



OFFICE OF THE CONTRACTOR GENERAL OF JAMAICA

Special Report of Investigation

Office of the Contractor General's Investigation – Concerning Divestment of Government of Jamaica Owned Assets – The Sale of Property Located at 35 West Parade, Kingston, to Bashco Trading Company Limited by the Urban Development Corporation (UDC)

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INTRODUCTION

The Office of the Contractor General (OCG) commenced a statutory Investigation on October 14, 2011, into the sale of a property at 35 West Parade, located in Kingston, to Bashco Trading Company Limited, by the Urban Development Corporation (UDC). The OCG's Investigation emanated from formal written allegations and representations that had been made to the OCG, by the law firm, Hart Muirhead Fatta, Attorneys-at-Law, by way of a letter, which was dated September 28, 2011.¹ The law firm, Hart Muirhead Fatta, made representations on behalf of Mr. Michael Mahfood (M. Mahfood & Sons Limited), a tenant for approximately thirty (30) years. The allegations and representations include, *inter alia*, the following:

- a. A concern regarding the process by which the property was being divested by its registered proprietor, the UDC;²
- b. The assertion that “...on several occasions our client has offered to purchase or take a long term lease of the property. The UDC has consistently rejected those offers on the basis that the property is required for road-widening”;³
- c. The statement that “not only was Mr. Mahfood not given any opportunity to purchase the property, but the desire to sell this public asset was not advertised or otherwise made public”;⁴
- d. The allegation that “...the property is being sold to Bashco Trading Company Limited (“Bashco”) for JMD30,000,000, whereas our client is prepared to pay substantially more to acquire the property, having regard to perceived market value and our client’s

¹ Formal Letter of Allegations and Representations presented to the Office of the Contractor General, by the law firm, Hart Muirhead Fatta, Attorneys-at-Law, dated September 28, 2011.

² Formal Letter of Allegations and Representations presented to the Office of the Contractor General, by the law firm, Hart Muirhead Fatta, Attorneys-at-Law, dated September 28, 2011.

³ Formal Letter of Allegations and Representations presented to the Office of the Contractor General, by the law firm, Hart Muirhead Fatta, Attorneys-at-law, dated September 28, 2011.

⁴ Formal Letter of Allegations and Representations presented to the Office of the Contractor General, by the law firm, Hart Muirhead Fatta, Attorneys-at-law, dated September 28, 2011.



being prepared to acquire the property, having regard to perceived market value and our client's being prepared to pay a premium to continue business there.”⁵

In addition to the referenced assertions, the OCG was prompted to investigate the captioned matter as a result of the following concerns:

1. The failure of Ms. Joy Douglas, the then UDC's General Manager, to address and satisfy, in a timely and fulsome manner, the concerns and questions which had been raised in the OCG's statutory Requisition, which was dated September 30, 2011. On the stipulated response deadline of October 10, 2011, Ms. Joy Douglas wrote to the OCG and advised, *inter alia*, that “*An Agreement for Sale was executed on August 11th 2011 for the sum of Thirty One Million Four Hundred Thousand Dollars (\$31,400,000.00).*”⁶
2. Additionally, and as a result of certain assertions that were made by Ms. Joy Douglas in a letter dated October 11, 2011. The assertions were as follows:
 - a. “*The UDC received an unsolicited proposal from Bashco Trading Company Limited, via its principal, Mr. Gazzan [sic] Azan, to purchase properties in the West Parade/Beckford Street area*”;
 - b. Mr. Gassan Azan had made contact with the UDC in February 2011, “*...submitting an offer for Thirteen Million Four Hundred and Sixty Eight Dollars (\$13,468,00.00) for two (2) properties which on his own research he had discovered was owned by the UDC*”⁷.

⁵ Letter of Notification of the Sale of the 35 West Parade property Presented to the OCG by Ms. Joy Douglas, dated, October 10, 2011.

⁶ Letter of Notification of the Sale of the 35 West Parade property presented to the OCG by Ms. Joy Douglas, dated, October 10, 2011.

⁷ Letter addressed to the OCG by Ms. Joy Douglas, dated October 11, 2011.



- c. A development plan had been submitted by Mr. Gassan Azan, which, upon review, concurred with the UDC 's plan for the redevelopment of the area; and
- d. That “...one of the principles as stated in Ministry Paper #34 reflecting Public Sector divestment was breached in that the property was not publicly advertised. However, we wish to categorically state that this was not because of any ulterior motive or flagrant disregard of the policy but can be explained on the basis of the Corporation’s historical operation and we genuinely erred.”⁸(OCG Emphasis)

Having regard to the representation that was made by Ms. Joy Douglas in her referenced letter, the OCG notes that the provisions in the UDC’s Estate Management Policy and Guidelines, of June 9, 2003, are not in line with the principles which are embodied in Ministry Paper #34, “Privatization Policy and Procedures.” The referenced provision stipulates, inter alia, that “...the Corporation will advertise all the properties to be divested, except in cases where direct offers are received from private investors.”⁹

Expansion of Investigation

The OCG’s Investigation was expanded as a result of certain assertions and representations that were made to the OCG, by the law firm, Henlin Gibson Henlin, Attorneys-at-Law, Barristers & Solicitors & Notaries Public, by way of a letter, which was dated October 27, 2011 and which was received in our Office on November 1, 2011. The law firm, Henlin Gibson Henlin, represented Fifth Avenue Traders Ltd, one of the then tenants of 35 West Parade, which had occupied the property for over thirty (30) years. The referenced assertions and representations are, hereunder, documented as follows:

- a. The assertion that *“In the mid 1980’s... [Fifth Avenue Traders Limited] made an offer to purchase the premises and made a deposit of US\$30,000.00 through its then Attorney-at-Law, Myers, Fletcher & Gordon. The offer was rejected but the deposit was never*

⁸ Letter of Notification of the Sale of the 35 West Parade property presented to the OCG by Ms. Joy Douglas, dated, October 11, 2011.

⁹ Estate Management Policy and Guidelines, with an effective date of June 9, 2003, pg. 13 of 14.



returned. The basis of the rejection was due to the downtown redevelopment program...”,¹⁰

- b. That “by letter dated 16th November of 2007 our client again expressed its interest to the UDC to either purchase or lease on a long term basis the entire building”;
- c. The assertion that “By letter dated the 5th January 2010 our client made another offer to purchase the building or to increase their occupation by leasing a bigger space. After no response was received it is alleged that its representative spoke to the Chairman of the Board who confirmed that the building will not be sold because of the downtown redevelopment plans. Subsequently the UDC responded about the existing lease without reference to the additional space or the offer to purchase”;
- d. The allegation that “By undated letter in July 2011 our client again expressed an interest in purchasing the property and requested a recent valuation report.”;
- e. The statement that “Our client finally received a **written** response dated the 2nd August 2011 from the General Manager of the UDC indicating that the property is unavailable since it had already been committed to transfer ownership. Our client was then advised that its offer would be considered if the undisclosed transferee’s offer fails to proceed to conclusion”;
- f. The assertion that “By way of letter dated the 9th August 2009 it submitted a further offer of J\$32,000,000.00. In making this offer, our client took into account the fact that it was dealing with a public property that should be subject to transparency and a public competitive bidding process. As it turns out, our client’s offer was more than the one allegedly accepted even before the contract was signed”; and

¹⁰ Letter from Henlin Gibson Henlin, Attorney- at-Law, Barristers & Solicitors & Notaries Public, addressed to the OCG on October 27, 2011.



- g. The assertion that “...the UDC’s actions deprived our client of the opportunity to participate in a process provided for in the Government of Jamaica’s Ministry Paper#34, *Privatisation Policy and Procedures...*”¹¹

¹¹ Letter from Henlin Gibson Henlin, Attorney- at-Law, Barristers & Solicitors & Notaries Public, addressed to the OCG on October 27, 2011.



TERMS OF REFERENCE

Primary Objectives

The primary objectives of the Investigation are set out hereunder:

1. To ascertain whether there was compliance on the part of the UDC with the Contractor General Act (1983), the Public Bodies Management and Accountability Act (2003) and the Urban Development Corporation (UDC) Act (1968) by the sale of 35 West Parade to Bashco Trading Company Limited and/or its nominee, by the UDC.
2. To determine whether the sale of 35 West Parade, by the UDC, was in compliance with Ministry Paper #34 Privatization Policy and Procedures, the UDC's Estate Management Policy and Guidelines (2003), the UDC's Real Estate Divestment (Sale) Procedure (2004) and/or any other policies or guidelines, which govern the divestment of Government owned assets.

Specific Objectives

The specific objectives of the Investigation are as follows:

1. To identify the process adopted and the sequential activities, which were carried out by the UDC, in selecting Bashco Trading Company Limited, and/or its nominee, as the preferred purchaser for the property located at 35 West Parade, Kingston.
2. To determine whether the UDC and/or the Office of the Prime Minister carried out the requisite due diligence to ensure that a fair market value was realized for the sale of the property.
3. To determine the circumstances under which the property located at 35 West Parade was sold to Bashco Trading Company Limited.
4. To ascertain whether there is any, *prima facie*, evidence that would indicate any level of impropriety and/or irregularity, on the part of any individual and/or entity, acting on



behalf of the UDC, and/or the GOJ, which led to the sale of the said property to Bascho Trading Company Limited, and/or its nominee, by the UDC.

5. To ascertain whether the overall process which led to the sale of the property located at 35 West Parade to Bascho Trading Company Limited, and/or its nominee, was fair, impartial and transparent.
6. To ascertain whether there was, *prima facie*, evidence of a conflict of interest on the part any member of the Board of Director and/or any officer of the UDC, by virtue of personal, official/business and/or any other relationship with Mr. Gassan Azan, Chief Executive of Bascho Trading Company Limited and/or its nominee.



JURISDICTION

The OCG's decision to undertake an Investigation into this matter is predicated upon the gravity of the allegations mentioned herein which highlight issues of irregularities and impropriety contrary to Section 4 of the Contractor General Act. The OCG is of the view that the sale of the property located at 35 West Parade is a matter which falls within the ambit of the Contractor General Act, and accordingly, the circumstances surrounding the sale of the referenced property was investigated by the OCG, pursuant to Sections 15(1) and 16 of the Contractor General Act.

The sale of the property located at 35 West Parade, is in fact the divestment of a government-owned asset. The sale of the referenced property, will, upon the acceptance of a successful bid, mark the commencement of a formal contract between the UDC and the bidder. In this regard, Section 4(1) of the Contractor General Act requires, *inter alia*, that Government of Jamaica contracts must be awarded “*impartially and on merit*” and that the circumstances of award must “*not involve impropriety or irregularity*”.

Further, Section 16 of the Act expressly provides that “*An investigation pursuant to Section (15) may be undertaken by a Contactor-General on his own initiative or as a result of representations made to him, if in his opinion such investigation is warranted.*”¹²

The OCG also relied on the provisions of Section 2 of the Contractor-General Act, which provides, *inter alia*, as follows:

“government contract” includes any licence, permit or other concession or authority issued by a public body or agreement entered into by a public body for the carrying out of building or other works or for the supply of any goods or services;

“public body” means-

¹² The Contractor General Act (1983).



(a) a Ministry, department or agency of government;

(b) a statutory body or authority;

(c) any company registered under the Companies Act, being a company in which the Government or an agency of Government, whether by the holding of shares or by other financial input, is in a position to influence the policy of the company;”¹³

¹³ The Contractor General Act (1983).



METHODOLOGY

The requisitions/questionnaires were directed by the OCG to Public Officials/Officers of the UDC and other persons of interest. In addition, a comprehensive review of relevant Government of Jamaica legislation and policy procedures was undertaken.

Subsequent to the receipt of the referenced allegations, an initiation letter, dated October 14, 2011, was sent to the Hon. Bruce Golding, former Prime Minister and Ms. Onika Miller, former Permanent Secretary, Office of the Prime Minister. Requisitions were directed by the OCG to the following persons who were deemed pertinent to the referenced Investigation, during the period October 28, 2011 to November 21, 2012:

1. The Hon. Bruce Golding, former Prime Minister;
2. Mr. Wayne Chen, former Chairman of the Board of Directors, UDC;
3. Ms. Joy Douglas, former General Manager, UDC;
4. Ms. Onika Miller, former Permanent Secretary, Office of the Prime Minister;
5. Mr. Patrick Stanigar, former Chief Architect, UDC;
6. Ms. Sonia Mitchell, former Board Member, UDC;
7. Mr. Philip Myers, Director, Estates Management, UDC;
8. Major (ret'd) Brian Campbell, Director of Sales, UDC;
9. Mr. Michael Mahfood, Director, M. Mahfood & Sons Limited;
10. Mrs. Maritza Warwar, Director, Fifth Avenue Traders Limited;
11. Mr. Gassan Azan, Chief Executive Officer, Bashco Trading Company Limited;
12. Dr. Cleo Taylor, former Board Member, UDC;
13. Ms. Elizabeth Harrilal, Manager, Estates, UDC;
14. Mr. Robert Russell, former Board Member, UDC;
15. Mr. Desmond McKenzie, former Board Member, UDC;
16. Mr. Michael Subratie, former Board Member, UDC:



17. Mr. Lennox Elvy, former Board Member, UDC;
18. Mr. Michael Ammar Jr., former Deputy Chairman of the Board of Directors, UDC;
19. Ms. Ann Marie Rhoden, former Board Member, UDC;
20. Ms. Daniella Gentles, former Board Member, UDC;
21. Ms. Kathryn M. Phipps, former Deputy Chairman of the Board of Directors, UDC;
22. Mr. Desmond Young, former Board Member, UDC;
23. Mr. Anthony Walker, former Board Member, UDC;
24. Mr. Vivion Scully, former Board Member, UDC; and
25. Mr. Milverton Reynolds, Managing Director, Development Bank of Jamaica Limited.

Upon receipt of the signed responses, a detailed review of the responses and supporting documentation was undertaken. Following the review of the responses, a detailed listing of all the facts pertinent to the Investigation was established and the findings were discussed in conjunction with the objectives outlined in the terms of reference.



FINDINGS OF FACT

1. The UDC was the legal owner of the property located at 35 West Parade, prior to its divestment to Bashco Trading Company Limited. The property, which is located in Kingston, Jamaica, is registered at Volume 328 and Folio 86, and measures 5800 square feet.
2. The property located at 1 Beckford Street is registered at Volume 1226/Folio 3, and measures 2992 square feet.
3. Mr. Michael Mahfood (M. Mahfood & Sons Limited) occupied the property located at 35 West Parade for approximately thirty (30) years prior to its divestment to Bashco Trading Company Limited.
4. The UDC received an unsolicited proposal from Bashco Trading Company Limited on February 15, 2011, for the purchase of a property located at 35 West Parade and 1 Beckford Street. The proposal was received subsequent to a meeting, which was held in January 2011, between Bashco Trading Company Limited's principal, Mr. Gassan Azan, and the UDC.
5. The then UDC's Board of Directors were not informed of a January 2011 meeting which was convened by the former General Manager, Ms. Joy Douglas and the former Chief Architect, Mr. Patrick Stanigar with Mr. Gassan Azan, Principal, Bashco Trading Company Limited. The meeting, as indicated by Mr. Azan was held to discuss matters relating to the re-development of Down Town, Kingston.
6. Bashco Trading Company Limited's proposed price as indicated in its purchase proposal to the UDC for 35 West Parade was in the amount of Nine Million Two Hundred Thousand and Eighty Thousand Dollars (\$9,280,000.00).



7. Bashco Trading Company Limited's proposed price indicated in its purchasing proposal to the UDC for 1 Beckford Street was in the amount of Four Million One Hundred and Eighty-eight Thousand Dollars (\$4,188,000.00).
8. The unsolicited proposal that was submitted to the then UDC by Bashco Trading Company Limited was presented to the UDC's Board and approved on April 28, 2011, subject to the conduct of two (2) independent valuations by the UDC to determine the sale.
9. The property located at 35 West Parade was not advertised for sale by the UDC or any other GOJ entity.
10. The UDC's Executive Management, which was spearheaded by the then General Manager, Ms. Joy Douglas, **unilaterally decided not to consider purchase offers from other prospective purchasers for the purchase of 35 West Parade property.**
11. An agreement for the sale of 35 West Parade in the sum of Thirty One Million Four Hundred Thousand Dollars (\$31,400,000.00) was executed August 11, 2011, between the UDC and Bashco Trading Company Limited.
12. The UDC's Board of Directors were only made aware of other competing offers for the purchase of the 35 West Parade property, when the OCG wrote to the UDC and requested evidence of the purchase offers, which the UDC had received from interested parties.
13. The process undertaken by the UDC to divest the property located at 35 West Parade to Bashco Trading Company Limited was in contravention of the then applicable Government of Jamaica Privatization and Procedures Policy/Ministry Paper #34. The then applicable section of the policy states as follows:



“the selection of items to be privatized will be announced to the public by way of advertisements”¹⁴

14. The UDC received an offer for the purchase of 35 West Parade on November 16, 2007 from Fifth Avenue Traders Ltd.
15. The UDC received a second offer for the purchase of 35 West Parade on January 5, 2010 from Fifth Avenue Traders Ltd.
16. The UDC received a third offer for the purchase of 35 West Parade on July 28, 2011 from Fifth Avenue Traders Ltd.
17. The law firm, Hart Muirhead Fatta made representation on September 28, 2011, to the OCG on behalf of Mr. Michael Mahfood/M. Mahfood & Sons Limited, regarding the sale of 35 West Parade to Bashco Trading Company Limited.
18. Mr. Michael Mahfood, Director of M. Mahfood and Sons, in his response to the OCG’s statutory requisition dated October 28, 2011, stated “...*I can confirm that we (H. Mahfood & Sons Limited and I) would have been willing to pay some J\$40,000,000.00 for the property and to develop it suitably*”.
19. The law firm, Henlin Gibson Henlin, made representation on October 27, 2011, to the OCG on behalf of Fifth Avenue Traders Company Limited regarding the sale of 35 West Parade.
20. The UDC’s Estate Management Policy and Guidelines is inconsistent with the then applicable Government of Jamaica Privatization and Procedures Policy/Ministry Paper #34. In fact, Ministry Paper #34 stipulates that Government items considered for

¹⁴ Government of Jamaica Privatization and Procedures Policy/Ministry Paper #34, pg. 4



privatization should be advertised. Whereas, Provision 8.1.1 of the UDC's Estate Management Policy mandates that the Corporation is not obliged to advertise properties for sale in instances where direct offers are received.

21. Ms. Joy Douglas, UDC's former General Manager, by way of a letter, dated October 19, 2011, addressed to the OCG **admitted that the divestment process involving the sale of the property located at 35 West Parade to Bashco Trading Company Limited breached the then applicable Government of Jamaica Privatization and Procedures Policy/Ministry Paper #34.**
22. The UDC did not have a formally approved development plan outside of the West Kingston Development Project Document at the time that the approval for sale was granted by the UDC Board of Directors for the sale of the property located at 35 West Parade to Bashco Trading Company Limited.
23. The then portfolio Minister, and former Prime Minister, the Honourable Bruce Golding, gave a no-objection to the sale of the property located at 35 West Parade.¹⁵
24. Ms. Joy Douglas, UDC's then General Manager, did not inform the Board of Directors that the property located at 35 West Parade was the subject of written and competing offers from at least two (2) other parties.
25. Ms. Joy Douglas, the then General Manager, failed to advise the UDC Board of Directors that the properties were occupied at the time the sale approval was being sought from the UDC Board.
26. There was no approved Government of Jamaica policy or decision, stating that the referenced 35 West Parade property was no longer required for the purpose of road

¹⁵ However, his no-objection was later withdrawn after he had received information that the approved sale was in contravention of Ministry Paper#34.



widening as outlined in Section 4.3.3 of the West Kingston Development Project Document (1984).

27. The tenet of the UDC Estate Management Policy and Guidelines that the UDC relied on to facilitate the sale of the property located at 35 West Parade to Bashco Trading Company Limited is Section 8.1.1., states that:

“...the Corporation will advertise all the properties to be divested, except in cases where direct offers are received from private investors.”¹⁶

¹⁶ The UDC Estate Management Policy and Guidelines that the UDC, Section 8.1.1



TIMELINE OF KEY EVENTS SURROUNDING THE SALE OF THE PROPERTY LOCATED AT 35 WEST PARADE

Table 1

The following table outlines the major activities that were undertaken in relation to the sale of the property located at 35 West Parade and the representations made to the OCG in respect of the UDC's administration of the divestment process. The table also incorporates the issues pertaining to the OCG's actions regarding the divestment of the property.

DATE	EVENTS AND COMMENTS
Early Jan. 2011	Mr. Gassan Azan, CEO of Bashco Trading Company Limited attended a meeting at the UDC in relation to " <i>the redevelopment plans for Downtown Kingston.</i> " ¹⁷ The UDC officers in attendance, as communicated by Mr. Gassan Azan, were as follows: Ms. Joy Douglas, former General Manager, and Mr. Patrick Stanigar, UDC's Chief Architect. ¹⁸
Feb. 15, 2011	Mr. Gassan Azan, Chief Executive Officer of Bashco Trading Company Limited submitted an unsolicited proposal and a basic development plan to the UDC for the purchase and development of 35 West Parade and adjoining #1 Beckford Street. ¹⁹
Feb. 17, 2011	Ms. Joy Douglas, UDC's former General Manager, forwarded Bascho Trading Company Limited's proposed offer to the UDC for the purchase of 1 Beckford Street and 35 West Parade. The proposal was forwarded to Mr. Patrick Stanigar, UDC's Chief Architect for his comments. ²⁰

¹⁷ Mr. Gassan Azan's November 23, 2011 response to the OCG's requisition dated November 18, 2011, response # 2.

¹⁸ Mr. Gassan Azan's November 23, 2011 response to the OCG's requisition dated November 18, 2011, Timeline of Events # 1.

¹⁹ Mr. Gassan Azan's November 23, 2011 response to the OCG's requisition dated November 18, 2011, response # 2.

²⁰ Mr. Patrick Stanigar's May 1, 2012 response to the OCG's requisition dated April 18, 2012, responses #1&10



April 1, 2011	Mr. Patrick Stanigar sent an e-mail to Ms. Joy Douglas and noted therein that “ <i>the proposed development is consistent with existing intense commercial use in the area and should be an encouragement to others to improve their properties...</i> ” ²¹
April 12, 2011	The UDC’s former General Manager Ms. Joy Douglas presented Bashco Trading Company Limited’s offer to the UDC’s Board of Directors requesting approval for the sale of 1 Beckford Street and 35 West Parade to Bashco. ²²
April 20, 2011	Mr. Gassan Azan wrote to Ms. Joy Douglas by way of a letter and indicated that he would be willing to purchase the referenced properties (35 West Parade and 1 Beckford Street) without vacant possession ²³
April 28, 2011	The UDC’s Board held discussions regarding Bashco Trading Company Limited’s proposal and approval was granted by the Board for the sale of 35 West Parade and 1 Beckford Street. ²⁴
August 10, 2011	Mr. Gassan Azan wrote to Mr. Brian Campbell, Director of Sales, and informed him that he would accept the sale price of JA\$31, 400, 000.00 for the 35 West Parade property. ²⁵
August 11, 2011	Miss Chryseis Reynolds, Director of Legal Services, UDC, wrote to Mr. Gassan Azan by way of a letter and provided him with the Agreement for Sale and a breakdown of the funds to be paid for the referenced 35 West Parade property. ²⁶
August 16, 2011	Mr. John Mahfood, under the cover of a letter captioned “ <i>Sale of 35 West Parade-Kingston</i> ”, wrote to the then Prime Minister, The Hon. Bruce Golding, informing him, <i>inter alia</i> , that his entity, H. Mahfood & Sons Ltd. had been an occupant of the referenced property for the past thirty (30) years and he had just been informed that the property was sold to another party without affording them the opportunity to bid on the property. ²⁷

²¹ E-mail sent to Ms. Joy Douglas on April 1, 2011 by Mr. Patrick Stanigar.

²² Board Paper No. 000.64/11/13, submitted by Mr. Wayne Chen in his December 14, 2011 response to the OCG’s statutory Requisition dated November 23, 2011.

²³ Letter addressed to Ms. Joy Douglas by Mr. Gassan Azan, April 20, 2011

²⁴ Mr. Wayne Chen December 14, 2011 response to the OCG’s statutory Requisition dated November 23, 2011, responses 15 (f) a & c

²⁵ Letter from Mr. Gassan Azan dated August 10, 2011 and addressed to Mr. Brian Campbell, Director of Sales UDC.

²⁶ Letter from Miss Chryseis Reynolds dated August 11, 2011 and addressed to Mr. Gassan Azan, CEO, Bashco Trading Company Limited.

²⁷ Letter from Mr. John Mahfood to the Hon. Bruce Golding, dated August 16, 2011.



Sept. 12, 2011	The Agreement for the sale of 35 West Parade was signed between Bashco Trading Company Limited and the UDC for the purchase price of \$31,400,000.00. ²⁸
Sept. 28, 2011	The law firm, Hart Muirhead Fatta (HMF), by way of a letter wrote to the OCG and expressed concerns regarding the process by which the property was being divested on behalf of its client Mr. Michael Mahfood. They outlined the circumstances under which the then pending sale of 35 West Parade, Kingston, to Bashco Trading Company Limited was being undertaken by the UDC. ²⁹
Sept. 30, 2011	The OCG, by way of a statutory Requisition addressed to Ms. Joy Douglas, requested information on the sale of the 35 West property and the assertions that had been levied in relation to same. ³⁰
October 5, 2011	The UDC wrote to the OCG and advised that the opinion of the Attorney General regarding the pending sale of 35 West Parade to Bashco Trading Company Limited was sought and the UDC was awaiting his advice. ³¹
Oct. 10, 2011	The then UDC General Manager, Ms. Joy Douglas, under the cover of a letter captioned “ <i>Status Report – Sale of West Parade, Kingston to Bashco Trading Company Limited</i> ” advised the OCG that “...an agreement for the sale was executed on August 11, 2011 for the sum of Thirty Million Four Hundred Thousand Dollars (\$31, 400, 000.00).” The said letter also stated, amongst other things: that “...completion is in exchange for registrable Transfer and Discharge of the Duplicate Certificate of Title. A deposit of ten percent (10%) of the purchase price was received, the balance is payable on completion.” ³²

²⁸ Sale Agreement between the UDC and Bashco Trading Company Limited, September 12, 2011.

²⁹ Letter from the law firm, HMF Hart Muirhead Fatta, to the OCG, dated September 28, 2011.

³⁰ Office of the Contractor-General statutory Requisition addressed to Ms. Joy Douglas on September 30, 2011.

³¹ Letter from the then UDC’s General Manager, Ms. Joy Douglas, addressed to the Contractor-General and the attention of Craig Beresford, dated October 5, 2011.

³² Letter from the then UDC’s General Manager, Ms. Joy Douglas, addressed to the Contractor-General and the attention of Mr. Craig Beresford, dated October 10, 2011.



Oct. 11, 2011	The OCG, under the cover of a letter addressed to Ms. Joy Douglas, acknowledged receipt of her letter of even date and advised her of the OCG's intention to conduct a Special Investigation into the sale of the referenced property. ³³
Oct. 11, 2011	The UDC, under the cover of a letter captioned " <i>Status Report – Sale of West Parade, Kingston to Bashco Trading Company Limited</i> " wrote to the OCG and advised, <i>inter alia</i> , that " <i>The UDC received an unsolicited proposal from Bashco Trading Company Limited vide its principal Mr. Gazzan [sic] Azan to purchase property in the West Parade/Beckford Street area.</i> " ³⁴
Oct. 13, 2011	The OCG wrote to Ms. Joy Douglas and recommended that the UDC immediately terminate the divestment arrangements with Bashco Trading Company Limited. ³⁵
Oct. 14, 2011	The OCG, by way of a letter, sent a Formal Notice of the Commencement of Special Statutory Investigation to the then Prime Minister, the Honourable Bruce Golding and Ms. Onika Miller, former Permanent Secretary, Office of the Prime Minister, concerning the pending sale of 35 West Parade. ³⁶
Oct. 14, 2011	Ms. Joy Douglas wrote to Mr. Milverton Reynolds, Manager Director of the Development Bank of Jamaica and advised that " <i>the UDC is now moving assiduously to come into full compliance with the provisions of Ministry Paper#34.</i> " ³⁷

³³ Letter addressed to Ms. Joy Douglas by the OCG on October 11, 2011.

³⁴ Letter from the UDC addressed to the Office of the Contractor General and the attention of Mr. Craig Beresford at the OCG on October 11, 2011.

³⁵ Letter addressed to Ms. Joy Douglas by the OCG on October 13, 2011.

³⁶ Formal Notice of Commencement of Special Statutory Investigation – Concerning Divestment of Government of Jamaica Owned Assets – The Pending Sale of Property Located at 35 West Parade, Kingston, to Bashco Trading Company Limited by the UDC, October 14, 2011.

³⁷ Letter from the UDC's General Manager, Ms. Joy Douglas, addressed to Mr. Milverton Reynolds, Managing Director, Development Bank of Jamaica, dated October 14, 2011.



Oct. 14, 2011	Ms. Joy Douglas wrote to Ms. Onika Miller, Permanent Secretary, Office of the Prime Minister, and advised that “ <i>the UDC is now moving assiduously to come into full compliance with the provisions of Ministry Paper#34.</i> ” ³⁸
Oct. 18, 2011	Ms. Joy Douglas, by way of a letter, wrote to ‘Afeef Lazarus’ [sic], Attorney-of-Law at the Livingston Alexander & Levy, requesting that Bashco Trading Company Limited release the UDC from the performance of the contract entered into with said entity due to alleged breaches of the Government’s Divestment and Privatization Policy, specifically Ministry Paper #34. ³⁹
Oct. 19, 2011	Mr. Afeef Lazarus, of Livingston Alexander & Levy, by way of a letter wrote to the UDC/Miss Chryseis Reynolds, Director – Legal Services and requested the duplicate Certificate of Title registered at Volume 328 Folio 86 in the name of its client’s nominee. ⁴⁰
Oct. 19, 2011	The UDC, by way of a letter, captioned “ <i>Status Report – Sale of West Parade, Kingston to Bashco Trading Company Limited</i> ” wrote to the Office of the Contractor General and advised, <i>inter alia</i> , “ <i>we are in the process of writing to Bashco’s Trading Company Attorney-at-Law requesting their acquiescence for us to terminate the contract, in order for us to be allowed to comply with the divestment process.</i> ” ⁴¹
Oct. 20, 2011	Mr. Afeef Lazarus, of Livingston Alexander & Levy, by way of a letter wrote to the UDC/Miss Joy Douglas and advised that Bashco would like to conclude the purchase and the terms & conditions of the Sale Agreement should be fulfilled. ⁴²
Oct. 24, 2011	The UDC, by way of a letter wrote to the OCG in respect of its October 13, 2011 letter that was sent to the UDC requesting information on the pending sale of 35 West Parade. The said letter advised that the UDC was in the

³⁸ Letter from the UDC’s General Manager, Ms. Joy Douglas, addressed to Ms. Onika Miller, Permanent Secretary, and Office of the Prime Minister, dated October 14, 2011.

³⁹ Letter addressed to Livingston, Alexander and Levy, by the UDC, dated October 18, 2011.

⁴⁰ Letter from Livingston Alexander & Levy, addressed to the UDC/Miss Chryseis Reynolds, dated October 19, 2011.

⁴¹ Letter addressed to the Office of the Contractor General by the then UDC’s General Manager, Ms. Joy Douglas, dated October 19, 2011.

⁴² Letter from Livingston Alexander & Levy, addressed to the UDC/ Miss Joy Douglas, dated October 20, 2011.



	process of finalizing the compilation of the information requested by the OCG. ⁴³
Oct. 27, 2011	The law firm, Henlin Gibson Henlin, wrote to the OCG and advised that they had seen a press release from the OCG regarding the “ <i>Pending/Aborted Sale of Property Located at 35 West Parade, Kingston to Bashco Trading Company Limited by Urban Development Corporation.</i> ” The law firm expressed concern in relation to the mentioned media release in which the OCG failed to mention their client’s (Fifth Avenue Traders Limited) expressions of interest or as a tenant in the referenced premises. ⁴⁴
Nov. 3, 2011	The UDC wrote to the OCG and advised, <i>inter alia</i> , that: “... <i>In light of the fact that Bashco and its Attorneys are not prepared to voluntarily release UDC from the Sale Agreement, we have sought legal advice from the Attorney General’s Chambers as to the best way forward as there exists a valid and binding Sale Agreement.</i> ” ⁴⁵
Nov. 3, 2011	The OCG, by way of a letter, wrote to Mr. Wayne Chen, then Chairman of the Board of Directors at UDC and Mr. Desmond Young, then Acting General Manager of said entity and requested that the UDC provide the OCG with an Executive Summary outlining the steps that the UDC had taken to terminate the contract with Bashco Trading Company Limited for the sale of 35 West Parade. ⁴⁶
Nov. 8, 2011	The Attorney General’s Chambers, by way of a letter, wrote to the UDC and advised that the sale of the referenced property should not be aborted once the purchaser has performed its obligations in good faith. ⁴⁷
Nov. 10, 2011	The UDC wrote to the Office of the Contractor-General by way of a letter and informed the then Contractor-General, Mr. Greg Christie of the opinion of the Attorney General’s Chambers on the sale of 35 West Parade to Bashco Trading Company Limited. ⁴⁸

⁴³ Letter from the UDC to the OCG, addressed to the attention of Mr. Craig Beresford and dated October 24, 2011.

⁴⁴ Henlin Gibson Henlin’s letter addressed to the Office of the Contractor-General, dated October 27, 2011.

⁴⁵ The Urban Development Corporation’s letter addressed to Mr. Maurice Barrett, Office of the Contractor-General, dated November 3, 2011.

⁴⁶ The Office of the Contractor-General’s letter to the UDC, dated November 3, 2011.

⁴⁷ The Attorney General Chambers’ letter to the UDC, dated November 8, 2011.

⁴⁸ The Urban Development Corporation’s letter addressed to the then Contractor-General, Mr. Greg Christie, dated November 10, 2011.



DISCUSSION OF FINDINGS

Initial Meeting: The UDC and Mr. Gassan Azan of Bashco Trading Company Limited

Based on information provided by Mr. Gassan Azan in his response to the OCG's statutory requisition dated November 18, 2011, a meeting was convened by the UDC at its Head Office in Kingston, in early January 2011. According to Mr. Gassan Azan, the meeting in question was held in response to a prior request that he had made to the UDC for the referenced entity to provide him with its plans for the redevelopment of Downtown Kingston. Two (2) UDC Officers, namely: Ms. Joy Douglas and then Chief Architect, Mr. Patrick Stanigar were alleged to be in attendance.⁴⁹ With regard to the details of the meeting between the two parties, Mr. Gassan Azan in his November 18, 2011, response stated as follows:

“During early January 2011 I had a meeting at the UDC with Mrs. Joy Douglas and Mr. Patrick Stanigar to enlighten me in respect of the redevelopment plans for Downtown Kingston. I was shown a slide presentation in addition to being given a map that was coded.

Around the middle of January I did my research at the titles office and identified the project location that suited the development plans for the area.⁵⁰

(OCG Emphasis)

Subsequent to the meeting, Mr. Gassan Azan further indicated in the said response to the OCG that he had submitted a development plan to the UDC. The under mentioned highlights Mr. Gassan Azan's response in respect of the plan:

⁴⁹ Mr. Gassan Azan's November 23, 2011 signed response to the OCG's requisition dated November 18, 2011, Timeline of Events, #1.

⁵⁰ Mr. Gassan Azan's November 23, 2011 signed response to the OCG's requisition dated November 18, 2011, response #2.



“On February 15, 2011 I submitted my development plan for the referenced property and the adjoining #1 Beckford Street as the plan was to build a multi story indoor shopping mall that would run from Parade all along Beckford Street to Luke Lane.”⁵¹

With regard to the aforementioned meeting, the OCG in a bid to ascertain additional information, requested that Mr. Patrick Stanigar respond to the following question, as outlined in its requisition dated September 7, 2012:

“Mr. Gassan Azan, in his response to the OCG’s Statutory Requisition of April 18, 2012, indicated that “During early January 2011 I had a meeting at the UDC with Mrs. Joy Douglas and Mr. Patrick Stanigar to enlighten me in respect of the redevelopment plans for Downtown Kingston. I was shown a slide presentation in addition to being given a map that was coded.” He further indicated that the said meeting was indicated by Ms. Joy Douglas and was held at the UDC building.

However, based upon a timeline which was prepared by you in your response to the OCG’s Statutory Requisition of April 18, 2012, you indicated the following:

“At the time of the Bashco offer (I cannot recall the date) Ms. Sonia Dowding and I (As Architect Planner for Downtown Kingston) met with Mr.

⁵¹ Mr. Gassan Azan’s November 23, 2011 response to the OCG’s requisition dated November 18, 2011, response #2.



Gazan Azan of Bashco at his Orange Street office. We discussed the proposal and visited 35 West Parade.”

In view of the fact that the referenced meeting was the only one which you indicated in your response to the OCG’s Statutory Requisition as being in attendance at, please provide responses to the following questions:

a) Please provide clarification as to the veracity of your response in regard to (i) the name(s) and title(s) of the person(s) who was/were present at the said meeting, (ii) the venue at which the said meeting was held, and (iii) the name(s) and title (s) of the person(s) who initiated same.”⁵²

In response to the above questions and responses provided, the OCG acknowledges that even though Mr. Gassan Azan was able to provide details of the meeting, Mr. Patrick Stanigar was unable to furnish the OCG with a full description of the meeting. This acknowledgement was made in light of Mr. Patrick Stanigar’s October 3, 2012 response, which is outlined hereunder:

“I confirm the veracity of previous description [sic] of the meeting in question in all aspects. I do not remember or have a record of the meeting referred to by Mr. Azan but cannot deny that it happened as I have presented the planning work for downtown to

⁵² OCG September 7, 2012 requisition directed to Mr. Patrick Stanigar, question #2



many people in small and large groups over the last few years.”⁵³

In respect of the referenced meeting, Ms. Joy Douglas, in her response to the OCG’s requisition dated April 18, 2012, noted the following:

*“My diary shows that there was a meeting scheduled with Mr. Azan on January 18, 2011. Mr. Azan would have requested the meeting. I am however unable to confirm if the meeting proceed [sic] with me present...because I do have a confirmation of a rescheduled meeting with Mr. Noel Hylton of the Port Authority for 2:30 p.m. on the 18th....I would certainly have attended that meeting because of the urgent issues surrounding the town and port of Falmouth...I would therefore have instructed that other persons host the meeting. **It is likely that this would have been Commander Taylor and/or Mr. Stanigar. They should be able to confirm this along with the notes of what was discussed.**”⁵⁴ OCG Emphasis*

Based on the responses presented to the OCG by Mr. Patrick Stanigar and Ms. Joy Douglas, the OCG noted that there were discrepancies in relation to the information provided by the UDC officers. As such, the OCG subsequently requested Mr. Patrick Stanigar to provide the following information as stated in its September 7, 2011 statutory requisition:

The name(s) and title(s) of any Official(s)/Officer(s) of the UDC and/or the GOJ who was/were also

⁵³ Mr. Patrick Stanigar’s October 3, 2012 response to the OCG’s requisition dated September 7, 2012, response #2a.

⁵⁴ Ms. Joy Douglas’ May 2, 2012 response to the OCG’s requisition dated April 18, 2012, response #7.



*aware of the referenced meeting, and who, by virtue of their position(s), ought reasonably to have known that such practices were not permitted.*⁵⁵

Mr. Patrick Stanigar in his October 3, 2012 response to the above question stated the following:

*“Ms. Douglas and Ms. Dowding were aware of the meeting. I have no reason to believe that either believed it was not permitted.”*⁵⁶

In addition, the OCG directed the following question in relation to the referenced meeting to Mr. Wayne Chen in its September 7, 2012 Requisition:

“Mr. Gassan Azan, in his response to the OCG’s Statutory Requisition of April 18, 2012, indicated that “During January 2011 I had a meeting at the UDC with Mrs. Joy Douglas and Mr. Patrick Stanigar to enlighten me in respect of the redevelopment plans for the Downtown Kingston. I was shown a slide show presentation in addition to being given a map that was coded.” Mr. Azan also indicated in his Spreadsheet showing a timeline of events that Bashco requested that “the UDC provide their plan for the redevelopment of Downtown Kingston” and that ‘Bascho agreed to look at the plans to ascertain what suited their investment needs”

⁵⁵ OCG’s Requisition addressed to Mr. Patrick Stanigar on September 7, 2012, question 3e.

⁵⁶ Mr. Patrick Stanigar’s October 3, 2012 signed response to the OCG’s requisition dated September 7, 2012, response #3e.



(a) Were you and/or any other member of the Board of directors of the UDC aware of the referenced meeting? If yes, please provide responses for the following questions:

(i) Please state the date on which you were made aware of the said meeting;

(ii) The name(s) and title(s) of the person(s) of whom you are aware and who met with Mr. Azan;

(iii) The name(s) and title(s) of the person(s) who authorized and/or initiated the referenced meeting;

(iv) Particulars of the circumstances under which the meeting was held; and

(v) Details of the discussions, if known, which took place in the referenced meeting.⁵⁷

In response to the above mentioned question, Mr. Wayne Chen in his September 30, 2012 response to the OCG indicated the following:

“I was not aware of the meeting at the time it occurred. I subsequently heard, some months later, that a discussion had taken place with Mr. Azan re the possibility of him developing properties in downtown Kingston. I am not aware of who initiated the meeting, or the specifics of the discussion. I had seen in the media and received reports that Mr. Azan had constructed a modern

⁵⁷ OCG’s Requisition addressed to Mr. Wayne Chen on September 7, 2012, question #5.



*bakery on Orange Street in late 2010 and was seeking new opportunities, so his meeting with the Corporation did not strike me as unusual. I am not aware that any other Director knew of the referenced meeting*⁵⁸

Based on the aforesaid, it is apparent that Mr. Wayne Chen **was unaware** of the referenced January 2011 meeting, which was convened by the UDC following the request of Mr. Gassan Azan.

⁵⁸ Mr. Wayne Chen's September 30, 2012 response to the OCG's requisition dated September 7, 2012, response #5.



Submission of Bashco Trading Company Limited's Proposal to the UDC

Following the meeting between the UDC and Bashco Trading Company Limited, the UDC received an unsolicited proposal from the aforementioned entity on February 15, 2011, for the purchase and development of the following properties located in Kingston:

- 1) 35 West Parade – Registered at Volume 328/Folio 86, which consists of 5800 square feet;
- 2) 1 Beckford Street – Registered at Volume 1226/Folio 3, which consists of 2992 square feet.

The content of the proposal submitted by Bashco Trading Company Limited's is outlined hereunder:

"I am submitting herewith a basic developmental plan for the building. Needless to say we plan on spending quite a bit of money which at the end of the construction period, this should be no longer than 8-9 months, would greatly enhance the area.

In respect of the property located at 35 West Parade I am prepared to pay One Thousand & Six Hundred Jamaican Dollars (\$JA\$1,600.00) per square foot giving a total purchase price of Nine Million, Two Hundred and Eighty Thousand Jamaica Dollars (JA\$9,280,000.00). In respect of the property located at 1 Beckford Street I am prepared to pay One Thousand & Four Hundred Jamaican dollars (JA\$1,400.00) per square foot giving a total purchase price of Four Million, One Hundred and Eighty Eight Thousand Jamaica dollars (JA\$4, 188,000.00). Therefore, our total



offer for the both properties is Thirteen Million, Four Hundred and Sixty Eight Thousand Jamaica Dollars (\$JA\$13, 468, 000.00).⁵⁹

Based on the UDC's Board Paper, No. 000.64/11/13, the approval for the sale of the property located at 35 West Parade was granted by the UDC's Board on April 28, 2011, following the submission of Bashco Trading Company Limited's purchase offer on April 12, 2011. The content of Ms. Joy Douglas' presentation to the Board is documented hereunder:

“BACKGROUND

In the 1980's, to facilitate road widening prescribed by its Market Area Plan of 1983, the UDC purchased a number of properties along Beckford Street and Heywood Street in Kingston's Commercial and Market District. In recent years, UDC has from time to time received requests to purchase some of these properties but has generally refused to sell on the basis that they were needed for “future” road widening. UDC's renewed focus on Downtown Kingston's Planning, has suggested a review of this policy as follows:

Beckford Street was originally conceived of as the Eastbound leg a one way pair which included Heywood Street, Westbound. This pair was to have replaced West Queen Street as the two way street which merged into Spanish Town Road. Beckford's east-bound direction was logical as it was the

⁵⁹ Bashco Trading Company Limited purchase offer addressed to the then UDC's General Manager, Ms. Joy Douglas, on February 15, 2011.



access to the historic bus stations. It is clear that developments of the last 27 years have overtaken this 1983 solution 1983 [sic] and Beckford Street has maintained and improved its stature as one of the commercial districts major shopping streets. In fact, the situation has changed so much that it would now be inconceivable to suggest that the businesses along its northern side should be demolished for road widening. Based on this, we have abandoned any such plan as far as Beckford Street is concerned.

On the other hand, Heywood Street was planned as a continuation of Spanish Town Road to West Parade (Orange Street). Even though its role in the proposed one way pair is no longer relevant, we consider it prudent to maintain our ownerships along its south side to facilitate Market Area developments.

DEVELOPMENT

*Along with their offer, Bashco has provided an Architect's sketch suggesting the character of the proposed development. **We find that it is consistent with existing intense commercial use in the area and should be an encouragement to others to improve their properties. Similarly, the proposed very adventurous Baroque Facade is very much in character with Historic Downtown and would set a***



very high standard for similar developments.⁶⁰

(OCG Emphasis)

The OCG notes that there is no evidence to indicate that there was in fact a Market Area Plan to which Ms. Joy Douglas makes reference in her submission of Bashco Trading Company Limited purchase offer to the UDC's Board. The referenced Plan as stated in Ms. Joy Douglas' submission to the UDC's Board refers to properties that were purchased by the UDC in the 1980s for road widening. In order to seek further clarification on this matter, the OCG wrote to Mr. Desmond Malcolm, General Manager, on March 18, 2016, and Mr. Malcolm in his March 31, 2016 response noted the following:

“No, I am not aware of a Market Area Plan that was developed in 1983 by the Urban Development Corporation (UDC).”

...

(iii) I am only aware of the West Kingston Development Project Document (1984).”⁶¹

Upon perusal of the West Kingston Development Project Document (1984), by the OCG, it was observed that Section 4.3.3 of the document, which is entitled “*Road Building and Improvement*”, is the document that addresses issues pertaining to road widening in the area in which the properties in question are located.

With regard to Bashco Trading Company Limited's purchase offer, and as presented by Ms. Joy Douglas to the then UDC Board, the proposed prices communicated to the UDC Board are reflected in the table below:

⁶⁰ Ms. Joy Douglas' May 2, 2012 response to the OCG's requisition dated April 18, 2011, appendix 2/UDC Board Paper, NO 000.64/11/13.

⁶¹ Mr. Desmond Malcolm's March 31, 2016 response to the OCG's requisition dated March 18, 2016, response #1.



Table 2

Name of Properties and Value Offers⁶²

<u>Property Name</u>	<u>Property Size</u>	<u>Value per square ft.</u>	<u>Total Offer</u>
35 West Parade	5,800 square feet	\$1,600.00	\$9,280,000.00
1 Beckford Street	2,992 square feet	\$1,400.00	\$4,188,000.00
		Grand Total	\$13,468,000.00

⁶²Bashco Trading Company Limited purchase offer addressed to the then UDC's General Manager, Ms. Joy Douglas, on February 15, 2011.



UDC's Proposed Terms of Sale for 1 Beckford Street and 35 West Parade

The details of the UDC's terms of sale as contained in its Board Paper, NO 000.64/11/13 are detailed in the under mentioned:

“PROPOSED TERMS

UDC holds the freehold in registered titles at Volume 328 Folio 86 for 35 West Parade (the old Bardowell's Building) and at Volume 1226 Folio 3 for 1 Beckford Street, Kingston which is a vacant site. Both are free of mortgages and neither have restrictive covenants endorsed.

There are four tenants at 35 West Parade however the proposed purchaser has indicated it is prepared to accept the property tenanted and will not therefore require vacant possession from the UDC.

It is therefore recommended that the purchase price be satisfied by an initial twenty (20%) percent deposit on signing an Agreement for sale with the balance payable within ninety (90) days thereof, and that all outstanding sums be subjected to interest at nine (9%) percent per annum until paid and thereafter all rental payments shall pass to the purchaser at completion. UDC will stand the transfer taxes and stamp duties will be shared.’⁶³

⁶³ Ms. Joy Douglas May 2, 2012 response to the OCG's requisition dated April 18, 2011, appendix 2/UDC Board Paper, NO 000.64/11/13.



Adjustments to UDC's initial Proposed Sale for 1 Beckford Street

According to the UDC's Board Paper, NO 000.64/11/13, the reasons and conditions that warranted the adjustments made to the initial proposed sale terms are outlined below:

“With respect to one 1 Beckford Street, Miss Douglas informed that during the time of effecting the Board’s directive, subsequent research conducted revealed that the property was acquired by the Corporation in 1989 from Joseph and Marilyn Bruff (the Bruffs) by private treaty and that the Bruffs had made representation to continue to occupy the premises until the widening of Beckford Street was completed. They were granted an arrangement which left them in occupation and with responsibility to pay the relevant property taxes. Since the completion of the West Kingston market project, the widening of Beckford Street was no longer being pursued hence the previous proposal to the Board to sell the property to Bashco. Given the Bruffs continued interest in these premises and their previous commitment to repurchase the property, management having secured valuations for both properties had decided to make an offer to the Bruffs at the reserved and recommended price of \$13.25M. The offer was formally accepted by the Bruffs through a letter from their attorneys dated August 10, 2011.” (OCG Emphasis)



*... In the discussion which ensued and in light of the remarks made by Mr Walker, **the Board felt that there should be a policy in place whereby existing tenants were notified of pending sales and offered first right to purchase...***⁶⁴

In this regard, the UDC's Board was asked to note the changes that had been made to the sale terms subject to the submission of a suitable development plan by the Bruffs.⁶⁵ Ms. Joy Douglas also indicated that there was a need to abandon the 'road widening' project due to impracticability. Mr. Philips Myers in his response to the OCG's requisition dated April 18, 2012, stated the following:

*"...the decision to sell seemed the more appropriate and despite the changes in the planning, this could also have a strategic move by Executive Management to resolve a deteriorating situation and so improve the 'move back to the core'."*⁶⁶

In respect of the submissions that were made to the UDC's Board⁶⁷, it is instructive for the OCG to note that there is no circumstance that points to a formal change or abandonment of Section 4.3.3 or the entire development project contained in the West Kingston Development Project Document, had occurred.

In addition to the West Kingston Project Document and the actions taken by Ms. Joy Douglas and Mr. Patrick Stanigar, the OCG notes that Mr. Patrick Stanigar also disclosed the following:

"I do not know of a formal decision to abandon the plan to widen Beckford Street. It is not however clear to me if it would have been possible at any

⁶⁴ Mr. Wayne Chen's December 14, 2011 response to the OCG's requisition dated November 23, 2011/ UDC Board Paper, NO 000.64/11/13, pg. 15.

⁶⁵ Mr. Wayne Chen's December 14, 2011 response to the OCG' requisition dated November 23, 2011/UDC Board Paper, NO 000.64/11/13, pg.15.

⁶⁶ Mr. Philip G. Myers' June 1, 2012 response to the OCG's requisition of April 18, 2012, response #1.

⁶⁷ UDC Board Paper, NO 000.64/11/13, pg. 15



time as I am not sure if UDC had completed acquisition in the 1980's. The fact that in 2011, not all of the land was UDC owned implies that either the acquisition process was never completed or some of the purchased land was re-sold. This may have been based on ignorance as to the reason for ownership as the original Plan was long forgotten. The May 3, 2011 decision to sell the land does however imply final acceptance that widening was unrealistic.”⁶⁸

Further, it was revealed by Ms. Joy Douglas that the ‘Plan’ was subsequently revised by Mr. Patrick Stanigar and with regard to Bashco Trading Company Limited’s development plan; Ms. Joy Douglas noted that “*The plan was presented to the Board by Mr. Patrick Stanigar.*”⁶⁹

With regard to the West Kingston Project Document, Mrs. Daniella Gentles, a former Board Director, in her response to the OCG’s requisition dated April 19, 2012, noted the following:

“...The General Manager was also to prepare a Board Paper on the original policy/plan for the area and the reason for its change for the next Board meeting to be held on the 3rd May 2011.”⁷⁰

In addition to the reasons that were presented to the Board of Directors by Ms. Joy Douglas in relation to the UDC’s decision to divest the referenced properties, Mr. Philip Myers, in his response to the OCG’s requisition dated April 18, 2012 stated, *inter alia*, that:

“The research into the occupation of the building revealed that an untenable situation from an Estate

⁶⁸ Mr. Patrick Stanigar’s May 1, 2012 response to the OCG’s requisition dated April 18, 2012, response # 4.

⁶⁹ Ms. Joy Douglas’ January 17, 2012 response to the OCG’s requisition dated November 23, 2011, response # 13f.

⁷⁰ Mrs. Daniella Gentles’ June 6, 2012 response to the OCG requisition dated April 19, 2012, response # 1.5.



Management perspective had developed. **Firstly, the tenants at 35 West Parade who had short term (one year) leases from 2009 were continuing to occupy without signed leases in most instances despite indications that they were opting to renew their one year leases.** (OCG Emphasis) None seemed to have pressed for longer terms which made the rentals insecure and doubtful from a collection perspective. Such decision to operate under short term leases had to be rationalized or balanced against the somewhat poor condition of the facilities, albeit the upper floor is being unroofed did not result, it appeared in the lower floor being unsound.”⁷¹

⁷¹ Mr. Philips G. Myers’ June 1, 2012 response to the OCG’s requisition of April 18, 2012, response #1.



UDC's Procedural Assessment of Unsolicited Proposals

In relation to the above captioned, Mrs. Elizabeth Harrilal, UDC's Estates Manager, responded to an OCG requisition dated April 18, 2012, alluded to the following:

- *Estate Management performs research of ownership (Title, Valuation Roll Reading, Enclosure Plan, Location Plan), utilisation and provides a property status report with recommendations. Urban Regional Planning (URP) Department provides comments and recommendations on land use while the National Resource Management and Environmental Planning (Environment) Department provides special condition requirements, if necessary, for the clients, and Engineering provides comments on matters of building and or/infrastructural concerns, as necessary.*
- *If the comments of the technical team were favourable (especially of URP's), then a document outlining the party's information, interest, land registration, the recommendation for divestment along with the application would be prepared and submitted to the General Manager for approval.*



- *A Board Paper is prepared (for the General Manager's signature) to the Board of Directors of the UDC for approval/non-approval.*
- *The Board Paper is presented by the General Manager at the meeting of the UDC Board of Directors. Were Board approval received for the divestment of the property, a Board Extract advising the board's decision is issued by the Company Secretary of the UDC to the stakeholders.*
- *The Prime Minister's non-objection of the divestment is obtained Based on the Board Extract. Thereafter, the legal process is ensued, based on the Board Extract and the Prime Minister's non-objection letter.*

The Board and Management of the UDC determine the basis upon which a decision is taken to divest the referenced asset.⁷²

Similarly, the OCG in its requisition dated November 23, 2011 requested that Ms. Joy Douglas respond to the following question:

"Please provide full particulars of the role(s) and responsibility(ies) of the members of the Board of Directors of the UDC in the sale and/or divestment of property which is held by the UDC. The response

⁷² Mrs. Elizabeth Harrilal's May 28, 2012 response to the OCG's requisition dated April 18, 2011, response #6.



which is provided by you must include, *inter alia*, the following:

- a. *A sequential description of the representations and requests, if any, which must be made to the Board of Directors of the UDC prior to the sale and/or divestment of assets/real property;*
- b. *...;*
- c. *The name(s) and title(s) of the Officers/Official(s) of the UDC who has/have/had responsibility to inform the Board of Directors of the UDC of any prospective sale and/or proposed divestment of any property which is held by the UDC;*⁷³

In response to question (2a), Ms. Joy Douglas in her signed response to the OCG's requisition dated January 17, 2012 stated that:

"Matters related to divestment are taken to the Board through the Planning and Development Committee of the Board. The Committee is comprised of Directors of the Board supported by staff who attend as resource persons. A submission is taken to the Committee by the General Manager. The convention is that the principal staff who worked on the matter and prepared the paper, should sign at the end of the paper (this is not

⁷³ OCG requisition addressed to the then UDC's General Manager, Ms. Joy Douglas on November 23, 2011, question #2a.



always adhered to). It should be noted that in all instances a member of the Legal and Estate Division and the Sales Department must be involved in a submission related to the divestment of an asset. The front of the paper indicates a submission from the General Manager to the Committee. The technical staff who worked on the matter is available to clarify any issue raised by the Committee. At this stage, the Committee has the authority to request changes to the submission or recommend that the submission not go forward to the Board.

If the Committee agrees that the submission should go forward, it is transformed into a Board Paper and is given a Board Paper number by the Company Secretary. The paper then reflects that approval is recommended by the Committee.

When the paper is taken at the Board meeting, the technical staff also have to be available to the full Board to respond to queries.

Once the transaction is approved by the Board, a Board Extract is prepared by the Company Secretary and transmitted to the General Manager for action.

It should be noted that while the Board may approve a transaction it cannot be actioned without the approval of the Portfolio Minister. The General



Manager then prepares a submission to the Minister, indicating Board approval, outlines the nature of the development and the terms and conditions as approved by the Board, and requests the Minister's non-objection. It should be noted that no transaction can proceed without that non-objection. The Minister also has the prerogative to query the transaction and direct amendments to the terms and conditions previously approved by the Board.

Once the Minister's non-objection is received by the General Manager, it is directed to the Director of Sales and the Deputy General Manager, Legal Services and Estate, for action.

If there is any material issue that arises with respect to a sale, it is customary for the General Manager to prepare a Board Note which provides an update to the Board.

Routinely the progress of a transaction is reported on in the General Manager's monthly report to the Board.

In some instances the Board approval is restricted to authorizing management to negotiate with the prospective purchaser. In those instances, a Board Note is taken indicating the outcome of the negotiations and seeking Board Approval. The



matter then goes to the Portfolio Minister as outlined above.

It should also be noted that the approvals received only relate to the general terms and conditions of the sale. The details are left to the General Manager (section 8.1.3 of the Estate Management Policy). The Board therefore does not see the Agreement for Sale. In addition, if the Board approves a sale subject to two external valuations (the present UDC policy), the matter does not return to the Board as the policy already states that the sale price is the mean of the two valuations. This is recommended by the Estate Department and signed off by the General Manager.

It should be emphasized that the General Manager is an Executive Director and is therefore authorized to execute Contracts on behalf of the Corporation. Where two directors are required, it is normal for the Chairman to also sign. If he/she is unavailable then another Board Director signs.”⁷⁴

In relation to the mentioned requisition, the OCG requested that Ms. Joy Douglas provide details regarding the Officers/Officials who were entrusted with the responsibility to inform the Board of Directors of the UDC of any prospective sale and/or proposed divestment. The following response was provided by Ms. Joy Douglas:

“As indicated above, all submissions to the Board are channeled through the General Manager. The

⁷⁴ Ms. Joy Douglas’ January 17, 2012 response to the OCG’s requisition dated November 23, 2011, response #2a.



core officers who must be involved in the preparation of the papers related to divestment of assets would have been/are:

- *Legal and Estate – Legal - Mrs. Vivalyn Downer-Edwards - Legal Counsel/Company Secretary (no longer with the organization)/ Ms Yvette Sibble -Deputy General Manager, Legal Services and Estate Division.*
- *Estate - Mrs. Jewel Spencer - Deputy General Manager Asset Management Division (no longer with the organization)/Mr. Phillip Myers – Director Estate Department /Mrs. Elizabeth Harrilal, Estate Department*
- *Sales - Mrs. Sonia Dowding- Director, Sales Department (no longer with the organization)/Mr. A. Brian Campbell – Director, Sales Department (incumbent).”⁷⁵*

⁷⁵ Ms. Joy Douglas’ January 17, 2012 response to the OCG’s November 23, 2011 requisition, response #2c.



The Government of Jamaica Handbook of Public Sector Procurement Procedures (GPPH), 2010 regarding Unsolicited Proposals

The GPPH (2010), which was the then applicable Handbook, explicitly states that:

*“GoJ’s preferred method of procuring goods, services and works, is by Competitive Bidding. However, from time to time entities may receive unsolicited proposals and these shall be dealt with in a **transparent manner**. (OCG Emphasis)*

*The proposals should not have been influenced or otherwise initiated by the Procuring Entity; and **the Entity is NOT obliged to entertain them**.”⁷⁶ (OCG Emphasis)*

In addition, the GPPH further gives instruction as to the circumstances under which an unsolicited proposal may be considered by the Procuring Entity. The circumstances are as follows:

- a) *“demonstrates a unique and innovative concept, or demonstrates a unique capability of the contractor;*
- b) *offers a concept or service not otherwise available to the Government; and*
- c) *does not resemble the substance of a recent, current or pending Comparative Tender.”⁷⁷*

⁷⁶ Government of Jamaica Handbook of Public Sector Procurement Procedures (2010), section 1.2, pg. 7

⁷⁷ Government of Jamaica Handbook of Public Sector Procurement Procedures (2010), section 1.2, pg. 8



The GPPH states that in order for an unsolicited proposal to be considered and accepted by the procuring entity, it should be comprehensive, that is, the unsolicited proposal should contain background information on the company and its owners/stakeholders amongst other things. Further, the GPPH dictates that the provider must present a bid outlining the following:

- (a) *“the objectives and the relevance of the proposed work to be undertaken;*
- (b) *the rationale for the approach;*
- (c) *the methods or activities to be pursued;*
- (d) *the qualifications of the contractor; and*
- (e) *the level of funding required for attaining the objectives.”⁷⁸*

Having considered the above procedures and guidelines mandated to guide the Procuring Entity, it is instructive to note that the GPPH stipulates that whenever a Procuring Entity receives an unsolicited proposal it has three (3) options, which may be considered. The options are as follows:

- (a) *“to elect not to consider it and, therefore, to return it immediately;*
- (b) *to engage the Competitive Bidding process by means of a price test; or*
- (c) *to enter into the negotiation with the proponent.”⁷⁹*

⁷⁸ Government of Jamaica Handbook of Public Sector Procurement Procedures (2010), Section 1.2, pg. 8.



The OCG in an effort to determine the means by which a public body administers the divestment of properties which were not approved by the Cabinet, directed the following question in its requisition dated September 28, 2012, to then Portfolio Minister and Prime Minister, the Honourable Bruce Golding:

“Please indicate what provisions were made, if any, to deal with properties which are not on the list of properties which are approved by the Cabinet for Divestment within a financial year, but become the subject of an unsolicited proposal/offer to purchase.”⁸⁰

The following response was provided by the Honourable Bruce Golding:

“...It was the considered view of the Cabinet that positive investments could materialize from solicited proposals and therefore ought not to be absolutely disallowed. For example, it was an unsolicited proposal that led to the decision by Digicel to acquire from the UDC property on the Kingston waterfront on which it is now constructing its regional headquarters for the Caribbean and Latin America at an investment cost of US\$65 million. Similarly, it was an unsolicited proposal that culminated in the establishment of Mystic Mountain, a major tourist attraction, on lands in Ocho Rios formally owned by the UDC. Cabinet, in considering the matter, decided that an appropriate

⁷⁹ Government of Jamaica Handbook of Public Sector Procurement Procedures (2010), Section 1.2.1, pg. 8.

⁸⁰ OCG’S Requisition addressed to former Prime Minister, the Honourable Bruce Golding on September 28, 2012, question #7.



mechanism that was subject to rigorous due diligence and the necessary checks and balances should be developed to facilitate such proposals in the national interest and work on this was well advanced at the time I demitted office.”⁸¹

⁸¹ The Honourable Bruce Golding October 11, 2012 response to the OCG’s requisition of September 28, 2012, response #7.



Sale Approval in respect of Bashco Trading Company Limited's Unsolicited Proposal

Following the UDC's Board approval of the divestment of the properties located at 35 West parade and 1 Beckford Street on April 28, 2011, the Hon. Bruce Golding gave his no-objection to the divestment of the referenced properties, which is a requirement of the UDC's Divestment Policy. In this regard, it is instructive for the OCG to note that the referenced no-objection was granted in the absence of an approved development plan and without the necessary due diligence conducted by the UDC Board. This recognition is further substantiated by Mr. Wayne Chen's response to the OCG's Requisition dated September 7, 2012, in which he stated the following:

*"No formal "due diligence" was conducted by the Board of Directors to ensure that the information provided by the Corporation's officials in this matter was "correct" apart from the specific questions put to the Corporation's General Manager and officials by the Directors at Board meetings, and outside of the regular meetings. Where mistakes had been detected, they were explained and rectified by the Corporation's officials."*⁸²

Additionally, the OCG, in its requisition which was dated November 23, 2011, requested that Ms. Joy Douglas verify whether an evaluation of the unsolicited proposal, which was submitted by Bashco Trading Company Limited, was undertaken by the UDC. In her January 17, 2012, response to this requisition, Ms. Joy Douglas indicated that:

" ...

⁸² Mr. Wayne Chen's September 30, 2012 resigned response to the OCG's requisition dated September 7, 2012, response#7.



- a. *Mr. Patrick Stanigar, Chief Architect led the evaluation of the proposal.*

- b. *The detailed evaluation report was not submitted to the Board. **Mr. Stanigar appeared before the Board to answer questions about the evaluation of the proposal.***⁸³ (OCG Emphasis)

However, in response to the OCG's requisition of April 18, 2012, Mr. Patrick Stanigar indicated the following:

"To my knowledge, no "Evaluation Report" was done nor am I aware of UDC's policies relating to such matters."⁸⁴ (OCG Emphasis)

⁸³ Ms. Joy Douglas' January 17, 2012 response to the OCG's requisition dated November 23, 2011, response #11.

⁸⁴ Mr. Patrick Stanigar May 1, 2012 response to the OCG's requisition dated April 18, 2012, response #12.



Assessment of Valuation Reports for Properties located at 35 West Parade and 1 Beckford Street

In the captioned regard, Ms. Joy Douglas stated that “...the Corporation’s policy is to utilize the mean of the two valuations in determining the sale price.”⁸⁵ As a result, the UDC had commissioned two (2) independent valuations that were conducted by Breakenridge & Associates and Victoria Mutual Property Limited. The details of the valuations and subsequent sale prices are listed in the tables below:

Table 2

Breakenridge & Associates Valuation Report⁸⁶

<u>Name of Property</u>	<u>Date Received</u>	<u>Market Value</u>
1 Beckford Street (1 North & 1South) Building Area: 2,119 sq. feet Land Size: 2, 992 sq. feet	July 12, 2011	\$11,500,000.00
35 West Parade (35, 35A, 35B & 35C) Building Area: 5,768.73 sq. feet Land Size: 5, 800 sq. feet	July 12, 2011	\$32,050,000.00

The above table shows the market values for 35 West Parade and 1Beckford Street determined by an independent valuation conducted by Breakenridge & Associates. As indicated in the above table, the market value that was arrived at for 35 West Parade was Thirty Two Million and Fifty

⁸⁵Ms. Joy Douglas January 17, 2011 response to the OCG’s requisition dated November 23, 2011, response #1e.

⁸⁶ Breakenridge & Associates Valuation Report, July 12, 2011 – Presented to the OCG in Mr. Wayne Chen’s December 14, 2011 response to the OCG.



Thousand Dollars (\$32,050,000.00). In respect of 1 Beckford Street, the value was Eleven Million Five Hundred Thousand Dollars (\$11,500,000.00).

Instructively, the Breakenridge & Associates Valuation Report regarding the sale competitiveness of 35 West Parade and 1 Beckford Street stated, *inter alia*, the following:

*“Sale transactions in this area are few and usually purchasers are people who are already in the area. The low level of transactions is evidence that very few owners have been selling their properties and there is a vibrant rental market in this section of downtown Kingston.”*⁸⁷

Table 3

Victoria Mutual Property Services Ltd. Valuation Report⁸⁸

<u>Name of Property</u>	<u>Date Received</u>	<u>Market Value</u>	<u>Valuator’s Comment</u>
35 West Parade Building Size: 5, 590 sq. feet Land Area: 5,800 sq. feet	July 27, 2011	Building: \$21,500,000.00 Land: \$10,000,500.00 Total: \$32,000,000.00	<i>“There is a fair demand for properties in the area and properties placed on the market are usually transferred within a reasonable time.”</i>

Based upon an independent Valuation Report which was prepared by Victoria Mutual Property Services Ltd., the market value of the property which is located at 35 West Parade was Thirty-Two Million Dollars (\$32,000,000.00).

⁸⁷ Breakenridge & Associates Valuation Report, July 12, 2011, pg. 18 - Presented to the OCG in Mr. Wayne Chen’s December 14, 2011 response to the OCG.

⁸⁸ Victoria Mutual Property Services Limited (Date of Inspection July 15, 2011), Received by UDC July 27, 2011 - Presented to the OCG in Mr. Wayne Chen’s December 14, 2011, response to the OCG.



The mean market value of the two (2) independent Valuation Reports of the property located at 35 West Parade was Thirty Two Million and Twenty-five Thousand Dollars (\$32,025,000.00). Ms. Joy Douglas, however, in her response to the OCG's requisition dated November 23, 2011, indicated that the mean value was Thirty Two Million Dollars (JA\$32,000,000.00).⁸⁹ Upon receipt of the two (2) independent Valuation Reports commissioned by the UDC, Ms. Joy Douglas, in her response to the OCG indicated that:

*"...An analysis was undertaken by the Sales, Estate and Economic Development Departments (Mr. A. Brian Campbell, Mr. Phillip Myers and Mr. Gordon Summers respectively) and a recommendation made of \$31.4 million, which was approved by me..."*⁹⁰

Of note, the submission of Bashco Trading Company Limited's unsolicited offer to the UDC's Board on April 12, 2011, Ms. Joy Douglas made no mention of whether the UDC would accept the proposed sale price contained in the offer.

Having regard to the aforementioned, Ms. Sonia Mitchell, who represented the Office of the Prime Minister on the UDC's Board indicated in the UDC's Board Paper/000.64/11/13 as follows:

"Ms Mitchell observed that there was no indication in the submission as to whether the offer of \$13.468M from Bashco for the purchase of the two properties represented the current market value. In response, Miss Douglas assured that the Corporation would not accept the offer until the two

⁸⁹ Ms. Joy Douglas January 17, 2011 signed response to the OCG's requisition dated November 23, 2011, response #1e.

⁹⁰ Ms. Joy Douglas January 17, 2011 signed response to the OCG's requisition dated November 23, 2011, response #1e.



valuations were secured to determine the offer price... ”⁹¹

In addition to Ms. Sonia Mitchell’s query regarding the sale of 35 West Parade and the circumstances under which the property was being divested, the following was expressed by her in regard to other properties located along Beckford Street:

*“Ms Mitchell then questioned how the Corporation would deal with the divestment of the other properties along Beckford Street given that the 1983 Plan had been abandoned. Miss Douglas confirmed that the 1983 Plan would not be pursued as the government was not in a position financially to undertake the project. She assured that the Corporation would definitely need to review the way forward for the remaining properties on Beckford Street and in this regard **promised to provide the Board with a full presentation at the next regularly scheduled meeting of the Board.** ”⁹²*

⁹¹ Urban Development Corporation Board Paper No. 00.64/11/13 - Presented to the OCG in Mr. Wayne Chen’s December 14, 2011, response to the OCG.

⁹² Urban Development Corporation Board Paper No. 00.64/11/13 (April 28, 2011) pg. 13 - Presented to the OCG in Mr. Wayne Chen’s December 14, 2011, response to the OCG.



Statement of Account prepared by the UDC in respect of the sale of 35 West Parade to Bashco Trading Company Limited

In respect of the above captioned, the OCG is in possession of a copy of a Statement of Account that was prepared by the UDC. The contents of same are detailed below:

Table 4

STATEMENT OF ACCOUNT⁹³

LOT NO. : 35 WEST PARADE, KINGSTON
PURCHASER : BASHCO TRADING COMPANY LIMITED
DATE : NOVEMBER 10, 2011

Particulars	Dr \$	Cr \$	Balance \$
<i>Purchase Price</i>	<i>31,400,000.00</i>		
<i>Purchaser's Half Administrative Charges</i>	<i>100,000.00</i>		
<i>GCT on administrative charges</i>	<i>17,500.00</i>		
<i>Half Stamp Duty</i>	<i>471,000.00</i>		
<i>Half Registration Fee</i>	<i>78,500.00</i>		
<u><i>Deposit & Further Payments</i></u>			
<i>Receipt #035110 d/d 18.08.11</i>		<i>6,280,000.00</i>	
<i>Receipt #035111 d/d 18.08.11</i>		<i>117,500.00</i>	
<i>Receipt #035902 d/d 09.11.11</i>		<i>25,669,500.00</i>	
	<i>32,067,000.00</i>	<i>32,067,000.00</i>	
<i>Balance due to complete</i>			<i>Nil</i>

Prepared by: Chryseis Reynolds (Miss)

⁹³ Mr. Wayne Chen's December 14, 2011 signed response to the OCG's requisition dated November 23, 2011, response # 24.



Purchase Offers Submitted to the UDC prior to the Submission of Bashco Trading Company Limited's Offer

The OCG is in possession of several purchase offers that were submitted to the UDC, prior to and after the submission of Bashco Trading Company Limited's unsolicited proposal. Of note, Bashco Trading Company Limited's unsolicited proposal was received by the UDC on February 15, 2011. The offers are outlined hereunder:

- 1) **November 16, 2007**: An offer submitted on the stated date, was addressed to Mr. Gregory Benloss, the then UDC's "*JNR Estate Officer*" by Fifth Avenue Traders Ltd. The contents of the letter outlined the specifications of the offer and included the following:

"We hereby submit a proposal to purchase premises at 35 West Parade that we have a lease agreement for over thirty years (30) and counting. This said building consists of an upstairs which needs to be repaired extensively and would get a facelift which would provide increased asset to the Downtown Business District.

We are willing to provide a valuation on the premises to complete our proposal".⁹⁴

- 2) **December 21, 2009**: Following the submission of Fifth Avenue Traders Ltd.'s offer, Mr. Dennis Chin-You demonstrated an interest in purchasing properties in the geographic area in which 35 West Parade and 1 Beckford Street are located in Kingston. It is also important to note that based on the UDC's response to Mr. Dennis Chen-You's letter, the referenced properties were those that Mr. Chen-You had demonstrated an interest in purchasing. Mr. Dennis Chen-You's interest was communicated to the UDC by a letter that he had addressed

⁹⁴ Purchase Offer from Fifth Avenue Traders Ltd. for the purchase of 35 West Parade, November 16, 2007 – Submitted by Mr. Wayne Chen in his December 14, 2011 response to the OCG.



to the then General Manager, Ms. Joy Douglas. An extract from the said offer is mentioned hereunder:

“I am aware of the collaboration between the Kingston City Centre Improvement Company (KCCIC), the Urban Development Corporation (UDC), the Kingston Restoration Company (KRC) and the Kingston & St. Andrew Corporation (KSAC) to develop a Concept Plan which sets out your focus and vision for the redevelopment of Downtown Kingston.

I would like to use this medium to express to you my interest in playing a part in this development plan.

Specifically, I am interested in the acquisition, with a view for the future development of property located along Beckford Street from parade to West Street which includes the old Bardowell Building.”⁹⁵

The OCG is in possession of a letter dated July 1, 2010, and addressed to Mr. Dennis Chin-You from Mrs. Sonia Dowding, Director of Sales, UDC, in response to his letter, which bore the subject *“Proposed purchase of lands- Downtown, Kingston.”* The content of the letter is hereunder outlined:

“Your letter addressed to Ms. Joy Douglas, General Manager of the Urban Development Corporation

⁹⁵ Mr. Dennis Chen-You letter addressed to former General Manager, Ms. Joy Douglas on December 21, 2009.



(UDC), dated December 21, 2009, has been passed to me for a response. We apologise for not responding sooner.

Please be advised that UDC is the owner of parcels of land along Beckford Street and West Parade, which are part of the overall development plan for West Kingston development. These lands are therefore not available for sale at this time.

We wish to thank you for your interest in the UDC.”⁹⁶

The referenced letter was copied to Mr. Patrick Stanigar and Mrs. Elizabeth Harrilal of the UDC. Further, the OCG is also in possession of an email dated June 21, 2010, which was addressed to Mrs. Elizabeth Harrilal, from Mr. Dolton Dawkins, Senior Estate Officer, UDC. The referenced email stated, *inter alia*, the following:

“Mr. Dennis Chin-You wrote to us expressing an interest in the acquisition of properties located along Beckford Street (on the northern side) from Parade to West Street.

These properties were acquired by the U.D.C. under the West Kingston Redevelopment Program for the widening of Beckford Street.

⁹⁶ UDC response letter addressed to Mr. Dennis Chin-You regarding his interest in purchasing lands in Downtown, Kingston.



Under The West Kingston Development Project Area No. 1 Designated Order, 1987; the properties along the northern section of Beckford Street is declared to be a designated area for the purpose of the Act.

The U.D.C. is the registered owners [sic] of the following properties:

1 Beckford Street

13 Beckford Street

19-23 Beckford Street

25 ½ Beckford Street

27 Beckford Street

35 West Parade

Mr. Patrick Stanigar advised not to sell any of the properties; they play a pivotal role in the overall redevelopment plan of West Kingston.

*None of the properties can be sold to Mr. Dennis Chin. **Kindly advise him.***⁹⁷

- 3) **January 5, 2010:** The third offer and/or interest, which was submitted to the UDC by Fifth Avenue Traders Ltd/Mrs. Maritza Warwar was addressed to Mrs. Elizabeth Harrilal, UDC's Estate Manager. In the said letter/offer, Mrs. Warwar made reference to her November 2007 purchase offer submission and further noted, *inter alia*, that:

⁹⁷ Email sent on June 21, 2010 from Mr. Dalton Dawkins, Senior Estate Officer, UDC, to Mrs. Elizabeth Harrilal, UDC's Estate Manager.



“It would be a great opportunity if we got possession of this building, whether lease or buy in order to renovate such seeing that this building was damaged for some time ago. Such project will help to enhance the beatification of the Downtown Business District and help to bring back shoppers on a daily basis.

We are willing to meet with you to discuss our proposal.⁹⁸

Based on the foregoing, it is instructive for the OCG to note that it has seen no documentation to suggest that the UDC had responded to the stated offer.

⁹⁸ 2nd Purchase Offer from Fifth Avenue Traders Ltd for the purchase of 35 West Parade, letter dated January 5, 2010 - Submitted by Mr. Wayne Chen in his December 14, 2011 response to the OCG.



Purchase Offers Submitted to the UDC after the Submission of Bashco Trading Company Limited's Offer

- 1) **July 28, 2011:** In addition to the earlier mentioned offers that had been submitted to the UDC for the purchase of the referenced property, Mrs. Maritza Warwar, Director of Fifth Avenue Traders Ltd, also provided the OCG with documentary evidence of her renewed interest by a letter, which was stamped 'received' by the UDC on July 28, 2011. The referenced letter was directed to the attention of the then UDC General Manger, Ms. Joy Douglas. The following is an extract of the offer:

"Re: 35 West Parade, Kingston

Further to earlier correspondence regarding the above property I wish to renew my offer to purchase the property. As previously stated, we, Fifth Avenue Traders Ltd. have occupied the building since 1986, and are willing to purchase the property in order to facilitate our business. Please advise if a recent valuation has been obtained, if so could you kindly forward us a copy. Kindly treat this matter urgently."⁹⁹

In this instance, the UDC's then General Manager, Ms. Joy Douglas, to whom the offer was addressed, responded to the said offer in a letter dated August 2, 2011. The response stated as follows:

"We acknowledge receipt of your letter on July 28, 2011, advising of your interest in the above-mentioned property, unfortunately we have to advise that it is not available as it is already committed for a transfer of ownership. Should the

⁹⁹ Purchase Offer stamped received July 28, 2011, addressed to Ms. Joy Douglas from Mrs. Maritza Warwar, Fifth Avenue Traders Ltd.



*current agreement fail to proceed to conclusion and your offer still open, it would be considered...*¹⁰⁰

In response, Fifth Avenue Traders Ltd wrote to the UDC on August 16, 2011 and indicated the following:

*“As you will see in the attached letters, we have over the years shown interest in procuring this said building if offers were sent out for the sale and prior to these letters we made a deposit on the purchase of this building through Myers Fletcher & Gordon which did not materialized because, we were told that the area would be needed for further expansion of the road. We still pursued by making several telephone calls to your office of our interest to purchase, but were advised that the building is a landmark and that it was not for sale ...”*¹⁰¹

2) **August 9, 2011:** Fifth Avenue Traders Ltd. submitted its final offer to the UDC for the purchasing of 35 West Parade. The referenced offer is outlined hereunder:

“Fifth Avenue Traders Limited has been and continues to be a tenant at this property for upwards of thirty five (35) years. During this several offers have been made by us to purchase and we have consistently told the property is not for sale. We are now reliably informed that the property is to be sold. Accordingly we hereby

¹⁰⁰ UDC's August 2, 2011 response to Fifth Avenue Traders Ltd.'s Purchase Offer of July 28, 2011.

¹⁰¹ Fifth Avenue's Traders Ltd letter dated August 16, 2011, which was addressed to Ms. Joy Douglas, UDC.



submit a bid for thirty two million dollars (\$32, 000, 000.00) to purchase 35 West Parade in the parish of Kingston... ”¹⁰²

- 3) **August 19, 2011:** The OCG is also in possession of a purchase offer, which was made by C. Chatani Ltd for the purchase of the property located at 35 West Parade. The under-mentioned provides details of the referenced offer:

*“We are currently operating a retail operation at 35, West Parade, Kingston, trading under the name Sports Fashion Limited. **We would like to make an offer of fifty Million Jamaican Dollars in cash (J\$50, 000, 000.00) for the entire property located at 35 West Parade.** (OCG Emphasis)*

In Addition, if given the opportunity to purchase the property, we will be doing a complete restoration of the entire building to bring the exterior of the property to a new and modern landmark.

*We are willing to meet with your team to explain in details, our plans and will furnish you with architectural drawings for your perusal if requested
... ”¹⁰³*

¹⁰² Fifth Avenue Traders Ltd.'s 4th documented offer dated August 9, 2011, which was addressed to Mr. Ainsworth Campbell, Director of Sales, UDC.

¹⁰³ C. Chatani Ltd purchase offer submitted to the OCG by Mr. Wayne Chen in his December 14, 2011 signed response to the OCG's Statutory Requisition dated November 23, 2011.



Based on the stated offers that were presented to the UDC by Fifth Avenue Traders Ltd, it is important for the OCG to emphasize that Fifth Avenue Traders Ltd **had repeatedly shown an interest in purchasing the referenced 35 West Parade property prior to the submission of an offer by Bashco Trading Company Limited.** In addition to the written offers, Fifth Avenue Traders Ltd, through its principal, Mrs. Maritza Warwar, indicated that one ‘Mr. Andrew’ has had dialogue with Mr. Wayne Chen, in which he had verbally communicated his interest in purchasing the said property and she was told that the property was not for sale.¹⁰⁴ Mrs. Maritza Warwar in her response to the OCG’s requisition dated November 18, 2011, indicated that the medium that was utilized to communicate the various offers to the UDC was in writing. The direct response is stated below:

“Most offers to purchase property and communications regarding same were done in writing. At the time of the first offer made in the 1980’s, our lawyers Myers, Fletcher & Gordon acted on our behalf. Subsequent communication was done in writing, so no formal meetings in person were held...”¹⁰⁵

Further and with regard to the sale of the referenced property, Mrs. Warwar, in her response to the OCG’s Statutory Requisition dated November 18, 2011, communicated the under-mentioned:

*“We would like to state there was no indication made publicly for the sale of 35 West Parade, Kingston. And as tenants/stakeholders in the said property for over 40 years, **we believe it unjust that in spite of all our offers we have been rejected and***

¹⁰⁴ Mrs. Maritza Warwar’s December 14, 2011 response to the OCG’s requisition dated November 18, 2011, response #2.

¹⁰⁵ Mrs. Maritza Warwar’s December 14, 2011 response to the OCG’s requisition dated November 18, 2011, response #2.



made to believe property is not for sale.¹⁰⁶ (OCG
Emphasis)

With regard to Mr. Michael Mahfood's/H. Mahfood & Sons Limited's tenancy at the property located at 35 West Parade, the following was stated in Mr. Mahfood's November 16, 2011 response to the OCG:

"I occupy the property as one of its tenants. I am a monthly tenant. H. Mahfood & Sons Limited occupied the property as tenant from in the 1970s, until I first became a tenant of the property in my personal capacity on or about 1st November 2007, under an undated written lease between UDC and I, effective 1st November 2007."

...

"The (undated) written lease was effective 1st November 2007. I became a tenant under that one-year lease, although I repeatedly requested a long term lease. A long term lease is critical to planning and stability of the business I carry on at the property.

When the one-year lease expired, UDC eventually granted another one-year lease dated 4th November 2009, and afterwards declined to offer me another written or fixed term lease. Instead, I became a monthly tenant. I presently pay Sixty-six Thousand Eight Hundred and Twenty-Eight Dollars Jamaican

¹⁰⁶ Mrs. Maritza Warwar's December 14, 2011 response to the OCG's requisition dated November 18, 2011, response #34.



currency (J\$66,828.00) as rent for the property. I attach as “M.M. 2” a copy of receipt No. 0345672 which UDC supplied for the rent I paid on 19th October 2011.

The reason UDC gave for not offering me or H. Mahfood & Sons Limited a long term lease, was that the property was required for widening Beckford Street, and so could not be committed on a long term basis. I am unable to locate a copy of H. Mahfood & Sons Limited’s expired lease(s).”¹⁰⁷
(OCG Emphasis)

Additionally, Mr. Michael Mahfood, by way of his November 16, 2011, response to the OCG’s requisition of October 28, 2011 stated, *inter alia*, in relation to his interest in the purchase of 35 West Parade:

“On several occasions over the years since UDC became the registered proprietor of the property, H. Mahfood & Sons Limited (through my uncle Adeeb Mahfood on one occasion and through me on several occasions), and I, in my personal capacity, have each orally proposed to UDC to purchase the property:

(a) I do not have notes of the exact dates Adeeb Mahfood and I, respectively, proposed to purchase the property.

¹⁰⁷ Mr. Michael Mahfood’s November 16, 2011 response to the OCG’s requisition dated October 28, 2011, response# 1c & 1d.



Specifically, in relation to a proposal to purchase made by Adeeb Mahfood, on behalf of H. Mahfood & Sons Limited, he made that proposal in the late 1980s on an occasion when he went to pay rent at UDC, and spoke with UDC Estate Department personnel. Adeeb Mahfood's proposal was rejected by the UDC's Estate Department personnel with whom he spoke, on the purported basis that the property was not for sale because it was required for widening Beckford Street, and UDC had acquired the property specifically for road widening purposes.

*In relation to the proposals I made to purchase the property (either on behalf of H. Mahfood & Sons Limited or on my own behalf), typically, I made those proposals whenever members of UDC's Estate Department visited the property to inspect it, which happens about twice each year. **On every such occasion, without exception, I was told the property was not for sale, and that the reason it was not for sale is that it was required for widening Beckford Street. In fact, I was told UDC acquired the property specifically for road widening purposes.** (OCG Emphasis)*

My proposals to purchase the property were often made in the context of the repeated verbal



suggestions, over the years, by personnel from UDC's Estate Department, that we build a roof on the vacant 2nd floor of the property (which has no roof). They said UDC was not going to build the roof. We always told them that whilst I or H. Mahfood & Sons Limited (depending upon who was the tenant at the time the question was asked) would be prepared to build the roof, in view of the fact that such a roof would be very expensive to build, I would only build it if there was security of occupation of the property on the basis of either (i) a long term written lease to me or to H. Mahfood & Sons Limited, or (ii) we were allowed to purchase the property.

(b) As stated above, a proposal on behalf of H. Mahfood & Sons Limited to purchase the property was made by Adeeb Mahfood.

Whereas, proposals to purchase or take a long term lease of the property were made by me, in my personal capacity and on behalf of H. Mahfood & Sons Limited, as the case may be.

(c) The proposals to take a long term lease or to purchase the property were made to personnel from UDC's Estate Department.



I do not know the names of those individuals, but I am certain the ones with whom I have spoken work in UDC's Estate Department because I saw them when they visited to inspect the property, they identified themselves as being from UDC's Estate Department, and their shirts had UDC's distinct logo.

(d) The proposals referred to in paragraph 2(a), (b) and (c) above were all made orally, and the responses were all oral”.¹⁰⁸

Based on the foregoing, the OCG acknowledges that Mr. Michael Mahfood's assertion is consistent with that of Fifth Avenue Traders Ltd, whose principal indicated that she was told that the property was not for sale as it was required for road widening purposes.

With regard to the decision that was made by the UDC to divest the property located at 35 West Parade and the failure of the UDC to inform Mr. Michael Mahfood, the OCG hereby highlights the following November 16, 2011 response:

“I have never been approached by anyone on behalf of the GOJ and/or UDC regarding the sale, or to take a long lease of, the property.

I should state, for completeness, that I became aware that UDC was selling the property after surveyors attended the property to take various measurements, which put me on enquiry. After

¹⁰⁸ Mr. Michael Mahfood's November 16, 2011 response to the OCG's requisition dated October 28, 2011, responses # 2a, b, c & d.



much enquiry, I ascertained that the UDC had entered into an agreement to sell the property. Upon ascertaining this information I visited UDC's Estate Department to verify whether it was in fact selling the property, and I was told by someone in the Department that the property was not for sale.

Indeed, when our attorneys spoke with Ms Joy Douglas, then General Manager of UDC, on 25th August 2011, Ms Douglas refused to disclose the identity of the purchaser. It was only by virtue of further enquiries I made afterwards that I gathered Bashco was the purchaser.”¹⁰⁹

Mr. Michael Mahfood revealed that if he and/ or H. Mahfood & Sons Limited was given the opportunity to purchase the property located at 35 West Parade, he “... *would have been more than willing to pay some J\$40,000,000.00 for the property and to develop it suitably.*”¹¹⁰ Upon hearing that the property was sold to another party, Mr. Michael Mahfood in his November 16, 2011 response to the OCG's requisition dated October 28, 2011 noted that he had written to the then Prime Minister, The Hon. Bruce Golding regarding the matter. The content of the letter is outlined hereunder:

“We have occupied the above premises for the past thirty (30) years. However, we were just informed that the property was sold to another party without affording us the opportunity to bid on the property

¹⁰⁹ Mr. Michael Mahfood's November 16, 2011 signed response to the OCG's requisition dated October 28, 2011, response #12.

¹¹⁰ Mr. Michael Mahfood's November 16, 2011 response to the OCG's requisition dated October 28, 2011, response # 7b.



ourselves. This is quite alarming and smacks of secret deals. During our tenure, we have made numerous requests to both buy the property as well as to lease it on a long term basis, however, our requests were denied on the basis that the property would be required for a road widening exercise.

This property was never advertised for the sale on the open market nor were we as sitting tenants offered the opportunity to buy the property...¹¹¹

(OCG Emphasis)

Further to Mr. Michael Mahfood's response to the OCG's requisition dated October 28 2011, the following was communicated by Mr. Mahfood:

"On several occasions over the years since the UDC became the registered proprietor of the property, H. Mahfood & Sons Limited (through my uncle Adeeb Mahfood on one occasion and through me on several occasions), and I, in my personal capacity, have each orally proposed to UDC to purchase the property:

(a) I do not have notes of the exact dates Adeed Mahfood and I, respectively, proposed to purchase the property."¹¹²

¹¹¹ Mr. John Mahfood, Principal of H. Mahfood letter to the then Prime Minister, The Hon. Bruce Golding, August 16, 2011.

¹¹² Mr. Michael Mahfood's November 16, 2011 response to the OCG's requisition dated October 28, 2011, response #2.



In relation to the time period in which Mr. Michael Mahfood first made the alleged offers to the UDC, and whether the UDC had responded, the following response was provided by Mr. Mahfood in his response to the OCG's requisition of said date:

“Specifically, in relation to a proposal to purchase made by Adeeb Mahfood, on behalf of H. Mahfood & Sons Limited, he made that proposal in the late 1980s, on an occasion when he went to pay rent at UDC, and spoke with UDC Estate Department personnel. Adeeb Mahfood’s proposal was rejected by the UDC’s Estate Department personnel with whom he spoke, on the purported basis that the property was not for sale because it was required for road widening Beckford Street, and the UDC had acquired the property specifically for road widening purposes.”¹¹³

In regard to the failure of the UDC to inform the then tenant, Fifth Avenue Traders Ltd., of its intended decision to divest the referenced property, Mr. Michael Mahfood stated the following in response to the OCG's Requisition dated October 28, 2011:

“... (1) UDC has never invited either H. Mahfood & Sons Limited (including Adeed Mahfood) or me (either in my capacity or representing H. Mahfood & Sons Limited) to any meeting or otherwise sought to engage us in any negotiations or discussions for the purchase of the property or for us to take a long term lease of the property after the company’s lease(s) expired; and

¹¹³ Mr. Michael Mahfood's November 16, 2011 response to the OCG's requisition dated October 28, 2011s, response #2(a).



(2) I have recently been informed by another tenant of the property, Andrew Warwar that he recently proposed to UDC in writing to purchase the property.”¹¹⁴

In addition to the mentioned offers and except in cases where there is evidence that the UDC had responded to the offers, the OCG in its November 23, 2011, requisition to Ms. Joy Douglas asked the following question:

“Please provide an Executive Summary detailing the full particulars of all approaches and/or offers which were made by (a) Mr. Michael Mahfood and (b) M. Mahfood & Sons Limited and /or anyone and/or entity acting on its behalf, in regard to the sale/purchase and/or extended lease of the captioned property, to the GOJ and/or the UDC. In providing your response, please provide responses to the following questions:

- a. Please provide full particulars of the approach(es) and/or offer(s) which was/were made in each instance by (a) Mr. Michael Mahfood and (b) M. Mahfood & Sons Limited and/or anyone and/or entity acting on its behalf;*
- b. The date(s) on which the respective approach(es) was/were made.*

¹¹⁴ Mr. Michael Mahfood’s November 16, 2011 response to the OCG’s requisition dated October 28, 2011, response# 5(1).



- c. *The name(s) and title(s) of the officer(s)/official(s), within the UDC, who was/were approached and/or to whom offers were made;*

- d. *The basis(es) upon which the respective approach(es) and offer(s) was/were (i) accepted or, (ii) not accepted by the GOJ and/or the UDC, in each instance;*

- e. *Indicate whether you are aware of any other official/officer within the UDC who may have knowledge of the approach(es) and/or offer(s) which was/were made by the above named person(s)/entity(ies) for the sale of the captioned property; and*

- f. *any other particulars which are relevant to the respective approach(es) and offer(s) which were made by the above named persons for the sale of the captioned property.*¹¹⁵

In response to the said question, Ms. Joy Douglas, in her January 17, 2012 response to the OCG stated the following:

- a. *“Please secure from the UDC.*
- b. *Please secure from the UDC.*
- c. *Please secure from the UDC.*

¹¹⁵ OCG’s requisition addressed to Ms. Joy Douglas on November 23, 2011, question # 14.



- d. *As you are aware, the UDC considered that it had carried out its statutory duty as set out in the UDC Act and Estate Management Policy. It is important to note that as General Manager, I was determined to adhere to the legislation and policy, having had some very challenging experiences at the very outset of my tenure as Acting General Manager...*
- e. *Please note that before any matter is put before the Board a complete review of the files is required of the Legal and Estate Division along with a site inspection. **It was clear that there was less than thoroughness exercised initially in the matter and this was brought to the attention of Ms Yvette Sibble, Deputy General Manager, Legal and Estate... I received no report from Ms Sibble. I also personally requested that Mr. Phillip Myers, Director, Estate and Mr. A. Brian Campbell, Director Sales, research the files again to determine historic interest in the acquisition and development of the property. The response from both gentlemen was negative...I recommend that the OCG requisition Mr. Phillip Myer, on the matter...**¹¹⁶(OCG Emphasis)*

¹¹⁶ Ms. Joy Douglas' January 18, 2011 response to the OCG's requisition dated November 23, 2011, response #14.



In relation to the competing offers for the purchase of the property located at 35 West Parade, Mr. Wayne Chen in his response to the OCG's requisition dated November 23, 2011, noted the following:

- a. *“With regard to the purchase of the property – letters dated November 16, 2007, January 5, 2010, one undated letter received by the Corporation on July 28, 2011 (addressed to the General Manager, Joy Douglas) and another dated August 9, 2011, addressed to Brian Campbell, Director, Sales. In letter dated August 9, 2011, a bid for Thirty Two Million dollars (\$32M) was made. The later offer was rejected by the Corporation as the property had already been committed for sale to Bashco Traders Ltd. (letter dated August 2, 2011 from UDC General Manager to Mrs. Maritza Warwar. Fifth Avenue Traders also requested a new lease Agreement for the 35 West Parade property by letter dated November 2, 2011. Dates of offers:*
 - i. *Letter dated November 16, 2007*
 - ii. *Letter received by UDC on July 28, 2011*
 - iii. *Letter dated August 9, 2011*
 - iv. *November 2, 2011 (request for new lease agreement)*

- b. *Letters were sent to Mr. Gregory Benloss, Junior Estate Officer, Mrs. Elizabeth Harrilal, UDC Estate*



Manager, Ms. Joy Douglas and Mr. Brian Campbell.

- c. By letter dated August 2, 2011, UDC rejected the offer made by Fifth Avenue Traders on the basis that the property was already committed for the sale to Bashco.*

- d. I am not aware of any other official within the UDC who may have knowledge of offers from Fifth Avenue Traders Limited, except Mr. Philip Myers who seems to have been made aware of the offers when he received from UDC's General Manger, a copy of letter dated August 16, 2011 from Fifth Avenue Traders.*

- e. Fifth Avenue Traders, by letter dated August 16, 2011, to Ms. Joy Douglas, expressed their dissatisfaction with the UDC for not having an open competitive process for the sale of 35 West Parade. Additionally, on or about July 2011, Mr. Andrew Warwar verbally expressed his dissatisfaction with the lack of competitive tender during a conversation with this document's author.*

Please note that the Board of Directors became aware of the existence of the above documents at



its meeting of October 19, 2011, when copies were provided to the Board.¹¹⁷ (OCG Emphasis)

Based on this response and the fact that Bashco Trading Company Limited's offer was submitted to the UDC's Board on April 28, 2011, the OCG reiterates the fact that it was after the submission of Bashco Trading Company Limited's offer, that the then UDC's Board members became aware of the other competing offers.

¹¹⁷ Mr. Wayne Chen's December 14, 2011 response to the OCG's requisition dated November 23, 2011, response #17.



Lease Arrangements of UDC's Former Tenants in respect of the Property Located at 35 West Parade¹¹⁸

Tenants	Property Address	Area Leased	Title Ref.		Lease Duration		Term of Lease	Option to Renew	Status of Lease
			Volume	Folio	Commencement	Expiration			
H. Mahfood & Son's	35 West Parade	2,600.04 sq. ft.	328/86		1-Nov-09	31-Oct-10	1 yr.	No	Expired
Sports Fashions Ltd.	35 West Parade	800.00 sq. ft.			1-Aug-09	31-Jul-10	1 yr.	Yes; a similar term	The lessee has exercised his option to renew. Expiry date: July 31, 2011. No signed lease is in place. The Account is up to date.
Paramount/Markham Betting	35 West Parade	800.00 sq. ft.			1 Nov-09	31-Oct-10	1 yr.	No	Expired
Fifth Avenue Fashions	35 West Parade	800.00 sq. ft.			1-Nov-09	31-Oct-10	1 yr.	No	Expired
<p>General Comments: No option to renew, however, the then Director of Sales, Mrs. Sonia Dowding, recommended that a new lease be offered with a 10% increase in rental. Tenants are still in possession and paying rental, Sports Fashion's lease will expire on July 31, 2011.</p>									

Based on the information contained in the above table, the OCG observes that the UDC did not extent the tenancy of H. Mahfood & Sons, Sports Fashions Ltd and Fifth Avenue Fashion,

¹¹⁸ Partial Representation of table which was provided by Mr. Philip Myers in his response of May 28, 2012 to the OCG's requisition dated April 18, 2012.



beyond 2010, which is the year reseeding the divestment of the property located at 35 West Parade to Bashco Trading Company Limited.

Additionally, and in regard to the offers and/or proposals that were submitted to the UDC, the OCG acknowledges that Mrs. Elizabeth Harrilal, UDC's Estate Manager noted in her May 28, 2012, response, *inter alia*, that:

*"Mrs. Maritza Warwar, Director of Fifth Avenue Traders Limited submitted various proposals to purchase the referenced property, 35 West Parade, by way of letters dated November 16, 2007 to Mr. Gregory Benloss, Junior Estate Officer; January 5, 2010 to Mrs. Elizabeth Harrilal, Estate Manager; one undated letter received by the Corporation on July 28, 2011, addressed to the former General Manager, Miss Joy Douglas; and another dated August 9, 2011, addressed to Brian Campbell, Director, Sales."*¹¹⁹

Based on the foregoing disclosure, the OCG sought to ascertain whether Mrs. Harrilal had made any attempts to inform other UDC Officers of the referenced offers. In response to the OCG's requisition dated April 18, 2012, Mrs. Harrilal stated, *inter alia*, that "

"The name(s) and title(s) of the Officer(s) and/or Official(s) of the UDC to whom such disclosure were made;

RESPONSE:

Miss Joy Douglas-General Manager Mrs. Sonia Dowding-Director, Sales, Elizabeth Harrilal-

¹¹⁹ Mrs. Elizabeth Harrilal's May 28, 2012, response to the OCG's requisition dated April 18, 2012, response #15.



Estate Manager Dalton Dawkins-Senior Estate Officer¹²⁰ (OCG Emphasis)

Furthermore and in tandem with the said offers, Mr. Ainsworth Campbell, Director of Sales at the UDC in his response to the OCG's Requisition dated September 11, 2012, stated the following:

"b) Subsequent to my initial review of the file, the General Manager asked me to conduct a search once again with a view to determining if there had been any documented interest in the property prior to Mr. Gassan Azan's offer.

c) Ms Joy Douglas would have been aware of these offers. I do not know who else would have been.

*d) As I have stated in my previous submission, I only became aware of the offer after the Board and the Portfolio Minister had approved the sale. **I became aware of previous offers on my second attempt to research the matter on the instruction of the General Manager, by which time the sale subject to valuation had already been approved. I immediately advised the General Manager that I was on that occasion seeing evidence of previous offers on the file.***

(i) Up discovering that there were previous offers I alerted Miss Joy Douglas, General Manager.

¹²⁰ Mrs. Elizabeth Harrilal's May 28, 2012 response to the OCG's requisition dated April 18, 2012, response# 16f.



(ii) I am not aware of the date on which Miss Douglas was informed of the referenced officers. I informed her of their [sic] existence on October 12, 2011 when I first became aware of them.

(iii) I am not aware of what action, if any, were taken by the General Manager to acknowledge or give consideration to such offers.¹²¹ (OCG Emphasis)

Based on the inadequacy of the information that was provided to the UDC Board at the time the approval for the divestment of 35 West Parade was being sought by Ms. Joy Douglas, the OCG sought to ascertain the following in its April 19, 2012, requisition to Mr. Michael Subratie, former UDC Board Director:

“Please provide an Executive Summary detailing the extent of your personal and/or official involvement in the sale and/or purchase of the property, which is located at 35 West Parade, Kingston, by the Urban Development Corporation (UDC) to Bashco Trading Company Limited and/or any of its affiliates or nominees.”¹²²

In response to the above question, Mr. Michael Subratie in his response to the OCG’s Requisition dated April 19, 2012, stated that:

“I recall approving the sale in a board meeting based on the information provided to me. I also recall many months later being provided

¹²¹ Mr. Ainsworth Campbell’s September 25, 2012 response to the OCG’s requisition dated September 7, 2012, response # 4b-4d (i,ii,iii).

¹²² OCG’s Requisition to Mr. Michael Subratie dated April 19, 2012, question #1e.



information from the OCG in board meetings which included information that was not provided to me before and I expressed my concern to the board as to why we were not provided this information in the first place from the UDC executive.¹²³ (OCG Emphasis)

Mr. Michael Subratie further stated, *inter alia*, that:

“I generally felt that not all the information was provided to me which would allow me as a board member to make an objective decision.”¹²⁴ (OCG Emphasis)

Additionally, Mr. Michael Subratie reiterated, in his response to the OCG’s Requisition dated September 7, 2012, the following:

“In my opinion, I believe that I was not provided with all the information that I was supposed to have received. I was not aware that there were other offers. I believe the UDC executive failed to provide me as a UDC director with all the details so I could make an informed decision. At the time I was not aware that there was further information which I should have received.”¹²⁵ (OCG Emphasis)

Correspondingly, Mr. Michael Subratie provided the following response in relation to the OCG’s requisition dated September 7, 2012:

¹²³ Mr. Michael Subratie’s May 4, 2012 response to the OCG’s requisition dated May 19, 2012, response #1e.

¹²⁴ Mr. Michael Subratie’s May 4, 2012 response to the OCG’s requisition dated May 19, 2012, response #7d.

¹²⁵ Mr. Michael Subratie’s September 24, 2012 signed response to the OCG’s requisition dated September 7, 2012, response #12.



“The information was important because we did not know that the property was of such interest to so many people nor were we aware of the historical interest either. The impression I had was that the property was derelict and there was only one interested party. I assumed that the property had gone out for tender. After becoming aware of the interests I questioned whether the proper procedures were followed but I could not get any answers other than it was under investigation.”¹²⁶

(OCG Emphasis)

Similarly, Mr. Ainsworth Campbell revealed in his response to the OCG’s requisition dated April 18, 2012, *inter alia*, that:

“I also expressed...that there was a demand for the property, so there was no need to accept Mr. Azan’s offer of \$29 million. I also advised her that based on the time value of money, a cash sale for \$31.4 million would be the equivalent of \$32 million in ninety days, and that either Mr. Azan accepted these terms or the property should go back to market. The GM sanctioned my analysis and advised that I should negotiate up to \$31.4 million cash sale.”¹²⁷ (OCG Emphasis)

Mr. Ainsworth Campbell also expressed grave concern in the manner in which the property located at 35 West Parade was divested by the UDC. Additionally, Ms. Ann Marie Rhoden,

¹²⁶ Mr. Michael Subratie’s September 24, 2012 response to the OCG’s requisition dated September 7, 2012, response: #1b.

¹²⁷ Mr. Ainsworth Campbell’s May 24, 2012 response to the OCG’s requisition dated April 18, 2011, response #1.



former UDC Board Director in her response to the OCG's requisition dated April 19, 2012, noted the following:

“Notwithstanding the discomfort expressed by directors, the Board approved the sale subject to the UDC obtaining two valuations. The General Manager promised to bring additional information at the next meeting of the Board in May 2011, but this was not done.”¹²⁸ (OCG Emphasis)

In the instant regard, Ms. Ann Marie Rhoden also provided insight into the administration of the UDC's Board under the chairmanship of Mr. Wayne Chen. Ms. Ann Marie Rhoden's comments are mentioned below:

“In retrospect I consider that there are two situations that affected the Board. In the first instance the Board of the UDC was placed in an invidious position by the executive management in the way the transactions involving the sale of the two properties down-town were handled. The Board was never given the full information at any one time and more importantly it was deprived of critical information with which to make decisions. Information was requested and management would agree to provide those information. Yet on a number of occasions those promises were not fulfilled.” OCG Emphasis)

¹²⁸ Ms. Ann Marie Rhoden's June 27, 2012 response to the OCG's requisition dated April 19, 2012, response #5/Executive Summary.



In the second instance, the Board was a victim of its own impatience. It failed to heed instructions that were given by government representatives. The General Manager would also give a sense that all was needed was the Port-folio Minister's no-objection to conclude any matter. The Board fell victim because it wanted to play its role in moving forward quickly with developmental issues. I recall on one occasion based on my insistence the Board agreed reluctantly to advertise another property which was requested by Guardsman Limited, down town. The Chairman sought to appease me by asking if a 2-week advertisement period would suffice. Management did not even follow through on the decision."¹²⁹ (OCG Emphasis)

Further, Ms. Sonia Mitchell, former UDC Board Director, advised the OCG that, while in attendance at a UDC Board Meeting on April 28, 2011, she advised that the proposed sale of the referenced property would terminate an approved development plan, to be undertaken pursuant to the 'Market Area Plan' (1983). She stated *inter alia*, that:

"During the discussion following the presentation of Board Paper No.000.64/11/13...I express reservations that the sale could be effectively terminating a previously approved plan for the development of West Kingston market district, including widening the Beckford Street roadway, which UDC had been responsible for implementing.

¹²⁹ Ann Marie Rhoden's June 27, 2012 response to the OCG's requisition dated April 19, 2012, response #9/Executive Summary



It was my view, which I shared at the Board meeting held on 28th April, 2011, that a presentation should first be made of the policy and development plan for the market district, the changes which had occurred since the approval of that policy, and any other considerations which had been taken into account by the UDC's management in making the recommendation which would effectively end the road widening aspect of the plan. The Minutes note that, in response to this concern, the General Manager undertook to make a full presentation, on the market district plan at the next regular Board meeting.”¹³⁰

Based on the concerns expressed by Ms. Sonia Mitchell, the OCG observes that there was dissatisfaction on her part in relation to manner in which the property was being divested. On the other hand, Mr. Michael Ammar explicitly stated in his response to the OCG's requisition dated April 19, 2011, *inter alia*, the following:

“I, along with other members of the previous Board, were not in agreement with Miss Mitchell, as we had participated in the formulation and presentation of the new plans for the redevelopment of downtown and would have been aware of the changes regarding Beckford Street...Miss Mitchell, however, was correct in that the policy change had not been formally accepted by the previous Board despite their acceptance of the new development plan. Steps to

¹³⁰ Ms. Sonia Mitchell May 5, 2012 response to the OCG requisition dated April 18, 2012, response #1.



**correct this were taken at a special meeting of the
Board held on May 3, 2011.**¹³¹

In relation to the above statement made by Mr. Michael Ammar, the OCG considers it prudent to note that it has found no documentary evidence to substantiate this assertion, which alludes to the formulation of a new development policy for the area in which the property located at 35 West Parade was located.

¹³¹ Mr. Michael Ammar's May 17, 2012 response to the OCG requisition dated April 19, 2012, response# 7b.



Efforts made by the UDC to abort the Sale of the Property Located at 35 West Parade to Bashco Trading Company Limited

In relation to the captioned matter, the OCG is in possession of a letter dated October 18, 2011, and which bore the heading “*Sale of 35 West Parade, Kingston. UDC to Bashco Trading Company Limited nominee Jaycrow Ltd.*” The letter was under the signature of Ms. Joy Douglas and addressed to Livingston, Alexander and Levy. The letter stated the following:

“As you are aware, the Office of the Contractor General has launched a special investigation into the sale of the subject property to your client. In the course of the investigation the Contractor General has questioned the process employed by the UDC in the divestment of the public asset and alleges a contravention of the government’s divestment and privatization policy, specifically Ministry Paper #34. The specific breach cited is that the property was divested without being advertised and therefore the process lacks transparency.

*By letter dated October 13, 2011 the Office of the Contractor General requested that the UDC immediately terminates the sale to Bashco and re-advertises the property, in keeping with the requirements of the government’s privatization policy and procedures. **Our Board has therefore mandated that we write to request of your client, in light of our acceptance that there was a breach of the divestment policy, if he would consider mutual termination of the sale, so that the divestment***



procedure can be complied with, in the interest of probity and good order...¹³² (OCG Emphasis)

The letter of October 13, 2011, as referenced herein, stated as follows:

*“...the OCG **recommends**, in an effort to ensure that the situation does not hemorrhage any further, the UDC immediately terminates the arrangement with Bashco Trading Company Ltd. and advertise the property in keeping with the strictures and requirements of the Government of Jamaica Privatization Policy and Procedures.”*¹³³

The UDC responded by way of letter which was dated October 19, 2011, and advised as follows:

*“We are in the process of writing to Bashco’s Trading Company Attorney-at-Law requesting their acquiescence for us to terminate the contract, in order for us to be allowed to comply with the divestment process.”*¹³⁴

In light of the foregoing, the OCG published a Media Release on October 20, 2011, which commended the approach taken by the UDC to remedy the admitted breach in relation to the sale of the referenced property. The instant Media Release stated, *inter alia*, the following:

“The precedent that the UDC has set in its efforts to remedy its transgressions, augers well for the establishment of good governance best practices in public contracting in Jamaica. It is something that

¹³² Letter from the UDC’s former General Manager, Ms. Joy Douglas, addressed to Livingston, Alexander and Levy on October 18, 2011.

¹³³ Letter from the Office of the Contractor General to the UDC dated October 13, 2011.

¹³⁴ Letter from the UDC to the Office of the Contractor General dated October 19, 2011.



should be emulated by all Public Bodies, for in the final analysis the work of the OCG should not be about forcing Public Bodies into compliance with the relevant laws, but rather at securing their voluntary compliance with the said laws in the interest of the people and taxpayers of Jamaica.¹³⁵ (OCG Emphasis)

Having regard to the above mentioned statement, in which the OCG publicly commended the UDC for the steps that it had taken to abort the sale of the referenced property, the OCG was advised by the then UDC's Acting General Manager, Mr. Desmond Young, shortly thereafter that:

*"We refer your attention to the enclosed letter dated November 8, 2011 from the Attorney General's Chambers providing their opinion on how the Corporation ought to proceed...**The Chambers has opined that having read the Agreement, it would be ill-advised for the Corporation to terminate the Agreement once the Purchaser has performed its obligations in good faith and further, given that Ministry paper 34 is not a term of the Agreement, as the Corporation would be at risk of being sued for the breach of contract and possibly be liable for damages, costs and expenses.**"*¹³⁶ (OCG Emphasis)

¹³⁵ Office of the Contractor General Media Release, dated October 20, 2011.

¹³⁶ Letter from Mr. Desmond Young, Acting General Manager, UDC, dated November 10, 2011, addressed to the attention of the then Contractor-General.



In regard to the referenced opinion, Mr. Desmond Young provided the OCG with a copy of the Attorney General's opinion of November 8, 2011, which is referenced herein. The details of the opinion stated, *inter alia*, as follows:

“Under clause 13, Schedule, of the Agreement, the Vendor¹ has covenanted with the Purchaser² to inter alia after delivery of possession of the relevant land (upon completion)³ to the Purchaser to cause the name of the Purchaser to be returned to the appropriate Collector of Taxes as the Purchaser of the relevant land, subject to the Purchaser having performed its obligations.

In light of this provision once the Purchaser has performed its obligations in good faith it is not advisable for the UDC to terminate the Agreement as it could be sued for the breach of contract and liable for damages, costs and expenses, bearing in mind the purchase price and the purchaser's obligation to construct a commercial complex on the land under the Agreement; and that Ministry Paper 34 is not a term of the Agreement. We are instructed that the Purchaser paid the deposit on the purchase price in performance of its obligations under the Agreement.”¹³⁷

The OCG is also in possession of a letter dated November 2, 2011, which was addressed to the UDC by Livingston Alexander & Levy advising of potential legal action that would be taken if

¹³⁷ Letter from the Attorney General Chambers to the UDC, dated November 8, 2011.



the UDC fails to perform the terms and conditions therein. The referenced letter stated, among other things, the following:

“Our client has been following, with great interest, the saga of this transaction as it has been unfolding in the press.

We wish to remind you that our client, having concluded long and arm’s length negotiations with the UDC, as an enforceable contract for the purchase of the above mentioned property based on independent valuations from three (3) highly reputable appraisers. Our client has now been made to suffer financial and reputational damage by your persistent failure to complete the sale contemplated by the said contract by forwarding to us the documents requested in our letter to you of October 20, 2011.”¹³⁸

As it relates to the Office of the Prime Minister and its obligations in relation to the divestment of Government assets, Ms. Sonia Mitchell was asked the following question as outlined in the OCG’s requisition dated November 21, 2012:

“The OCG has received information which indicated that based upon information which came to the attention of Mr. Bruce Golding. In his capacity as the then Minister with Portfolio responsibility for the Divestment of Assets, he withdraw his non-objection to the sale of the 35 West Parade property to Bashco Trading Company

¹³⁸ Copy of letter from Livingston Alexander & Levy addressed to the UDC on November 2, 2011.



Ltd. and advised the Board of Directors to take the necessary steps to abort the sale. In light of the referenced information, please indicate whether you/were aware that this action was taken by Mr. Golding? If yes, please provide responses to the following questions:

- a) Please indicate the date and circumstances upon which you became aware of the said request;*
- b) The date upon which the request was made, if known;*
- c) Please state the name(s) and title(s) of any other UDC/GOJ Official(s)/Officer(s), who was/were also privy to such information;*
- d) The name(s) and title(s) of any other UDC /GOJ Official(s)/Officer(s), who was/were tasked with taking the necessary steps to abort the sale; and*
- e) Please also state what attempt(s), if any, were made by the Board of the UDC, and/or any other Officer(s)/Official(s) of the UDC and/or the GOJ, to abort the referenced sale, in keeping with the said request.¹³⁹*

¹³⁹ OCG's Requisition dated November 21, 2012 addressed to Ms. Sonia Mitchell, question #4.



In Ms. Sonia Mitchell's December 5, 2012 response to the OCG requisition of November 8, 2012, the following was noted:

"I cannot recall the sequence of events but I am aware that then Prime Minister Bruce Golding no longer supported the sale of 35 West Parade after it was brought to his attention that the applicable divestment procedures had not been faithfully followed. Please see my response to question 10 of 15 May 2012 response to OCG Requisition issued on 18 April 2012. You may wish to note that the UDC tried to withdraw from completing the sale but Bashco's Attorney's-at-Law responded that they would seek specific performance."¹⁴⁰ OCG
Emphasis

Additionally, the OCG sought to ascertain if there was a system in place to deal with the divestment of Government assets that were not approved by the Cabinet, as obtained in the case of the sale of 35 West Parade by the UDC. In this regard, the following question was directed to Ms. Sonia Mitchell in the OCG's requisition of November 21, 2012:

"Please indicate whether in your capacity as a Principal Director in the OPM, you are/were aware of the existence of any provision(s), to deal with properties which are not on the list of properties which are approved by the Cabinet for the divestment within a financial year, but which become the subject of an unsolicited proposal/offer to purchase? If yes, please provide full particulars

¹⁴⁰ Ms. Sonia Mitchell's December 5, 2012 response to OCG requisition dated November 21, 2012, response #4.



*of same and as well as any supporting documentation.*¹⁴¹

In answer to the above question, Ms. Sonia Mitchell in her December 5, 2012 response to the OCG's requisition of November 21, 2012, the following was stated:

*"I was not aware of the system which was in place for dealing with properties which were not on the list of properties approved by the Cabinet for divestment within a financial year as, from a policy perspective, this type of detail regarding divestments would have been within the purview of the Planning and Development Division of the Office of the Prime Minister, and, from an operational perspective, it would have been the purview of the Development Bank of Jamaica."*¹⁴²

The OCG is also in possession of a Memorandum dated June 9, 2011, which was captioned "1983 West Kingston Development Project – Policy Change and Sale of Land by the Urban Development Corporation." The said Memorandum was addressed to the Prime Minister, the Honourable Bruce Golding, by Ms. Sonia Mitchell, Principal Director. The referenced memorandum stated as follows:

"You may recall receiving a submission from the Urban Development Corporation seeking your non-objection to the sale of land at 35 West Beckford Street, Kingston to Bashco Trading Company Limited. The Board of the Urban Development Corporation was advised at its meeting held 18th

¹⁴¹ OCG's Requisition dated November 21, 2012 addressed to Ms. Sonia Mitchell, question #10.

¹⁴² Ms. Sonia Mitchell December 5, 2012 response to OCG's requisition dated November 21, 2012, response #10.



May, 2011 that you had given your non-objection to this sale. I nonetheless wish to provide additional information regarding this proposal for your records.

During the discussion, I expressed concerned that a decision to sell this property would effectively result in the abandonment of an aspect of the 1983 Market Plan without there being an examination of the plan, the extent to which it had been implemented and expenditure involved, and the impact, if any, of abandoning this aspect of the Plan. These concerns were acknowledged and an undertaken given to address the Board on these issues at its May meeting.”¹⁴³

¹⁴³ Memorandum dated June 9, 2011, which was addressed to the Honourable Prime Minister, Bruce Golding, by Ms. Sonia Mitchell, Principal Director, Office of the Prime Minister.



Withdrawal of the Honourable Bruce Golding's No-objection to the Sale of the Property Located at 35 West Parade

In an effort to ascertain the overall role of the then Prime Minister, the OCG by way of a Requisition dated September 28, 2012, directed the following question to the Honourable Bruce Golding:

“Please provide full particulars of any meeting(s) and/or discussion(s) in which you have been solely involved and/or correspondence to which only you are privy which was had with and/or exchanged with any person and/or entity who/which had expressed an interest in the purchase of the property which is located at 35 West Parade, Kingston. Your response must include the name(s) and title(s) of the person(s) with whom such meetings and/or discussions were held and with whom correspondence was exchanged and the date(s) on which same was done.”¹⁴⁴

In reply to the above question, the then Prime Minister, the Honourable Bruce Golding, responded on October 11, 2012, to the said OCG's requisition and noted the following:

*“I cannot provide the full particulars requested as I currently have no records that would enable such specificity. **I recall receiving correspondences or copies thereof from persons of their attorneys objecting to the sale on the grounds that they previously expressed interest or made offers for***

¹⁴⁴ OCG's Requisition dated September 28, 2012 addressed to Mr. Bruce Golding, the then Prime Minister of Jamaica, question #15.



the purchase of the properties and had not been given a fair opportunity to pursue that interest. I also recall that Mr. Andrew Warwar verbally indicated to me that a member of his family was among those so affected. I discussed these concerns with the chairman of the Board, Mr. Wayne Chen, who advised that he had also been made aware of these interests to which the Board was not made privy at the time when it approved the sale. It was this development which led to my decision to withdraw the non-objection and the efforts by the Board to have the sale aborted.¹⁴⁵

(OCG Emphasis)

¹⁴⁵ Mr. Bruce Golding's October 11, 2012 signed response to the OCG statutory Requisition of September 28, 2012, response #15.



Conflict of Interest

According to the then applicable GPPH (2010), the OCG makes reference to Section 4.2 of the GPPH which states, *inter alia*, as follows:

“All personnel involved in the procurement process are expected to observe the GOJ Code of Conduct for Civil Servants outlined in the Staff Orders. They are expected to be free from interests or relationships that are actually or potentially detrimental to the best interests of the Government, and shall not engage or participate in any transaction involving a company, its affiliates, divisions or subsidiaries, in which they have even minor interests.”¹⁴⁶

Further, the GPPH (2010) in Section 4.2.1 outlines the following directives in relation to the administration of a declaration that should be observed:

“It is the duty of all staff and any other Public Officers and officials directly or indirectly involved in the procurement process – especially in the preparation of bidding documents; evaluation; contract negotiations; contract management; and payments – to declare any potential conflicts of interest. A conflict of interest will arise when the individual has a direct or indirect relationship with a contractor, which may affect or might reasonably

¹⁴⁶ Government of Jamaica Handbook of Public Procurement Procedures (2010), Section 4 (4.2). Pg. 18.



be deemed by others, to affect impartiality on any matter related to his/her duties.¹⁴⁷

In addition to the abovementioned procedural directives, it is stated in the said applicable GPPH (2010) that a conflict of interest exists when GOJ employees involved in the procurement process are in contravention of the under-mentioned applicable stipulations:

- a) *“have an outside interest that materially encroaches on time or attention that should be devoted to the affairs of GoJ; and*
- b) *have a direct or indirect interest in, or relationship with an outsider that is inherently unethical, or who it might be implied or construed could make possible personal gain due to his/her ability to influence dealings or otherwise inhibit the impartiality of the employee’s judgment.”¹⁴⁸*

In regard to the applicable sections of the GPPH (2010), the OCG in its requisition directed to Mr. Gassan Azan on November 18, 2011 asked, *inter alia*, the following question:

“Do you know, or have you had any personal, business or other relationships with any member(s) of the Board of Directors of the UDC or any Official/Officer or Employee of the GOJ and/or the UDC (former or present)? If yes, please state the following:

¹⁴⁷ Government of Jamaica Handbook of Public Procurement Procedures (2010), Section 4.2.1, pg. 18.

¹⁴⁸ Government of Jamaica Handbook of Public Procurement Procedures (2010), Section 4.2.1, pg. 19.



- a. *The full name (s) and title(s) of the individual(s) and his/her relationship with the UDC and/or the GOJ;*
- b. *The length of time that you have known the individual(s); and*
- c. *A full description of the nature of the relationship between yourself, Bascho Trading Company Limited and the individual(s). ”¹⁴⁹*

In compliance with the mentioned request, Mr. Gassan Azan, in his response to the OCG stated the following:

“Yes

- a) *Mr. Wayne Chen – Chairman UDC – Over 20 years (friend)*
- b) *Mr. Robert Russell – Director UDC – Over 20 years (friend)*
- c) *Mr. Michael Subratie –Director UDC – 10 years (acquaintance)*
- d) *Mr. Michael Ammar – Director UDC – 30 years (friend)*
- e) *Dr. Cleo Taylor – Director UDC – 20 years (friend)*
- f) *Mayor Desmond McKenzie – 30 years (friend) ”¹⁵⁰*

¹⁴⁹ OCG’s November 18, 2011 requisition directed to Mr. Gassan Azan, question #25.

¹⁵⁰ Mr. Gassan Azan November 21, 2011 response to the OCG’s requisition dated November 23, 2011, response #25.



Akin to the above mentioned question directed to Mr. Gassan Azan, the OCG also directed a similar question to former Directors of the UDC Board and other individuals who effectuated the sale approval of 35 West Parade to Bashco Trading Company Limited. The general question asked in the OCG's Requisitions of the respective individuals is hereunder mentioned:

“Do you know, or do you have, or have you had a personal, business or other relationship with, any of the Principals, Shareholders, Directors, Partners, Officers and/or Employees of Bashco Trading Company Limited and/or its nominee, which purchased the property which is located at 35 West Parade? If yes, please indicate:

- a) The full name of the individual and his/her relationship with Bashco Trading Company Limited and/or its nominee;*
- b) The length of time that you have known the individual; and*
- c) A full description of the nature of the relationship between yourself and the individual.”¹⁵¹*

The OCG has noted hereunder the responses which were provided by the persons to whom Requisitions were sent:

1. Mr. Wayne Chen, former UDC Board Chairman - *Response “No”*¹⁵²

¹⁵¹ OCG's requisitions directed to Mr. Michael Subratie, Mr. Michael Ammar, Dr. Cleo Taylor, Mr. Wayne Chen and Mr. Robert Russell.

¹⁵² Mr. Wayne Chen December 14, 2011, response to the OCG's requisition dated November 23, 2012, response #38.



2. Mr. Robert Russell, former UDC Board Director – *Response:*

a) *“I have not had any personal, business or other relationship(s) with any of the Principals, Shareholders, Partners, Officers and/or Employees of Bashco Trading Company Limited and/or its nominee, which purchased the property which is located at 35 West Parade.*

b) *However I have known Mr. Gassan Azan for approximately 20 years.*

c) *The nature of the relationship between Mr. Gassan Azan is that of acquaintances”¹⁵³*

3. Mr. Michael Subratie – former Board Director: *Response: “No”¹⁵⁴*

4. Mr. Michael Ammar, former Deputy Board Chairman: *Response:*

“Yes, I have a personal relationship of a purely social nature with:

a) *Mr. Gassan Azan, principal of Bashco Trading Co. Ltd.*

¹⁵³ Mr. Robert Russell’s May 21, 2012, signed response to the OCG’s requisition dated April 19, 2012, response #23.

¹⁵⁴ Mr. Michael Subratie’s May 4, 2012 response to the OCG’s requisition dated April 19, 2012, response #23.



- b) *I have known Mr. Azan and his family for over 35 years. I have also know [sic] Mr. Michael Mahfood and Mrs. Maritza Warwar for over 30 years in a social capacity.*
- c) *My relationship with Mr. Azan is one solely of a personal and social nature.*¹⁵⁵

5. Dr. Cleo Taylor, former Board Director, *Response:*

“Yes.

(a) I know Mr. Gassan Azan. He appears to be THE or one of the principals of Bashco Trading Co. Ltd.

(b) I have known the Azan family for approximately 40 years.

*© The nature of the relationship is a casual personal relationship.*¹⁵⁶

In relation to Mr. Gassan Azan’s response indicated above, the OCG observes that the response is inconsistent with the responses provided by the following individuals:

1. Mr. Wayne Chen;
2. Mr. Robert Russell; and
3. Mr. Michael Subratie.

The referenced individuals stated that they had no relationship with the Principals, Shareholders, Directors, Partners, Officers and/or Employees of Bashco Trading Company Limited and/or its

¹⁵⁵ Mr. Michael Ammar’s May 17, 2012 signed response to the OCG’s requisition dated April 19, 2012, response #23.

¹⁵⁶ Dr. Cleo W. Taylor’s May 31, 2012 response to the OCG’s requisition dated April 19, 2012, response #23.



nominee. However, Mr. Gassan Azan indicated that they have been friends with the former Board Members for over twenty (20) years, which was up to the time of the sale of 35 West Parade. Of note, Mr. Gassan Azan has been the principal of Bashco Trading Company Limited since its incorporation on May 21, 1990.¹⁵⁷

In relation to the foregoing, Ms. Ann Marie Rhoden in her response to the OCG's statutory Requisition dated April 19, 2012, noted the following:

*"There was no declaration of conflict of interest by any director. However one director admitted that he had knowledge of the area and that it would be appropriate for the UDC to retain ownership of a section of the Beckford Street area. Except for this director I am not aware that any other Director knew Mr. Azan, either personally or professionally."*¹⁵⁸

In relation to the foregoing, it is also instructive for the OCG to note that Mr. Robert Russell in his response to the OCG's requisition dated April 12, 2012, which sought to determine whether there were any irregularities and/or any form of corrupt activities undertaken, noted, *inter alia*, that:

"To my knowledge no irregularity(ies) and/or any form of corrupt activities has/have been undertaken by me and/or any Public Official(s), Officer(s) and/or anyone acting on behalf of the GOJ/UDC and any member of the political directorate in regard to the negotiations for the sale of the

¹⁵⁷ The Companies Office of Jamaica, <https://www.orcjamaica.com/> retrieved on April 20, 2015.

¹⁵⁸ Ms. Ann Marie Rhoden's June 27, 2012 response to the OCG's requisition dated April 19, 2012, response # 4.



property located at 35 West Parade to Bashco Trading Company.”¹⁵⁹

The OCG in an effort to ascertain whether the then General Manager, Ms. Joy Douglas was aware of any existing relationship(s) in relation to the Mr. Gassan Azan and then members of the UDC’s Board, requested that Ms. Joy Douglas respond to the following question in its April 18, 2012 statutory Requisition:

“1. Were you aware of any subsisting relationship(s), whether business, personal or otherwise, between Mr. Gassan Azan and/or any other person(s) acting on behalf of Bashco Trading Company Ltd., and any or all of the following person(s), during the period in which the sale of the referenced property was being negotiated and/or the approval of the Board of Directors, at the UDC was being sought?

a) Mr. Wayne Chen – the then Chairman, of the Board, UDC;

b) Mr. Robert Russell – the then Director, of the Board, UDC;

c) Mr. Michael Subratie - the then Director, of the Board, UDC;

d) Mr. Michael Ammar - the then Director, of the Board, UDC;

¹⁵⁹ Mr. Robert Russell’s May 21, 2012 response to the OCG’s requisition dated April 19, 2012, response #31.



e) Dr. Cleo Taylor - the then Director, of the Board, UDC; and

f) Mayor Desmond McKenzie - the then Director, of the Board, UDC”¹⁶⁰

In response to the above mentioned requisition, Ms. Joy Douglas, in her May 2, 2012 response to the OCG, noted the following:

- a) I am not aware of any subsisting relationship(s), whether business, personal or otherwise, between Mr. Gassan Azan and/or any other person(s) acting on behalf of Bashco Trading Company Ltd., and Mr. Wayne Chen, the then Chairman, of the Board, UDC.*
- b) I am not aware of any subsisting relationship(s), whether business, personal or otherwise, between Mr. Gassan Azan and/or any other person(s) acting on behalf of Bashco Trading Company Ltd., and Mr. Roberts Russell, the then Director, of the Board, UDC.*
- c) I am not aware of any subsisting relationship(s), whether business, personal or otherwise, between Mr. Gassan Azan and/or any other person(s) acting on behalf*

¹⁶⁰ The OCG’s statutory Requisition directed to Ms. Joy Douglas on April 18, 2012, question #1.



of Bashco Trading Company Ltd., and Mr. Michael Subratie, the then Director, of the Board, UDC.

d) I am not aware of any subsisting relationship(s), whether business, personal or otherwise, between Mr. Gassan Azan and/or any other person(s) acting on behalf of Bashco Trading Company Ltd., and Mr. Michael Ammar, the then Director, of the Board, UDC.

e) I am not aware of any subsisting relationship(s), whether business, personal or otherwise, between Mr. Gassan Azan and/or any other person(s) acting on behalf of Bashco Trading Company Ltd., and Dr. Cleo Taylor, the then Director, of the Board, UDC.

f) I am not aware of any subsisting relationship(s), whether business, personal or otherwise, between Mr. Gassan Azan and/or any other person(s) acting on behalf of Bashco Trading Company Ltd., and Mayor Desmond McKenzie, the then Director, of the Board, UDC.”¹⁶¹

¹⁶¹ Ms. Joy Douglas’ May 2, 2012 response to the OCG’s requisition dated April 18, 2012, response #1.



Individuals Present at the UDC Board Meeting, held on April 28, 2011¹⁶²

The referenced table below lists the names of the Board of Directors and other attendees who were in attendance at the UDC's Board Meeting on April 28, 2011, at which the sale of the property located at 35 West Parade to Bashco Trading Company Limited, was approved.

Table 5

Name	Title
<i>Wayne Chen</i>	<i>Board Chairman</i>
<i>Kathryn Phipps</i>	<i>Deputy Board Chairman</i>
<i>Joy Douglas</i>	<i>Director/General Manager</i>
<i>Cleo Taylor</i>	<i>Board Director</i>
<i>Robert Russell</i>	<i>Board Director</i>
<i>Michael Subratie</i>	<i>Board Director</i>
<i>Daniella Gentles</i>	<i>Board Director</i>
<i>Michael Ammar Jr.</i>	<i>Board Director</i>
<i>Desmond Young</i>	<i>Board Director</i>
<i>Ann Marie Rhoden</i>	<i>Board Director</i>
<i>Lennox Elvy</i>	<i>Board Director</i>
<i>Sonia Mitchell</i>	<i>Board Director</i>
<i>Vivion Scully</i>	<i>Board Director</i>
<i>Anna Young</i>	<i>Company Secretary</i>
<u>INVITEE:</u>	
<i>Basil Parker</i>	<i>External Counsels</i>
<i>Angela Robertson</i>	<i>Livingston, Alexander & Levy</i>
<i>Marcia Scott-Golding</i>	<i>DGM - HRMA</i>
<i>Patrick Stanigar</i>	<i>Chief Architect</i>
<u>ABSENT:</u>	
<i>Desmond McKenzie (Absent)</i>	<i>Board Director</i>
<i>Anthony Walker (Absent)</i>	<i>Board Director</i>

¹⁶² The Urban Development Corporation Board Meeting Minutes of April 28, 2011.



The OCG notes that all UDC Board Directors, with the exception of Mr. Desmond McKenzie and Mr. Anthony Walker were present at the UDC's April 28, 2011 Board Meeting in which the approval was granted for the sale of the property located at 35 West Parade.



Applicable Policies and Legislation in relation to the Divestment of the Property Located at 35 West Parade by the GOJ and/or the UDC:

1. The UDC Estate Management Policy and Guidelines (2003);
2. The UDC Real Estate Divestment (SALE) Procedures;
3. The Urban Development Corporation Act (1968);
4. The Government of Jamaica Privatization Policy and Procedures - Ministry Paper No. 34; and
5. The UDC Real Estate Divestment (Sale) Procedure (2004)

In relation to the overall management of lands and/or properties owned by UDC, the UDC is mandated to abide by the principles outlined in its Estate Management Policy and Guidelines (2003).¹⁶³ The applicable tenets are as follows:

1.0 GENERAL

“The Urban Development Corporation has under its jurisdiction, significant land holdings and other real property in its project areas across the country. These properties are held in trust on behalf of the nation and as such, must be managed in the nation’s interest.” (OCG Emphasis)

The Corporation shall therefore seek to manage these assets under its control in accordance with the pertinent statutory and regulatory requirements for such real property.

The UDC is committed to good stewardship of the land and other real property in its ownership and

¹⁶³ Document No.: UDC. EM.POL.OO1.00, issued date: 2003 June 9.



control, to maintaining good relationships with the legitimate occupiers of the properties, communities and the designated/project areas in which they are situated.”¹⁶⁴ (OCG Emphasis)

In meeting the above listed objectives, the Policy mandates that the UDC should “...encourage awareness of best practices among employees, managing agents, contractors/consultants and legal occupiers of UDC properties”.¹⁶⁵ In addition, Section 5.2.2 of the Estate Management Policy and Guidelines documents the following:

*“All land to be divested within the context of the Corporation’s development and corporate plans, for the specific areas and in the interest of national development, will be determined by the land use identified in the development plan/s as approved by the Minister responsible for the UDC. Prices will be determined by the existing or potential use of the land.”*¹⁶⁶

As outlined in the foregoing sections, the disposal and/or divestment of lands owned by the Corporation should comply with the principles outlined therein. To this end, and as outlined in the subsequent Policy directive, the Minister who has been so entrusted with the crucial governance of the UDC ought to give the necessary approvals. More specifically, the Policy provides the following guidelines:

Section 5.2.4:

“Where land has been zoned for particular uses in a development plan for UDC, this information is

¹⁶⁴ The UDC Estate Management Policy and Guidelines/Effective date June 9, 2003, Section 1.0, pg. 1.

¹⁶⁵ The UDC Estate Management Policy and Guidelines/Effective date June 9, 2003, Section 5.2.2, pg. 1.

¹⁶⁶ The UDC Estate Management Policy and Guidelines/Effective date June 9, 2003, pg. 8.



public. Disposal of these properties will be considered in accordance with the zoning.¹⁶⁷
(OCG Emphasis)

Section 5.2.5:

“Land is to be divested in a manner that meets the highest test of transparency and integrity. Standardised procedures and guidelines for divestment will be reviewed in light of Government’s Divestment Policy.”¹⁶⁸ (OCG Emphasis)

Section 5.2.6:

“The Corporation will consider offers for the purchase of land from individuals/investors. The disposal of land from direct offers will not be subjected to any tendering procedures, except in circumstances where the Corporation deems this necessary. In all cases however, it will not result in the publication or disclosure of any individual investor’s ideas/proposal for use.”¹⁶⁹ (OCG Emphasis)

Section 5.2.7:

“The use and development for which the land is divested is subject to the approval of the relevant government agencies, even when it is already

¹⁶⁷ The UDC Estate Management Policy and Guidelines/Effective date June 9, 2003, pg. 9

¹⁶⁸ The UDC Estate Management Policy and Guidelines/Effective date June 9, 2003, pg. 9

¹⁶⁹ The UDC Estate Management Policy and Guidelines/Effective date June 9, 2003, pg. 9



legally zoned for the proposed use. Such use should be stated clearly in the sales/lease agreements and be endorsed on the Certificates of Title with necessary conditions.¹⁷⁰ (OCG Emphasis)

With regard to the applicable sections of the UDC Estate Management Policy and Guidelines, the OCG deems it pertinent to note that the actions undertaken by the UDC to divest the property located at 35 West Parade were not representative of a process that meets the highest test of transparency and integrity as mandated in Section 5.2.5. In regard to the referenced Policy, Section 5.2.6., gives the UDC the autonomy to divest lands without same being subjected to a tender process, which runs counter to the then applicable Ministry Paper #34.

The UDC Estate Management Policy and Guidelines: Vested Responsibilities in key UDC Officers

In order to ensure compliance and application of the Guidelines, the Policy devotes key responsibilities in the following UDC officers as outlined in the respective Sections:

Section 7.1:

*“The Board of Directors is responsible for establishing the Corporation’s Estate Management Policy. The authority to maintain, manage, purchase, sell, lease or grant partial interest in real property is vested in the UDC Board.”*¹⁷¹

Section 7.2:

“The General Manager and the Executive Management Team have responsibility for

¹⁷⁰ The UDC Estate Management Policy and Guidelines/Effective date June 9, 2003, pg. 5

¹⁷¹ The UDC Estate Management Policy and Guidelines/Effective date, June 9, 2003, pg. 12



*executing the Estate Management Policy in accordance with the authority delegated by the Board.*¹⁷²

In addition to the responsibilities that have been entrusted in the UDC Board of Directors, the OCG also considers it necessary to note that Section 7.9 of the Policy outlines that:

Section 7.9:

*“It is the responsibility of all officers of the Corporation to confirm with the Estate Department, the status of ownership, title and any encumbrances relating to all lands which are to be developed.”*¹⁷³

Given this overall vested responsibility in all UDC officers and Board of Directors, it is obvious that the Policy places significant importance on undertakings having to do with land development. As such, the Policy further dictates the following:

Section 8.1.1:

“In order to ensure transparency and accountability, the Corporation will advertise all the properties to be divested, except in cases where direct offers are received from private investors.”¹⁷⁴ (OCG Emphasis)

¹⁷² The UDC Estate Management Policy and Guidelines/Effective date, June 9, 2003, pg. 12.

¹⁷³ The UDC Estate Management Policy and Guidelines/Effective date, June 9, 2003, pg. 13.

¹⁷⁴ The UDC Estate Management Policy and Guidelines/Effective date, June 9, 2003, pg. 13.



Section 8.1.2:

“The provisions of the Development Plan for the respective areas must be adhered to when decisions are being taken to divest properties.”¹⁷⁵

Based on Section 8.1.1, of the referenced Policy/Guidelines, it is noted that in cases where the UDC receives direct offers from private investors, it has the autonomy to divest properties without same being advertised. As such, the referenced clause in the UDC’s policy is in contravention of the provisions of the then applicable GOJ Privatization Policy/Ministry Paper #34, which mandates that Government owed assets which are to be privatized should be advertised. In particular, the principles as outlined in Ministry Paper #34 are as follows:

- **“...the selection of items to be privatized will be announced to the public by way of advertisements.**
(OCG Emphasis)

- **the concept of market-economic valuation will apply in establishing the disposal price and more than one valuation must be obtained;**
(OCG Emphasis)

- **transactions are to be arms-length and equal opportunity will be given to all except where special foreign exchange requirements are a feature of privatization or where**

¹⁷⁵ The UDC Estate Management Policy and Guidelines/Effective date, June 9, 2003, pg. 13.



special arrangements are being made for employees;

- *as far as possible, parties with likely conflicting interests will not be invited to assist the process in any way.*
- **public announcements will be made when an item is privatized.**¹⁷⁶

The OCG's Investigation also reveals that the property located at 35 West Parade did not appear on the approved lists of GOJ properties to be divested. In order to ascertain further clarification on the instant matter, the OCG required Ms. Sonia Mitchell in a requisition dated November 21, 2012, to respond to the following question:

*“...please indicate what measures were put in place by the Office of the Prime Minister, as the office with portfolio responsibility to ensure that all applicable legal requirements, government policies or regulations, or any other directives in regard to the divestment of government owned assets, were adhered to by all parties who/which were involved in the referenced sale, including: a) ‘The Enterprise Team’, b) Members of the Board of Directors of the UDC, and c) any other Officers(s)/Official(s) of the UDC and/or the GOJ.”*¹⁷⁷

¹⁷⁶ Government of Jamaica Privatization Policy and Procedure/Ministry Paper #34 (1991).

¹⁷⁷ OCG statutory Requisition addressed to Ms. Sonia Mitchell on November 21, 2011, question #2.



In response to the above mentioned question, Ms. Sonia Mitchell in her response to the OCG on December 5, 2012 stated the following:

“The sale of 35 West Parade was handled by the UDC at an operational level and hence there was no reference to the Office of the Prime Minister at a policy level which would have required the involvement of the Ministry given that the Ministry provides guidance to its agencies with respect to policy matters. During the period of this sale, the entity with direct responsibility for divestments of specified Government assets was the Development Bank of Jamaica.”¹⁷⁸

Further and in regard to Ministry Paper #34, the OCG’s requisition directed to Mr. Wayne Chen on November 23, 2011 requested a response to the following question:

“Was the Board of Directors of the UDC aware of Ministry Paper # 34 – “Privatization Policy and Procedures”? If yes, please indicate the date on which the Board of Directors became aware of the referenced document and whether same has been used, at any time, to inform the divestment of any property which was sold by the UDC.”¹⁷⁹

¹⁷⁸ Ms. Sonia Mitchell’s December 5, 2012 response to the OCG’s requisition dated November 21, 2012, response # 2.

¹⁷⁹ OCG statutory Requisition addressed to Mr. Wayne Chen on November 23, 2011, question #8.



Mr. Wayne Chen in his response of December 14, 2011 noted, *inter alia*, the following:

“Generally, the Board of Directors was not aware of Ministry Paper No. 34. The Board became aware of the Paper when the Office of the Contractor General questioned the referenced sale and referred to the Paper. The Corporation received Ministry Paper No. 34 on October 3, 2011 from the OCG and the Board became aware of the document shortly thereafter, through the General Manager.

The specifics of Ministry Paper No. 34 was not used during the tenure of the current Board to inform the sale of any property. However, the Board was generally guided by the principles of transparency save and except that the in house Divestment manual had provided for unsolicited proposals as an exception.”¹⁸⁰ (OCG Emphasis)

Ms. Joy Douglas provided the following response in relation to a similar question that was posed by way of an OCG requisition:

“...I became aware of Ministry Paper #34 on September 30, 2011 when I received the first letter from the Office of the Contractor General dated September 30, 2011. A search was made of the UDC’s records and a copy could not be found. I also contacted former key UDC personnel, Mrs.

¹⁸⁰ Mr. Wayne Chen’s December 14, 2011 response to the OCG’s requisition dated November 23, 2011, response # 8.



*Vivalyn Downer-Edwards former Legal Counsel/Company Secretary ...who indicated that she was not aware of the Ministry Paper”.*¹⁸¹ (OCG Emphasis)

In like manner, the OCG in its requisition of April 18, 2012 directed the following question to Mr. Patrick Stanigar in regard to the said Ministry Paper:

*“Were you, and/or any Officers(s)/Official(s) of the UDC, in particular those who are vested with the substantive responsibility of receiving, reviewing, evaluating and/or managing proposals for the sale and/or divestment of the properties/assets, which are held by the UDC, aware of Ministry Paper #34 –“Privatization Policy and Procedures”? If yes, please indicate the date(s) on which you, as well as the named Officer(s)/Official(s) of the UDC, became aware of the referenced document and whether same has been used, at any time, to inform the divestment of any property which was sold by the UDC.”*¹⁸²

In response to the referenced question, Mr. Patrick Stanigar, noted the following in his May 1, 2012 signed response to the OCG:

*“I am not familiar with the document nor am I vested with responsibility in this area.”*¹⁸³

¹⁸¹ Ms. Joy Douglas’ January 17, 2012 response to the OCG’s requisition dated November 23, 2011, response #7.

¹⁸² OCG statutory Requisition addressed to Mr. Patrick Stanigar on April 18, 2012, question # 8.

¹⁸³ Mr. Patrick Stanigar’s May 1, 2012 response to the OCG’s requisition dated April 18, 2012, response #8.



Additionally, the OCG in a bid to ascertain whether Ms. Sonia Mitchell was aware of Ministry Paper # 34 posed the following question by way of its statutory Requisition dated November 21, 2012:

“Ministry Paper # 34, entitled Privatization Policy and Procedures, section No. 6, provides that, “The Office of the Prime Minister is responsible for developing policies and strategies for submission to the Privatization Committee and Cabinet. It Monitors and review the programme and recommends the necessary adjustments.

In the case of the captioned matter, please state whether you were aware of any policy/(ies) and/or strategy/(ies), which was/were developed by the Office of the Prime Minister, to ensure that all relevant procedures were complied with, and that all information which is deemed necessary to assist the Board of Directors in making an informed decision, in approving such sales, was/were made available to the Board of Directors, prior to advancing to the next stage of obtaining a non-objection’ from the Portfolio Minister.”¹⁸⁴

In response to the question stated above, Ms. Sonia Mitchell in her response to the OCG dated December 5, 2012 stated the under mentioned:

“I am aware that the Office of the Prime Minister routinely advises agencies within its portfolio of policies, policy developments and relevant

¹⁸⁴ OCG statutory Requisition addressed to Ms. Sonia Mitchell on November 21, 2011, question #9.



procedures...In light of the then Chairman's and then General Manager's participation on the UDC Enterprise Team, their guidance regarding another applicable policy informed decisions of the Board regarding this type of matter."¹⁸⁵

In addition to the issues that were raised and investigated by the OCG in relation to Ministry Paper #34 and the role of the Portfolio Minister, the OCG in its statutory Requisition dated September 28, 2012 directed a Requisition to Miss Onika Miller, then Permanent Secretary, Office of the Prime Minister as follows:

"Ministry Paper #34, entitled Privatization Policy and Procedures, section No. 6, provides that, 'The Office of the Prime Minister is responsible for developing policies and strategies for submission to the Privatization Committee and Cabinet. It Monitors and review the programme and recommends the necessary adjustments.'"

In the case of the captioned matter, please state what policy, if any, was/is in place to ensure that all relevant procedures have been complied with, and all information which is deemed necessary to assist the Board of Directors, in making an informed decision, in approving the sale, was made available to the Board of Directors, prior to advancing to the next stage of obtaining a 'non-objection'."¹⁸⁶

¹⁸⁵ Ms. Sonia Mitchell's December 5, 2012 response to the OCG's requisition dated November 21, 2012, response #9.

¹⁸⁶ OCG statutory Requisition addressed to Miss Onika Miller on September 28, 2012, question # 5.



Miss Onika Miller, in her response of October 22, 2012 indicated the following:

“To the best of my knowledge, the Government has relied on Ministry Paper #34 to guide divestment/privatization, and in this regard, the active involvement of the DBJ as the main implementing agency to ensure compliance with policies and procedures.

Section 19 of the UDC Act sets out the responsibility of the Board and management and Portfolio Minister in the sale, lease and/or rental of property owned by the UDC. The Development Bank of Jamaica (DBJ) succeeded the National Investment Bank of Jamaica (NIBJ) as the central implementing agency for privatisation and/or divestment of Government Assets which are listed on the Government’s list. I am also aware that in or about 2008, the UDC and DBJ formed a UDC Enterprise Team to have general oversight of the privatisation of the UDC’s assets. As the Government’s central implementing agency for privatisation and/or divestment, the DBJ was tasked to divest the non-core assets of the UDC.

The Chairman and General Manager of the UDC and the Chairman and Managing Director of the



DBJ were members of this UDC Enterprise Team...¹⁸⁷

Mr. Milverton Reynolds, Managing Director of the Development Bank of Jamaica Limited stated following, which highlights his non-involvement of himself in divestment of the property in question:

“With regard to the referenced transaction, I wish to state for the record that:

- I had no personal or professional involvement, either in my personal capacity or as a member of the UDC Enterprise Team, in the divestment of the properties located at 35 West Parade and 1 Beckford Road/Street;*
- The DBJ, had no involvement in the divestment of the properties located at 35 West Parade and 1 Beckford Road/Street;*
- The UDC Enterprise Team was not mandated to oversee and consequently had no involvement in the divestment of the properties located at 35 West Parade and 1 Beckford Road/Street.¹⁸⁸*

The following statement was also made by Mr. Milverton Reynolds in relation to the Enterprise Team:

¹⁸⁷ Miss Onika Miller October 22, 2012 response to the OCG’s requisition dated September 28, 2012, response # 5.

¹⁸⁸ Mr. Milverton Reynolds’ December 21, 2012 response to the OCG requisition dated November 21, 2012.



“Since the inception of the ET, the UDC has been represented on the ET by either the UDC’s General Manager, Chairman of the UDC’s Board or a UDC Board director. The UDC’s representatives on the ET have included the following persons: Mr. Laurie Vantor (UDC Board Director), UDC’s General Manager – formally, Ms. Joy Douglas and Mr. Desmond Young; currently, Mr. Desmond Malcolm, and the UDC’s Chairman, formally, Mr. Wayne Chen; and currently, Senator K.D Knight since 2012.¹⁸⁹

The UDC Real Estate Divestment (Sale) Procedure (2004): Applicable Sections in relation to the Divestment of Lands owned by the UDC:

In relation to the applicable Sections and Sub-sections of the UDC Estate Management Policy (2003), the UDC Real Estate Divestment (SALE) Procedure (2004) manual gives clear guidelines in relation to the purchasing, leasing or selling of properties owned by the UDC. In relation to the applicable Sections, the OCG hereby, makes reference to the following:

Section 3.1 Land Evaluation Committee (LEC):

“Land Evaluation Committee (LEC) consists of persons from various Departments and disciplines within the UDC. The Committee is chaired by the Chief Legal Counsel. It is the Committee’s role to review and deliberate on all submissions received from members of the public for the purchase, lease and sale of property on behalf of the UDC and

¹⁸⁹ Mr. Milverton Reynolds’ December 21, 2012 response to the OCG’s requisition dated November 21, 2012, response # 2C.



provide recommendations to Executive Management.”¹⁹⁰

Section 4.2 (i, ii, iii):

Having regard to the foregoing section, whenever a decision is taken by the Corporation to divest property, the UDC Real Estate Divestment (SALE) Procedure mandates that the following procedures be undertaken:

- i. “Consult development or land use plan for the area, to ensure property to be divested is in keeping with the plans for the area.*
- ii. Confer with Planning Divestment where no plans exist for the area to determine appropriate land use.*
- iii. Prepare terms and conditions to guide negotiations for sale and send to the Executive Chairman and or the General Manager for approval.*”¹⁹¹

Section 4.4 (iii):

*“Advice the LEC and Estate Manager of the selection made.”*¹⁹²

Section 4.5 (IV):

“Make a preliminary offer/counter offer to the prospective purchaser outlining Terms and

¹⁹⁰ The UDC Real Estate Divestment (Sale) Procedure, effective January 16, 2004, Section 3.1, pg. 1.

¹⁹¹ The UDC Real Estate Divestment (Sale) Procedure, Effective January 16, 2004, Section 4.2.(i), (ii) and (iii), pg. 2

¹⁹² The UDC Real Estate Divestment (Sale) Procedure, Effective January 16, 2004, Section 4.4.(iii), pg. 3



Condition of sale and subject to the approval of the Board of Directors.”¹⁹³

The Urban Development Corporation Act (1968): applicable Sections in relation to the divestment of properties in ‘Zoned Areas’:

Based on the West Kingston Development Document, the OCG’s Investigation reveals that the property located at 35 West Parade is located in an area that is ‘zoned for road widening’, and as such, the following sections of the UDC Act (1968) should have been made +applicable to the referenced sale:

Section 5 (1) of the UDC Act states as follows:

*“The Minister may, after consultation with the chairman, give the Corporation directions of a general character as to the policy to be followed in the performance of its functions in relation to matters appearing to him to concern the public interest.”*¹⁹⁴

In relation to Section 15 (1), the UDC Act outlines the steps that should be taken by the UDC in relation to informing local authority/ies of proposed development plans that are under consideration by the Corporation. The referenced Section states as follows:

“The Corporation shall, as soon as practicable after a designation order has been made, furnish every local authority within whose area the relevant designated area or any part thereof is situated with a plan of development for such designated area and a statement, both of which together give particulars in regard to-

¹⁹³ The UDC Real Estate Divestment (Sale) Procedure, Effective January 16, 2004, Section 4.5.(iv), pg. 3

¹⁹⁴ The Urban Development Act (1968), Section 5(1), pg.5



(a) the manner in which such designated area will be laid out and the land therein used and, in particular, the land intended to be used for the provision respectively of buildings, roads and open spaces;

(b) the approximate number and nature of the buildings proposed to be constructed;

(c) particulars relating to water supply, drainage and sewage disposal, and request each such local authority to furnish the information required in accordance with subsection (2), before a specified day.”¹⁹⁵

Section 15 (2) mandates that the local authority take the following steps after the Corporation has furnished the required information:

“Every local authority to which a plan of development and a statement are furnished in accordance with the requirements of subsection (1) shall, before the specified day, inform the Corporation in writing-

(a) that it does not recommend any modifications of such plan and statement; or

¹⁹⁵ The Urban Development Act (1968), Section 15(1), pg. 9



(b) of any modifications of the plan or statement which it recommends.”¹⁹⁶

Based on the dictates of the foregoing Sections, the UDC Act further requires that the Corporation take the following steps:

Section 15 (3):

“The Corporation shall, upon receipt of such information from every local authority to which a plan of development and a statement were furnished in accordance with the provisions of subsection (1), submit such plan of development to the Minister for his approval, and the information received by the Corporation and comments and recommendations of the Corporation thereon shall be submitted with such plan.”¹⁹⁷

Additionally, the Minister in accordance with Section 15 (5) may take the following steps in relation to development planning:

“The Minister may approve a plan of development with such modifications as he thinks fit and shall cause notice of his approval to be published in the Gazette, and thereupon such plan of development, with or without modification, shall have effect as an approved plan of development.”¹⁹⁸

Section 21 (1):

¹⁹⁶ The Urban Development Act (1968), Section 15 (2).

¹⁹⁷ The Urban Development Act (1968), Section 15 (3).

¹⁹⁸ The Urban Development Act (1968), Section 15 (5).



“The Corporation shall carry out or secure the laying out and development of every designated area in accordance with the approval plan of development relating thereto.”¹⁹⁹

In respect of the referenced sections of the UDC Act, and the statements presented to the OCG regarding the impracticability of pursuing the Market Plan and the need to develop an alternative plan, the OCG notes that the respective sections of the Act were not observed by the UDC in its pursuit to develop and implement a new development plan.

UDC’s Real Estate Divestment (SALE) Procedure (2004)

In regard to the applicability of the UDC’s Real Estate Divestment (SALE) Procedure, the OCG notes that the following tenets of the referenced procedural document are crucial to the divestment process having to do with assets owned by the UDC, particularly the Land Evaluation Committee, which is highlighted hereunder:

Section 3.1:

“Land Evaluation Committee (LEC) consists of persons from various Departments and disciplines within the UDC. The Committee is chaired by the Chief Legal Counsel. It is the Committee’s role to review and deliberate on all submissions received from members of the public for the purchase, lease and sale of the property on behalf of the UDC and provide recommendations to Executive Management.”²⁰⁰

¹⁹⁹ The Urban Development Act (1968), Section 21 (1).

²⁰⁰ UDC Real Estate Divestment (SALE) Procedure (2004), Section 3(1).



Notwithstanding the relevance of the Land Evaluation Committee, the evaluation of Bashco Trading Company Limited's offer was mainly influenced by Mr. Patrick Stanigar, who Ms. Joy Douglas gave enormous latitude to spearhead the divestment process.

Further to the procedural anomalies identified by the OCG in respect of the sale of the property located at 35 West Parade, Ms. Ann Marie Rhoden, in her response to the OCG's requisition dated June 27, 2012, made the following observations:

“ ...

- d) Management proceeded to negotiate a discounted sale price with Bashco Trading for the property at 35 West Parade against its own internal policy
- e) Management prepared sale agreements and accepted deposit on discounted price
- f) *Management executed agreement with the Bruffs and Bashco Trading*
- g) The sale of property to the Bruffs was communicated to the Board at a meeting on August 17, 2011, from which I was absent. The sale of this property was executed before presentation of the change in the decision not to sell both properties to Bashco Trading
- h) Management decided unilaterally not to entertain offers from other prospective purchasers



- i) **The Board only became aware of the existence of these offers when the Contractor General wrote about them.**²⁰¹ (OCG Emphasis)

²⁰¹ Ms. Ann Marie Rhoden's June 27, 2012 response to the OCG's requisition dated April 19, 2015, response #7.



The Sale of 35 West Parade and the Government of Jamaica Public Procurement Policy

One of the mechanisms that is used to facilitate economic efficiency and to achieve value for money is the use of market based approaches in the acquisition and sale of assets in the public and private sector. As such, competition plays a very important role in facilitating this process.

In the conduct of the GoJ public procurement, securing value for money is of paramount importance. In this regard, the Procurement Policy Statement of the Ministry of Finance stated as follows:

“The GOJ procurement policy is governed by the following key principles:

- 1) *Value for Money;*
- 2) *Economy;*
- 3) *Efficiency;*
- 4) *Equity;*
- 5) *Fairness;*
- 6) *Transparency/Accountability;*
- 7) *Reliability.”*²⁰²

In relation to the attractiveness of the property, Breakenridge & Associates made the following observation as contained in the said valuation report:

*“Sale transactions in this area are few usually purchasers are people who are already in the area. The low level of transactions is evidence that very few owners have been selling their properties and there is a vibrant rental market in this section of downtown Kingston.”*²⁰³

²⁰² The Procurement Policy Statement of the Ministry of Finance.



Similar sentiments in regard to the competitiveness and demand of the referenced property were also communicated in the valuation report that was conducted by Victoria Mutual Property Services Limited. The following, *inter alia*, is an extract of the valuation report provided by same:

“There is a fair demand for properties in the area and properties placed on the market are usually transferred in a reasonable time.”²⁰⁴

²⁰³ Breakenridge & Associates Valuation Report, July 12, 2011, Pg. 17

²⁰⁴ Victoria Mutual Property Services Limited, July 2011. Pg. 4



CONCLUSIONS

Based upon the documents and responses to various OCG's Requisitions which have been reviewed, the OCG has arrived at the following considered Conclusions:

1. The process employed in relation to the sale of the property located at 35 West Parade was in contravention of the then applicable Government of Jamaica Privatization and Procedures Policy, Ministry Paper #34. The UDC failed to comply with the directives of the policy, which was mandated to ensure that Government assets being considered for divestment are advertised.

The OCG further concludes that the actions undertaken by the UDC to divest the referenced property contrary to the provisions stipulated in Ministry Paper #34, is tantamount to a disregard for the then applicable Government Policy, which was designed to facilitate transparency and economic efficiency in the divestment of Government assets. In particular, the role played by Ms. Joy Douglas, in secreting information from the Corporation's Board regarding the other competing offers to purchase the 35 West Parade property is tantamount to an unfair undertaking by the then General Manager.

2. The UDC did not solicit or engage any other entity to participate in the procurement opportunity for the divestment of the property located at 35 West Parade. Despite the fact that three (3) offers had been made for the purchase of the said property prior to the submission and acceptance of Bashco Trading Company Limited's offer to the UDC on February 15, 2011.
3. The UDC, in its administration of the sale of 35 West Parade failed to comply with the following sections of its Estate Management Policy and Guidelines that were developed in 2003: *a) Section 5.2.4; b) Section 5.2.5; and c) Section 5.2.7.*



Importantly, Section 5.2.4 provides that “*where land has been zoned for particular uses in a development plan for the UDC, this information is made public.*”²⁰⁵ However, even though the UDC through its then General Manager, Ms. Joy Douglas, initially claimed that the UDC had developed a revised development plan subsequent to the established Market Area Plan, the UDC was unable to provide evidence of a revised plan for the area in which the 35 West Parade Property is located.

Further, the actions taken by the UDC to divest the 35 West Parade property constituted a breach of Section 5.2.5 of its Estate Management Policy and Guidelines. Section 5.2.5, requires that “*Land is to be divested in a manner that meets the highest test of transparency and integrity.*” However, the OCG during the conduct of its Investigation observed that the divestment process was compromised by the lack of transparency. This is primarily due to the fact that the procurement opportunity for the divestment of the property was not opened to all interested parties and there are no justifications by the UDC as to the reason(s) to indicate why the parties that had expressed interests in purchasing the property were not informed of the UDC’s intention to divest the property in question.

4. In respect of the UDC Act (1968), which seeks to guide the Corporation in the fulfillment of its development mandate in a transparent and equitable manner, the OCG’s Investigation has revealed that the UDC failed to comply with the following sections of the Act:

- a) *Section 15 (1)*

- b) *Section 21(1).*

Based on the foregoing sections, a formal abandonment of the West Kingston Development Plan (1984) and the adoption of a new development plan for an area that is

²⁰⁵ UDC Estate Management Policy, Section 5.2.4



a zoned development area would necessitate the UDC to furnish all relevant local authorities with such information that is pertinent to the proposed development.

5. In relation to the UDC's Real Estate Divestment (SALE) Procedure (2004), which gives credence to the establishment of a Land Evaluation Committee (LEC), which is mandated to address matters pertaining to the sale of properties owned by the UDC, the OCG observes that the then executive management of the UDC, failed to ensure that the Land Evaluation Committee (LEC) function effectively in facilitating the sale of 35 West Parade to Bashco Trading Company. Based on the dictates of the UDC's Real Estate Divestment (SALE) Procedure, the LEC is mandated to execute the following roles:

“...review and deliberate on all submissions received from members of the public for the purchase, lease and sale of the property on behalf of the UDC and provide recommendations to Executive Management.”

6. The UDC failed to publicly advertise its development plans for the area and, thereafter, failed to invite tenders from interested parties that would be consistent with the said development plans, so as to ensure competition, transparency and value for money in the divestment of the property.
7. The OCG concludes that the meeting that was facilitated in January 2011, by the UDC upon the request of Mr. Gassan Azan, to discuss matters relating to the redevelopment of Down Town Kingston is dubious, to say the least, as neither the UDC's former General Manager, Ms. Joy Douglas nor its former Chief Architect, Mr. Patrick Stanigar could account for the discussions that Mr. Gassan Azan indicated were held with both officers.



8. The action of the then UDC Board in granting the approval for the divestment of 35 West Parade to Bashco Trading Company Limited in the absence of an approved and credible development plan reflects that the UDC's Board acted with unnecessary haste, irresponsibly and contrary to stipulated protocols. It is also the reasoned opinion of the OCG that the UDC's then General Manager, Ms. Joy Douglas, failed to provide the UDC's Board of Directors and the Office of the Prime Minister with the requisite information which would probably allow the Board to make an objective and informed decision in relation to the sale of the property.



RECOMMENDATIONS

Section 20 (1) of the Contractor-General Act (1983) mandates that “*after conducting an investigation under this Act, a Contractor-General shall, in writing, inform the principal officer of the public body concerned and the Minister having responsibility therefor of the result of that investigation and make such recommendations as he considers necessary in respect of the matter which was investigated.*”²⁰⁶

In light of the foregoing, and having regard to the Findings and Conclusions that are detailed therein, the OCG now makes the following Recommendations:

1. The OCG respectfully recommends, though retrospectively, that the Office of the Prime Minister urgently seeks to ensure that all Appointees to the Board of Directors of the UDC be duly and fully made aware of their responsibilities and obligations under the provisions that are contained in the Public Bodies Management and Accountability Act and the GOJ Corporate Governance Framework for Public Bodies.

In particular, Principle (1) of the Corporate Governance Framework for Public Bodies states that “*Every Public Body should be headed by an effective Board which is collectively responsible for strategic management and oversight, serves as the focal point for Corporate Governance and is accountable to the Responsible Minister and shareholder representatives as determined by law.*” As such, the OCG recommends that proactive action be taken to ensure that the UDC functions in accordance with the referenced principle.

2. The OCG would like to commend the Government of Jamaica for the efforts that it has made in the developing of a new National Policy Framework and Procedures Manual for the Divestment of Government-Owned Lands (2015) and recommends that the UDC in

²⁰⁶ The Contractor General Act, Section 20 (1).



an effort to recover from the blunders that it had made, in relation to the divestment of the property located at 35 West Parade, seeks to ensure the following objectives of the GOJ Policy Framework and Procedures Manual for the Divestment of Government-Owned Lands:

1. *Maintain clear guidelines, procedures and institutional mechanisms to ensure transparency.*
 2. *Ensure standardization and harmonization of land divestment policies and practices...*
 3. *Contribute to national socio-economic goals through the implementation of a strategic land divestment programme.*
 4. *Strengthen the monitoring, control, evaluation and co-ordination of the Government's divestment programme.*
 5. *Ensure that land as far as possible, while a scarce and valuable national resource, is put to its highest and best use.*
3. In light of the fact that the OCG's Investigation reveals that the UDC's operations in regard to the sale of 35 West Parade was tainted with irregularities and breaches of the Corporation's internal policies established to guide its operations, the OCG strongly recommends that the UDC develops operational mechanisms required for enforcement of all mandated policy procedures. In particular, Section 3.1 of the UDC's Real Estate Divestment (Sale) Procedure gives credence to the establishment of a Land Evaluation Committee (LEG), and as such the OCG recommends that the mandated role of the referenced Committee be fully executed.



4. The OCG hereby recommends that all State-owned assets be divested in a manner which assures independent scrutiny and oversight, in order to facilitate transparency, accountability, competition and value for money, which are the guiding principles of the Policy Framework and Procedures Manual for the Divestment of Government-Owned Lands 2015.

5. In light of the development of the Government's Policy Framework and Procedures Manual for the Divestment of Government-Owned Lands (2015), the OCG recommends that the UDC review its existing land divestment policies in order to ensure compliance with the Government's newly developed divestment manual.