

香港特別行政區政府
The Government of the Hong Kong Special Administrative Region

房屋及規劃地政局
香港花園道美利大廈



Housing, Planning and Lands
Bureau

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立法會房屋事務委員會秘書
(經辦人：梁慶儀女士)

梁女士：

立法會房屋事務委員會

房屋委員會與亞太土木工程有限公司
有關圓洲角短樁事件的仲裁

二零零三年十二月五日的來信已經收到。信中要求我們公開「房屋委員會與亞太土木工程有限公司——圓洲角短樁事件仲裁」的資料文件，以及房屋及規劃地政局局長在二零零三年十一月十二日給余若薇議員的信件。

我們已向亞太土木工程有限公司轉述議員的關注，而該公司亦已答允將有關圓洲角事件的資料公開。由於取得該公司的同意，我們亦同意公開上述資料文件和房屋及規劃地政局局長給余若薇議員的信件，有關文件已夾附於本信中。

如有其他問題，請與本人聯絡。

房屋及規劃地政局局長

(林錦平 林錦平 代行)

二零零三年十二月十一日

副本送：房屋及規劃地政局局長政務助理
房屋署副署長(機構事務)
房屋署副署長(業務發展)

立法會房屋事務委員會
房屋委員會與亞太土木工程有限公司就
圓洲角短樁事件進行的仲裁

目的

本文件旨在告知議員，房屋委員會與打樁工程承建商亞太土木工程有限公司(亞太)就圓洲角短樁事件的合約糾紛進行仲裁的結果。仲裁與其後房屋委員會與亞太之和解協議都受到不可向外披露資料的限制。但為了使委員更明白整件事件，我們已取得亞太同意，將仲裁與和解協議的有關資料向立法會議員闡釋。

背景

2. 2000年，房屋委員會¹在發現圓洲角兩幢樓宇的打樁工程不合規格後，決定拆卸兩幢樓宇，並隨後向該打樁工程承建商，即亞太土木工程有限公司，採取多項行動，包括 —

- (a) 將亞太從房屋委員會的大直徑鑽樁工程承造商名冊及拆卸工程承辦商名冊中永遠除名；
- (b) 禁止鶴記(亞太的姊妹公司，管理體系同出一轍)承投房屋委員會所有工程，為期二十四個月；
- (c) 透過仲裁確定亞太違反合約條款，以追討房屋委員會因而蒙受的損失。

3. 房屋委員會與亞太的合約規定，雙方的合約糾紛須透過調解或仲裁方式解決。經仔細考慮多個不同方案(見下文第七至十段)追討損失，房屋委員會於2001年年初決定根據合約規定，訴諸仲裁。

¹ 大部分有關打樁工程及房屋委員會與亞太之間的合約糾紛事宜，房屋委員會授權由建築小組委員會處理。

4. 在仲裁中，房屋委員會尋求確認亞太未能根據合約規定建築樁柱、未能妥善監管工程及未能發現及報告有關缺損，因而違反合約條文。房屋委員會因而索償六億零五百萬元，當中包括房屋委員會直接耗用費用二億一千二百萬元(包括虛耗支出、拆卸費用、調查費用及工程中途終止而引致的材料耗費)、兩幢已拆卸樓宇的上蓋建築物承建商所索取的賠償(達六千五百萬元)，以及資產淨值損失(三億二千八百萬元)。另一方面，亞太亦向房屋委員會索償房屋委員會及其轄下部門疏忽監管打樁工程而引致的損失。

仲裁結果

5. 經過八個星期的聆訊，仲裁程序於 2003 年 8 月全部完結。仲裁人裁定亞太違反包括上文第四段所述的多項合約條文，更駁回其對房屋委員會的全部索償。仲裁人判予房屋委員會一億九千九百萬元，補償房屋委員會的直接損失、房屋委員會向上蓋建築物承建商要支付的全數賠償，連帶有關利息及法律費用²，但沒有就資產淨值損失判予賠償，主要是由於房屋委員會決定不重建兩幢已拆卸的樓宇。

和解協議

6. 在仲裁人作出裁決後，房屋委員會應亞太的要求，磋商賠償安排，最後達成協議。根據協議，亞太會向房屋委員會在 2004 年年底分期支付八千萬元，作為仲裁的全部及最後和解安排。亞太的母公司，惠記集團(為一上市公司)，承諾如果亞太未能全數付清賠償金額，會承擔當中的賠償金差額。鑑於亞太的財政狀況，房屋委員會決定接受這個賠償方案。經房屋委員會聘用的專業會計師核算確定，八千萬元的賠償已超越亞太的資產淨值。賠償金會分期支付，以減輕資產淨值低於八千萬元的亞太在

² 房屋委員會在過去四年於仲裁中的累積法律費用為三千八百六十萬元(2000-2003)。費用包括律師費二千零八十萬元、大律師費八百萬元、專家費用六百八十萬元、仲裁人費用二百四十萬元，以及其他仲裁開支六十萬元。費用反映了整個仲裁過程冗長，而且亦相當複雜。

資金週轉方面的困難。這個和解安排已是房屋委員會在情況許可下可以從亞太爭取到的最好賠償。

亞太較早前提出的和解賠償方案

7. 亞太在仲裁後作出的賠償最後少於其較早前提出的和解賠償方案，備受關注。以下資料解釋房屋委員會決定透過仲裁解決合約糾紛的過程及當中考慮的因素。

8. 2000年6月，亞太向房屋委員會提出兩個和解方案 —

- (a) 亞太向房屋委員會分期賠償一億元，由母公司惠記集團保證承擔該賠償；或
- (b) 由亞太的姊妹公司(鶴記)以四億六千五百萬元建築費為房屋委員會會建築重置樓宇，及亞太向房屋委員會就短樁虛耗建築費用及上蓋建築物承建商的索償作出賠償。

兩個方案附帶下述條件 —

- (a) 亞太自動從房屋委員會的大直徑鑽樁工程承造商名冊除名，及停止競投房屋委員會工程合約，為期一年；
- (b) 房屋委員會致力協助亞太與政府除大直徑鑽樁工程外在各項合約工程保持商業關係；
- (c) 房屋委員會致力鼓勵兩鐵及機場管理局如常與亞太進行商業交易；
- (d) 房屋委員會不會因短樁事件再處分任何惠記集團名下公司，或任何其董事同時為該集團董事的公司；及

- (e) 房屋委員會不會因短樁事件處分任何亞太員工，但懷疑刑事罪行則除外。

9. 房屋委員會於 2000 年 7 月拒絕接受以上的和解方案。經考慮後，房屋委員會向亞太提出以下反建議 —

- (a) 房屋委員會分期收取二億元；
- (b) 將亞太從大直徑鑽樁工程承造商名冊及拆卸工程承辦商名冊中除名。

亞太在回應上述方案時，提議分期賠償一億四千萬元，但拒絕從拆卸工程承辦商名冊中除名。房屋委員會拒絕了亞太的修訂方案。鑑於公眾對不合規格的公屋打樁工程反映強烈不滿，房屋委員會希望增加事件透明度，讓公眾知悉，並確定承建商的法律責任。基於以上考慮，房屋委員會選擇向法庭尋求訴訟(儘管這並非合約定明的調解糾紛做法)，而放棄磋商和解協議。

10. 至 2001 年 1 月，當時廉政公署已向幾位涉案人士提出刑事檢控，而且立法會亦已成立專責委員會研究有關公營房屋建築問題的幾宗事件，房屋委員會認為事件的細節將會披露，遂決定根據合約規定與亞太尋求仲裁，而非原先計劃的訴訟。

11. 仲裁程序於 2001 年年中展開。至 2002 年 11 月，亞太提出另外兩個和解方案 —

- (a) 現金賠償五千萬元另加法律費用一千萬元；或
- (b) 現金賠償其資產淨值(據亞太聲稱為八千萬元)的三分之二。

考慮到房屋委員會於仲裁的勝數很高，加上亞太提議的現金賠償額遠低於其在 2000 年 7 月建議的一億四千萬元，房屋委員會拒絕該和解建議。

12. 值得一提的是，甫開始，房屋委員會決定訴諸仲裁，而拒絕私下磋商協議，是基於希望向公眾展示及確定事件的法律責任完全屬於亞太。房屋委員會拒絕和解建議也是基於這個決定性因素。房屋委員會清楚了解選擇這個決定後，亞太的資產淨值會隨時間減少，再加上牽涉的法律費用，訴諸仲裁可能會令房屋委員會獲得的賠償相比起和解協議下所得的為少。

房屋及規劃地政局
2003年11月

(立法會秘書處譯文，只供參考用)

(余若薇立法會議員辦事處用箋)

香港
香港特區政府
香港房屋委員會主席
孫明揚先生, GBS, JP

主席先生：

我接獲一宗有關近期房屋委員會(下稱“房委會”)與亞太土木工程有限公司(下稱“亞太”)經仲裁後達成和解條件的申訴。該宗申訴作出下列指稱：

- (1) 房委會未有透露該筆8,000萬元的款項只會分攤在兩年內支付，而非一次過支付。
- (2) 相對6億5,000萬元的申索金額而言，8,000萬元的賠償款項只是小數。把申索金額誇大，是為了要將所有責任由房委會轉移給亞太。
- (3) 在較早階段，亞太曾提議分期支付1億8,000萬元，每6個月付款一次，但此建議不獲接受。
- (4) 房委會委聘西盟斯律師行(該律師行的高級合夥人林菲臘是建築小組委員會委員，其後更擔任該小組委員會的主席)作為其進行是次仲裁的律師，存在利益衝突的問題。
- (5) 仲裁開始後不久，亞太提出以8,000萬元和解的密封建議，但該建議不獲接受，令仲裁費用增加。
- (6) 房委會的法律費用高達4,000萬元，因此，房委會從和解所得的款項只有4,000萬元。

懇請閣下就上述指稱置評。

余若薇

2003年10月16日



CB(1)584/03-04(04)

 香港房屋委員會
Hong Kong Housing Authority

孫明揚
The Honourable Chairman
MICHAEL M Y SUEN
Hong Kong Housing Authority

12 November 2003

Hon Audrey Eu
Room 429
Central Government Offices
West Wing
11 Ice House Street
Hong Kong

Dear Ms Eu,

Thank you for your letter of 16 October referring to a complaint which you have received about the Housing Authority (HA)'s arbitration settlement with Zen Pacific Civil Contractors Ltd. (Zen Pacific).

In view of the wide-ranging implications of the matters mentioned in your letter, I ordered a thorough examination into them.

A detailed response to the points raised is set out at the Annex to this letter. Since the Housing Panel of the Legislative Council has also asked to be briefed on this issue, a paper setting out the background and the results of our examination will be issued to Members.

I have taken into account the need for transparency which might be compromised by the non-disclosure conditions in the arbitration and the settlement agreement between the Housing Authority and Zen Pacific. I have, therefore, secured Zen Pacific's consent to our disclosure, on a confidential basis, to you and other Members of the Legislative Council, of pertinent information about the arbitration and the settlement agreement.

Should you require further clarification, please do not hesitate to let me know.

Yours sincerely,

(Michael M Y SUEN)
Chairman
Housing Authority

b.c.c. PSH

**Detailed Response to
Points Raised in Hon. Audrey Eu's Letter**

Point 1

The Housing Authority failed to disclose that the \$80m will only be paid over 2 years and not in one lump sum.

On the insistence of Zen Pacific, the settlement agreement contains a non-disclosure provision to the effect that nothing in the agreement may be disclosed to any third party without the written consent of parties to the agreement. We have previously obtained the agreement of Zen Pacific to disclose the settlement sum of \$80m to the public, but not the terms related to when and how this sum will be paid to HA. We have now obtained the further agreement of Zen Pacific to disclose all pertinent information about the arbitration and the settlement agreement to Members of the Legislative Council on a confidential basis.

According to the settlement agreement, Zen Pacific will pay HA \$80m on or before 31 December 2004. A part payment in the amount of \$10m will be paid by 31 December 2003 and a further part payment of \$20m by 15 September 2004. Wai Kee Holdings Ltd., the parent company of Zen Pacific, has guaranteed to pay any shortfall to HA in the event that Zen Pacific defaults in paying HA the settlement amount in whole or in part. In agreeing to these payment terms, we have taken account of the fact that the net asset value of Zen Pacific is well below \$80m and Zen Pacific may have cash flow difficulties to pay the entire sum upfront.

Point 2

The settlement of \$80m is small viewed against the claim of \$650m. The claim was exaggerated in order to shift all the blame away from the Housing Authority to Zen Pacific.

The claim was \$605m, comprising the following items –

- a. costs incurred by HA (wasted expenditure, demolition costs, investigation costs, abortive costs) - \$212m;
- b. compensation claimed by Paul Y-ITC General Contractors Limited (Paul Y) (superstructure contractor of the two demolished blocks with

- piling problems) - \$65m; and
- c. loss of value of asset - \$328m

The arbitrator determined that there was a series of breaches of contract by Zen Pacific, and dismissed all its counter-claims against HA. The arbitrator awarded HA \$199m for *item a*, full indemnity by Zen Pacific to HA for any payment to Paul Y under *item b*, plus interests and legal costs. No award was made for *item c*. HA was fully aware that the case to claim for loss of value of asset was not as strong as that for *items a* and *b* because of HA's decision not to rebuild the two demolished blocks.

The settlement sum of \$80m represents the best that HA could get from Zen Pacific given its financial position. The amount exceeds the net asset value of Zen Pacific as assessed by a professional accounting firm commissioned by HA in September 2003, and we have secured a guarantee from Zen Pacific's parent company to honour the settlement agreement.

Point 3

At an early stage, Zen Pacific offered \$180m payable by instalment every 6 months but this offer was not taken up.

Zen Pacific made two offers to HA in June 2000 –

- a. Zen Pacific to pay HA \$100m (\$20m upfront and \$10m for 8 years thereafter). The Wai Kee Group to provide a parent company guarantee for these payments; or
- b. Zen Pacific's sister company (Ngo Kee) to build two replacement blocks at a price of \$465m payable by HA, and Zen Pacific to compensate HA for abortive piling costs (\$28m), building costs paid to Paul Y (\$119m) and Paul Y's claims (\$30m-\$66m).

The following main conditions were attached to these offers –

- a. Zen Pacific will voluntarily de-list from HA's list of large diameter bored piling (LDBP) contractors, and will refrain from bidding for any other HA contracts for one year;

- b. HA will use its best endeavours to persuade Government to maintain business relationship with Zen Pacific for all types of contract except LDBP;
- c. HA will use its best endeavours to encourage KCRC, MTRC and Airport Authority to trade normally with Zen Pacific;
- d. HA will not make any further sanction against any company of the Wai Kee Group, or any company having directors in common with the Group arising from the defective piling case; and
- e. HA will not sanction any officer of Zen Pacific arising from the defective piling case except in circumstances of suspected criminal conduct.

The above two offers were rejected by the HA's Building Committee (BC) at its meeting on 3 July 2000. BC felt that the second offer was too complex and that it would not be appropriate to appoint Ngo Kee to rebuild the two blocks without going through proper tender procedure.

After further discussion, BC agreed to make the following counter-proposal to Zen Pacific –

- HA to receive a sum of \$200m (an upfront payment of \$100m. The remaining \$100m to be paid by 5 equal annual instalments); and
- Zen Pacific to be de-listed from HA's lists of LDBP and demolition contractors.

Zen Pacific responded with an offer of \$140m (an upfront payment of \$40m and the remaining \$100m to be paid by 5 equal annual instalments). It resisted the extension of de-listing to demolition works. BC unanimously rejected Zen Pacific's revised offer. The BC meeting was held at a time when there was very strong public discontent about the piling scandals and the blame was put on HA. The Legislative Council had just passed a resolution of no-confidence on the then Chairman of HA and Director of Housing. Against this background, BC was keen to make public the whole matter to achieve transparency and to establish liability of the contractor; hence was apprehensive about a negotiated settlement.

Point 4

There was conflict of interest in that the Housing Authority appointed Messrs. Simmons & Simmons, in which Philip Nunn, a member and later Chairman of the Building Committee was senior partner, as its solicitors for the arbitration.

In January 2000, in view of the fact that urgent legal advice was required on HA's legal position in relation to the piling defect cases in order to advise the BC, and in consideration of the need for independent advice, we decided to conduct a tendering exercise to appoint solicitor firms with established practice in the area of building law to advise on seven defective piling projects. After consulting the Department of Justice and the then Works Bureau, we compiled a list of 10 firms, which constituted Hong Kong's major construction dispute practice and invited eight of them to submit proposals. The other two were not invited because they were known to be representing contractors concerned.

The initial brief to these firms was to conduct a preliminary assessment of the strengths and weaknesses of the cases assigned to them and to estimate the cost and time involved. Six submitted proposals. Two declined because they were also representing contractors. We selected four from the six having regard to the firms' experience, personnel and fees. Simmons and Simmons was one of the four firms (third in overall score) and was assigned to deal with the Zen Pacific case. The two firms with higher scores were each assigned to deal with more than one project.

In the event, BC, having considered the legal advice given, decided to take actions against the piling contractors concerned and these four solicitor firms were appointed to continue with their actions in relation to those piling contractors in the projects they had already advised on.

Philip Nunn is a senior partner of Simmons & Simmons recognized for his expertise in handling construction dispute cases and in resolving such disputes by arbitration. He was nominated by Simmons and Simmons to be in charged of the case and the legal team on the basis of his expertise.

Philip Nunn declared his interest every time before BC discussed matters related to the Zen Pacific case, and attended BC meetings in his capacity as HA's legal adviser for the case. Whenever the case was discussed, he vacated from the Chair and another member was elected to stand in as acting Chairman. BC was fully aware that he was serving in his capacity as HA's legal adviser during the discussion of the case.

In considering reports, proposals and recommendations in relating to the Zen Pacific case, HD and or members always took into account the relevant facts and the merits of the case and made the appropriate decision in the interests of HA. There is no question that there was any conflict of interest in the appointment of Simmons & Simmons.

Point 5

Soon after the commencement of the arbitration Zen Pacific made a sealed offer of \$80m but this was not accepted and the cost for arbitration increased.

Zen Pacific proposed two alternative offers on 15 November 2002 –

- a. A cash payment of \$50m plus \$10m for legal costs; or
- b. A cash payment equivalent to two-thirds of its net asset value.

BC considered the two offers at its meeting on 21 November 2002 and found them unacceptable. BC noted that HA had a strong case to win the arbitration, and that the cash offer was much lower than the previous offer (\$140m) made in July 2000.

The arbitration process started in mid 2001, which was more than one year before Zen Pacific made these offers. Had a settlement been reached in November 2002, it is correct that the cost for arbitration would be less than the actual cost incurred, as it would no longer be necessary to continue the arbitration. However, from the outset, the primary reason for BC to pursue arbitration instead of a negotiated settlement is to establish and demonstrate to the community that the liability falls fully and squarely on Zen Pacific. BC's rejection of the offers was consistent with this overriding consideration.

Point 6

The Housing Authority's legal cost came to \$40m, thus the Housing Authority only received \$40m from the settlement.

The cumulative legal cost incurred by HA is \$38.6m¹ over a period of 4 years (2000 - 2003). HA will receive \$80m from Zen Pacific as settlement for the arbitration award. The legal cost incurred by HA will not be deducted from the sum due from Zen Pacific under the settlement.

BC was fully aware that HA might not be able to recover much from Zen Pacific at the end of the arbitration. During the course of the arbitration, BC was advised on many occasions that given the financial position of Zen Pacific, the amount to be recovered eventually would be insignificant after deducting the arbitration-related costs. For example, at the meeting in January 2001 when BC decided to proceed with arbitration, it was pointed out in the relevant BC paper that *HA had a strong case to establish Zen Pacific's liability, and that there should be a very significant award of quantum in HA's favor. However, any recovery would be limited to Zen Pacific's assets in 2 to 3 years time when the arbitration was concluded. There was no parent company guarantee offered to HA by Zen Pacific. At best HA would recover its legal costs and a small percentage of the amount awarded.* A similar message was repeated at BC meetings in June and August 2001 when the progress of arbitration was discussed.

¹ Position as of 28 October 2003. The costs include \$20.8m for solicitors' fees, \$8.0m for counsels' fees, \$6.8m for experts' fees, \$2.4m for arbitrator's fees, and \$0.6m for other arbitration expenses.

(立法會秘書處譯文，只供參考用)

(余若薇立法會議員辦事處用箋)

香港
香港特區政府
香港房屋委員會主席
孫明揚先生, GBS, JP

孫先生：

閣下於2003年11月12日的來函收悉，該函件標明屬密件。坦白說，我對閣下拒絕將此信公開感到難於接受。此事既然關乎公眾利益，公眾對此便有知情權。況且，我最少也要向申訴者作出交代。

對於閣下詳盡的回應，我初步有若干疑問。

關於第一點，閣下提及付款金額為8,000萬元。然而，閣下只提及在2004年12月31日支付款項1,000萬元，以及在9月5日再支付部分款項2,000萬元，但未有提及餘額5,000萬元。

關於第三點，閣下表示，建築小組委員會(下稱“建築小組”)很希望增加事件透明度，讓公眾知悉，並確定承建商的法律責任，因此，建築小組對私下磋商協議的做法有所顧慮。我認同事件的透明度由始至終的確令人關注。所以，我覺得閣下要求把信件保密，更難以令人理解。

關於第四點，我並無質疑林菲臘及其律師行的誠信。然而，是否有制訂任何指引，訂明在這類案件中恰當的行事做法？毫無疑問，林菲臘及其律師行對這類案件有很豐富的經驗，但如要就是否繼續進行訴訟或和解提供意見，他本人／其律師行與房屋委員會(下稱“房委會”)之間便會存有直接的利益衝突(尤其是與訟的另一方就整項申索及法律費用而言均處境不利)。這樣的利益衝突如何能夠避免？

關於第五點，閣下重申，過往對方曾提出較高金額的和解條件，但房委會拒絕接受，乃基於一個決定性的因素，就是要向公眾展示事件的法律責任完全屬於亞太土木工程有限公司(下稱“亞太”)。閣下現時與亞太達成保密和解協議，這立場如何與該決定性的因素一致？

關於第六點，閣下說過根據和解條件，為數達3,860萬元的法律費用，不會從亞太須付的款項中扣除。那麼，該筆費用會如何及何時支付，以及由誰人支付？

總括而言，我關注到閣下的結語：“建築小組清楚了解到仲裁完結時，房委會或會不能從亞太方面獲得很多賠償”。若料想情況如此，耗費大量時間和法律費用以如此方式來解決，又是否合理？房委會在這點上是否欠公眾一個解釋？若此事須在“保密”的情況下討論，又如何能夠解決這問題？政府是否肯定知道與亞太達成這些條款是錯誤的？

我與閣下的來往函件的複本已送交房屋事務委員會主席，以便作進一步處理。

余若薇

副本致：房屋事務委員會主席
何俊仁議員

2003年11月18日



CB(1)584/03-04(06)

 香港房屋委員會
Hong Kong Housing Authority

孫明揚
The Honourable
MICHAEL M Y SUEN
Chairman
Hong Kong Housing Authority

4 December 2003

Hon. Audrey Eu
Room 429
Central Government Offices
West Wing
11 Ice House Street
Hong Kong
(Fax: 2899 2249)

Dear Ms Eu,

Thank you for your letter of 18 November requesting clarification of some points in the detailed response attached to my 12 November letter to you in connection with the Zen Pacific case. I am pleased to enclose at Annex I a detailed response to your questions.

As regards your concern about my previous letter being graded confidential, you will no doubt realize that the Housing Authority (HA) is bound by the usual non-disclosure conditions of arbitration proceedings, as well as by confidentiality provisions in the subsequent settlement agreement between Zen Pacific and HA. Indeed, from its standpoint, HA welcomes full disclosure of the arbitration award and the terms of the settlement agreement. However, Zen Pacific has hitherto insisted that all information must be kept confidential save that contained in the joint public announcement (reproduced at Annex II) after conclusion of the settlement agreement.

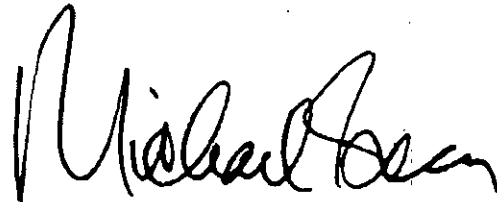
In view of your letter of 16 October and the request of LegCo Housing Panel for information about the case, we persuaded Zen Pacific to consent to our disclosure, on a confidential basis, to you and other Members of the Legislative Council, of pertinent information about the matter. An information paper was issued under confidential cover to the LegCo Panel on Housing on 13 November.

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We recognize that you have to account to the person who lodged the complaint with you, and have since persuaded Zen Pacific to further agree that the information in my two letters may be disclosed to the complainant. Zen Pacific has also agreed that, if deemed essential by the LegCo Housing Panel, all relevant information may be made public and de-classified. In this connection, I note that the LegCo Panel on Housing has requested for the relevant information to be made public at its meeting on 1 December 2003. We will respond favourably to any request from the Panel in this regard.

I hope the above addresses your concerns. Should you require further clarification, please let me know.

Yours sincerely,



(Michael M. Y. Suen)
Chairman
Housing Authority

c.c. Hon. Albert HO
Chairman, LegCo Panel on Housing

b.c.c. PSB
DD(CS)

Annex I***Point 1***

Under the agreement, Zen Pacific will pay the Housing Authority (HA) \$80 million *on or before 31 December 2004*. A part payment of \$10 million will be made by 31 December 2003, and a further part payment of \$20 million by 15 September 2004. The balance will be paid on or before the end of 2004.

Point 3

As explained in the main body of the letter, the demand for confidentiality came from Zen Pacific. HA cannot disclose any information concerning the arbitration award or the settlement agreement without the consent of Zen Pacific. We have now obtained the agreement of Zen Pacific that, if deemed essential by the LegCo Housing Panel, all relevant information may be made public.

Point 4

There are provisions in HA's Standing Orders (SOs) governing declaration of interests by its members, as well as employment of members in a professional capacity. Mr. Philip Nunn has complied with all the relevant SOs.

You have suggested that Mr Nunn and his firm may have direct conflict of interest when advising HA whether to carry on or to settle litigation. Indeed, such potential conflict of interest exists for any legal firm advising its client in a similar situation. Whether Mr. Nunn is a HA member or not is not really relevant. Mr. Nunn always declared his interests in accordance with the relevant SO before attending Building Committee (BC) meetings to discuss matters related to the Zen Pacific case. The meeting was fully aware that when Mr Nunn spoke on the subject, he was acting in his capacity as HA's legal adviser for the case and not as a member of HA and therefore did not participate in the decision-making process. At least at one BC meeting, Mr Nunn advised the meeting that 'the likely outcome would be that although the Authority would be awarded a substantial sum in arbitration, it might be an empty judgement in view of (Zen Pacific)'s asset position.'

- 2 -

Point 5

HA reached a settlement agreement with Zen Pacific only after the arbitration award had been made. The arbitrator determined that Zen Pacific had failed to construct the piles in accordance with specifications, to properly supervise the works, and to discover and report the defects. The arbitrator also rejected all counter-claims by Zen Pacific against HA. On this basis, the arbitrator awarded compensation to HA in the amount of \$199 million, among others.

The arbitration award has demonstrated that the liability for the short-piling falls fully and squarely on Zen Pacific. On this basis, and at the request of Zen Pacific, we entered into negotiations with Zen Pacific for a settlement. Taking into account a professional accountant firm's assessment that Zen Pacific's net asset value at that time was much less than the money owed to HA, and that if Zen Pacific was liquidated HA was unlikely to recover any money because HA was an unsecured creditor, HA decided to accept Zen Pacific's offer of \$80 million for settlement. This sum already exceeded the net asset value of Zen Pacific. We also obtained a guarantee from Zen Pacific's parent company (a listed company on the Stock Exchange of Hong Kong) to pay any shortfall to HA in the event that Zen Pacific defaults in paying HA the settlement amount in whole or in part. The settlement was reached in the best interest of HA and the public in the circumstances.

On the insistence of Zen Pacific, the settlement agreement was kept confidential. However, we persuaded Zen Pacific to agree to make a public announcement (copy at Annex II) on the settlement amount and the fact that a substantial award of damages had been made in favour of HA.

Point 6

The total legal cost of \$38.6 million is paid by HA from its own coffers to various parties over the four-year period from 2000-2003.

Overall comment

We have explained in detail, in the LegCo Housing Panel paper at Annex III, the considerations underlying BC's decision to pursue the course of action as it did in the Zen Pacific case. All the decisions were made under due process and after careful deliberations, and had the full backing of BC members. We consider that the decisions made are sound and in the best interest of HA and the public.

Annex II

HA's statement on a settlement agreement concerning a piling project in Shatin

The following is issued on behalf of the Housing Authority:

Subsequent to the detection of defective piling works in Blocks D and E of Shatin Area 14B Phase 2 in early 2000, the Housing Authority (HA) engaged in an arbitration with Zen Pacific Civil Contractors Ltd (ZPCCL), the piling contractor of the project. The following is a statement jointly issued by HA and ZPCCL today (25 September 2003) in relation to the settlement of the arbitration.

The Hong Kong Housing Authority (the Authority) and Zen Pacific Civil Contractors Limited (Zen Pacific) have now concluded arbitration proceedings arising out of the defective piling for Blocks D and E of Contract 166 of 1997 relating to Shatin Area 14B Phase 2 (the Project).

A substantial award of damages has been made in favour of the Authority by the Arbitrator. Zen Pacific has entered into an agreement with the Authority which results in a sum of HK\$80 million being paid to the Authority. This is in excess of the net asset worth of Zen Pacific. Any sums relating to the Project recovered by Zen Pacific from any sub-contractor or consultant will also be paid to the Authority.

The Authority and Zen Pacific confirm that all outstanding issues between them in relation to the Project have now been resolved.

END/NNNNN

25 September 2003 (Thursday)