides among other things that the 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.

9. As regards immediate family members, employees and close professional associates, the onus is on the prospective participant to check whether he has such a relationship with any member of the Technical Panel, so that he does not enter the competition when ineligible. As regards directorships and majority shareholdings, the member of the Technical Panel is assumed to be aware of the activities of his companies, if any, and the onus is therefore on him to ensure that none enters the competition.

10. We are therefore considering whether we should require members of the Technical Panel 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 and, if so, the names of those concerned. We would be able to check any declared names against the information in the sealed envelopes submitted with the entries and report the outcome to the Chairman of the Panel for a ruling.

11. We could go further and require Panel members to make such a declaration based on sight of a list of participants named in the sealed envelopes. This would remove doubt over who might have entered the competition and reduce the possibility of a Panel member claiming no prior knowledge that someone had entered. If we proceed on this basis, however, we run the risk of members revealing to third parties who has entered the

competition. We might then come to be accused of failing properly to protect the anonymity of the participants.

12. Either way, there would continue to be a risk of, for example, an employee of a Panel member having entered the competition and this not becoming known until much later. This might happen if the Panel member concerned was genuinely unaware that his employee had entered in his private capacity or could not conclusively identify a person by name only as being his employee. If the entry went on to win a prize and the relationship became known after the winning participants were announced, we could be in the position of having publicly to disqualify it. But this is a risk that we are running without requiring declarations of interest. At least with a declaration there is a greater chance of such an entry surfacing early, enabling the Panel to recommend it to the Jury for disqualification.

13. The above considerations have been put to the Professional Advisor for his advice in the light of his experience of how such matters have been handled in similar international competitions.

14. On balance, and subject to the advice of the Professional Advisor, our feeling at this stage is that we should require declarations of interest by Technical Panel members on the basis of the approach in paragraph 10 above. We have prepared a draft declaration form for this purpose. A copy is attached.

15. The question of declarations of interest by members of the Jury will be considered separately later.

Preliminary views of the Technical Panel

16. At the meeting of the Technical Panel on 9 October 2001, we informed members that we were examining the question of declarations of interest and had sought the advice of the Professional Advisor. One member suggested that a declaration along the lines in paragraph 10 above would be appropriate. No objections were raised.

Advice sought

17. I should be grateful to know whether you have any views on our proposed approach to this matter. The Bureau and the Planning Department are ready to discuss the matter with you as necessary.



(Eric Johnson)

for Secretary for Planning and Lands

c.c. D of Plan (Attn. Mr C K Li)

Fax : 2881 0636 (4 pages)

Source : Mr Raymond YOUNG, witness appearing before the Select Committee

DRAFT

West Kowloon Reclamation Concept Plan Competition

DECLARATION BY MEMBERS OF THE TECHNICAL PANEL

I, being a member of the Technical Panel for the West Kowloon Reclamation Concept Plan Competition, declare that I have read paragraph 16 of the General Conditions of the Competition Document, reproduced below:

16. *All those likely to be in conflict of interest are excluded from the Competition including but not necessarily limited to the following:*

- (i) *Persons closely associated with the Competition and their immediate family members;*
- (ii) *Members of the Jury and the Technical Panel, and the Professional Advisor and their immediate family members;*
- (iii) *An employee, any person having an employment-type contract or at continuous and close professional association or partnership with a member in category (i) and (ii) above; or*
- (iv) *A company of which a member in category (i) and (ii) above is a director or major shareholder.*

and that, in relation to paragraph 16 (ii), (iii) and (iv) above –

- *(a) *to the best of my knowledge, none of my immediate family members or employees and no-one who has an employment-type contract or close professional association or partnership with me, has entered the competition;*
- *(b) *I believe that the following, among my immediate family members or employees and those who have an employment-type contract or close professional association or partnership with me, have entered the competition;*

Name of entrant	Relationship with entrant

- *(c) *no company of which I am a director or major shareholder has entered the competition;*
- *(d) *a company of which I am a director or major shareholder has entered the competition. The company's name is:*

(*delete as appropriate)

Signed : _____

Name : _____

Date : _____