



地政總署
LANDS DEPARTMENT

電話 Tel: 2231 3088
圖文傳真 Fax: 2868 4707
本署檔號 Our Ref: LD 1/IS/PL/82 (TC) XXI
來函檔號 Your Ref: CB(3)/PAC/R43
Email : dof1@landsd.gov.hk

8 January 2005

Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

(Attn : Ms Miranda Hon)

Dear Ms Hon,

**The Director of Audit's Report on the
results of value for money audits (Report No. 43)**

Chapter 6 : Grant of land at Discovery Bay and Yi Long Wan

I refer to your letter of 17th December 2004 and as requested provide the following additional information :-

- (a) *It was mentioned at the hearing that the Lands Department (Lands D) had formulated measures regarding the setting out of boundaries of a government site before disposal of the site (paragraph 5.12(b)(i) of the Audit Report refers). What the details of the measures are.*

Sites for public auction or tender are normally fenced and their boundaries will be set out before sale. For sites granted by private treaty grant and extension, the plans in question include boundary dimensions and bearings, and the site area to facilitate the design of the development. The site boundaries will be set out on ground in advance or within 3 months after the completion of the land transaction so that the positions of the boundary marks can be shown to the landowner or his/her representative. Thereafter, it is the landowner's responsibility to protect the boundary marks placed on ground.

- (b) A copy of the letter dated 10 August 1981 from Developer A to the District Office/Islands applying for a Short Term Tenancy (STT) for government land at Wong Chuk Long, which adjoins the western end of the south golf course at Discovery Bay (DB) (paragraph 5.14 of the Audit Report refers).**

Developer A's letter to DO/Is dated 10.8.1981 is attached at Appendix I.

- (c) Whether the exclusion of the encroached government land at Wong Chuk Long from the boundary of the Lantau North (Extension) Country Park in 2001 was partly due to the fact that Developer A had repeatedly applied for a STT for the land (paragraph 5.20 of the Audit Report refers).**

LandsD's files do not contain any record showing the reason(s) for excluding the encroached government land at Wong Chuk Long from the boundary of the proposed Lantau North (Extension) Country Park in 2001. The assistance of Agriculture, Fisheries and Conservation Department and Planning Department is being sought in this regard.

- (d) When the plan for the Lantau North Country Park extension was first proposed and finally approved.**

The draft plan in respect of the proposed Lantau North (Extension) Country Park was gazetted for public inspection on 13.7.2001. The draft plan has not yet been approved by the CE in Council.

- (e) According to paragraph 5.15 of the Audit Report, Developer A said that the extension of the area for the golf course had been agreed in prior meetings with the Secretary for the New Territories (SNT). Whether there were records of those meetings; whether Lands D had ascertained with the SNT at that time the truthfulness of Developer A's claim of agreement with the SNT.**

LandsD's files do not contain any record of discussions between the then SNT and Developer A. Similarly we do not have any file record showing whether or not LandsD had ascertained with the then SNT the truthfulness of Developer A's claim of agreement.

- (f) A copy of the paper of 29 July 2002 from the Lands D to the Legislative Council (paragraphs 5.23 and 5.24 of the Audit Report refer).**

D of L's letter to LegCo dated 29.7.2002 (with enclosures) is attached at Appendix II.

- (g) According to paragraph 5.33(a) of the Audit Report, the Lands D had not taken timely rectification action on the encroachments on government land at DB due to the fact that the DB development was still on-going. Whether this was a normal arrangement in the 1980s to address encroachment on government land, and whether there were cases in the 1980s which were handled in a similar manner.**

This approach was not the normal arrangement in the 1980s to address encroachment on government land.

- (h) The reasons why there was a provision concerning the rate of payment for any excess or deficiency in area of the site in the General Conditions of the lease conditions of the Yi Long Wan development, but not in those of the DB development (2nd inset under General Condition 5(a) in Appendix B of the Audit Report refers).**

The records of Master Lease conditions in LandsD show that between the grant of the lot at Yi Long Wan in 1975 and the Discovery Bay in 1976 there was a change in approach and the rate of payment condition was dropped.

- (i) The reasons for the different approaches in addressing the land encroachment problem at DB and Yi Long Wan although both developments were located in Lantau Island and developed in the same period.**

The golf course encroachment was (and remains) an unbuilt open area operated by a single entity. The grant of a STT was the appropriate means to regularize it. The circumstances of the encroachment at Yi Long Wan involving two privately owned residential blocks in multiple ownership constructed partially outside the lot are quite different from those of Discovery Bay and therefore warrant different treatment.

- (j) Regarding the amount of STT rent paid by Developer A (paragraph 5.26 of the Audit Report refers), the amount of rent originally proposed by the Lands D and the estimated amount of revenue that could have been generated by the encroached land if it had not been used by Developer A.**

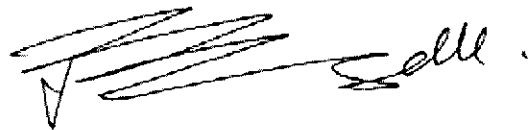
The negotiated rental of \$7.23M to cover the 21 year period from 27.10.1982 to 26.10.2003 was based on evidence of market transactions. The figure initially proposed in the negotiation by LandsD was \$11.2M for the same period.

The 3 encroached areas are remote and hard to access. The areas adjoining the encroached land at Wong Chuk Long are either steep sloping government land or private land owned by Developer A. As regards the other two encroached areas, they are largely sloping areas. We do not consider that they are capable of separate alienation or use by any party other than Developer A and as such no revenue would have been generated if they had not been used by Developer A.

- (k) *With reference to paragraph 5.24(c) of the Audit Report, the legal basis of the Lands D's view that "It could be argued that a form of tenancy had been in place".*

LandsD's view is based on the legal advice that the letter of 16.3.1983 created a relationship of landlord and tenant.

Yours sincerely,



(J. S. Corrigan)
Director of Lands (Ag)

c c	Secretary for Housing, Planning and Lands]	
	Secretary for Financial Services and the Treasury]	
	(Attn : Mr Manfred Wong)]	- w/o encl
	Director of Audit]	
	AA/SHPL]	

Encl

[DiscBay_Quest02]

Our Ref. P-3i/2393

District Officer
District Office, Islands
4/F International Building
Hong Kong

10th August 1981

Attention: Mr Bernard Chan

Dear Sir

PROPOSED TENANCY - WONG CHUK LONG

We wish to apply for a short term tenancy of the crown land coloured pink on the attached plan amounting to approximately 50,000 sq mtr. We require this land in order to ensure that a full 18 holes course is available for play by our projected opening date in the Autumn of 1982.

Variations in the building programme for the additional facilities in the Diana Farm area will mean that this area will not be completed in the time frame previously envisaged.

We trust that this request will meet with your favourable consideration and look forward to hearing from you in the near future.

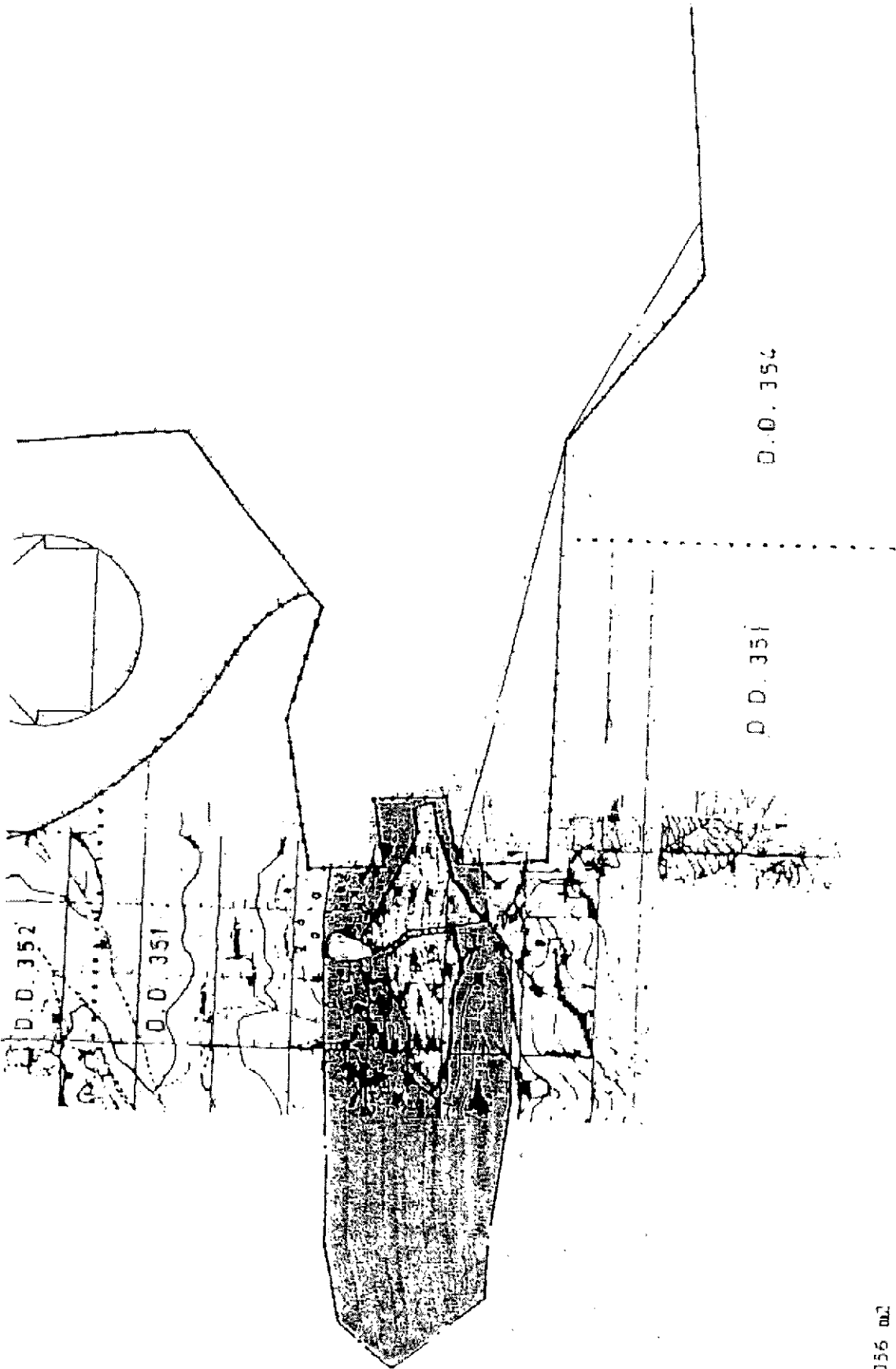
Yours faithfully
HONG KONG RESORT CO. LIMITED




Roger B Thompson
Administrative Director

RT/im

Enc




 ≈ 50,056 m²
 (about)

(Subject to survey)



地政惠民 廿載耕耘
Twenty Years of Quality Service



地政總署
LANDS DEPARTMENT

電話 Tel: 2231 3131
圖文傳真 Fax: 2868 4707
電郵地址 Email: adhk@landsd.gov.hk
本署編號 Our Ref: (27) in LD 1/IS/PL/82 XVIII
來函編號 Your Ref: CP/C 420/2002

我們矢志努力不懈
We strive to achieve

Appendix II

香港北角滙華道三三三號北角政府合署二十樓
20/F., NORTH POINT GOVERNMENT OFFICES
333 JAVA ROAD, NORTH POINT, HONG KONG
lands_dept@landsd.gov.hk

(Fax No. : 2521 7518)

29 July 2002

Secretary General,
Legislative Council Secretariat,
Legislative Council Building,
8 Jackson Road,
Central,
Hong Kong.

(Attn.: Miss E. Wong)

Dear Miss Wong,

Occupation of Government Land
Discovery Bay Golf Course

I refer to your letter dated 19 July 2002 and would respond to the points raised therein as follows:-

- (1) (a) The lot of Discovery Bay (DB) was granted to Hong Kong Resort Company Limited (HKR) by Conditions of Exchange (New Grant No. 6122) dated 10 September, 1976. Pursuant to Special Condition No. 54(a) of the Conditions of Exchange (see **Annex A**), HKR is permitted to operate a golf course or golf courses in the area shown coloured red hatched black on the grant plan (see **Annex B**). Special Condition 54(c) also requires HKR to provide not less than one 18-hole non-membership golf course open for use by members of the public. The original proposal as shown on Master Plan (MP) 4.0 (see **Annex C**) indicates the

provision of a non-membership golf course in the north. Another golf course was also proposed in the southern part of the lot. In 1979, HKR (see **Annex D**) requested for Government's agreement to (i) abandon the non-membership golf course which, as explained by HKR, would only serve a limited number of the public and not be economically viable; and (ii) allow HKR to provide either in the same area or elsewhere on DB alternative recreation facilities that would benefit a larger sector of the public. The provision of alternative public recreational facilities in lieu of non-membership golf course was considered acceptable by Government. The proposal was approved under MP No.5 (see **Annex E**) on 25 February 1982. The then Director of Lands in his letter dated 16 March 1983 and 21 September 1983 (see **Annexes F and G**) to HKR also confirmed that a separate lease modification was not required in view of the approved MP 5.0.

- (b) On 10 August 1981, HKR applied to the Government for a Short Term Tenancy (STT) (see **Annex H**) to cover adjoining government land at Wong Chuk Long in order to make way for a full 18-hole golf course. Although no records on processing HKR's application can be traced, it is, however, noted from the Building Plan Conference (BPC) Notes dated 7 October 1982 (see **Annex I**) in respect of the Supplementary Master Plan (SMP) for Golf Course and Clubhouse – Stage I that the 4th and 5th holes of the golf course are located outside the DB lot. It is also stated in the Notes that the occupation of government land would be included in Government's future rectification exercise. The SMP was approved by the BPC of Lands Department on 27 October 1982 (see **Annex J**).
- (c) Presumably, the then government might have contemplated to apply General Condition No. 3(a) of the Conditions of Exchange of DB to rectify the lot boundaries at a later stage rather than granting a STT to HKR. However, there is no file record to prove this intention. General Condition No. 3(a) stipulates that "*The boundaries of the lot shall be determined by the Secretary (whose decision shall be final) before the issue of the Crown Lease*". By his letter dated 16 March 1983 to HKR (3rd paragraph) (see **Annex F**), the then Director of Lands stated that "It may therefore be more appropriate to await the issue of the Crown Lease at the end of the whole development whereupon Government will carry out a survey of the lot boundaries".

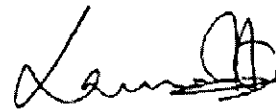
- (d) On 17 October 1996, HKR applied again for a STT (see **Annex K**) to cover the concerned government land which was already in use as part of the south golf course. Following consultation with the concerned departments, DLO/Is on 12 May 1998 rejected the application on the ground that the government land involved was within the proposed extension of the Lantau North Country Park at that time (see **Annex L**). HKR was asked to reinstate the government land. In response to DLO/Is's letter of 27 May 2002 (see **Annex M**) requiring reinstatement of the occupied government land, HKR requested to re-activate its previous application for a STT to cover the extended golf course (see **Annex N**).
- (e) It can be seen from the above that the lease governing the DB development originally made provision for both a private and public golf course. The public golf course proposal in the north was abandoned as mentioned in para. (1)(a). The existing golf course in the south was never planned as a public golf course from the very beginning. Therefore, the question of changing the nature of the golf course from public to private is considered not relevant. HKR's proposal to replace the requirement of a public golf course by alternative public recreational facilities which would benefit a large sector of the public is not unreasonable bearing in mind that golf playing was not so popular in Hong Kong twenty years ago. Government was aware of the occupation of government land in the early 1980s and it was then decided that the issue be addressed in the future boundary rectification exercise. Given the historical background above, I cannot agree that there has been mal-administration by Government in handling the matter.
- (2) Government is considering to rectify the situation by the issue of a STT to cover the areas of the DB golf course which have occupied government land. It is intended to collect rent, to be assessed on full market rent basis, with effect from the time of occupation. As the collection of rates is under the purview of the Rating and Valuation Department(R&V), you may wish to write to R & V for their advice.
- (3) Change in public recreational facility provisions in the course of large scale development like DB is not unreasonable. According to Land Registry record, the date of the (Principal) Deed of

Mutual Covenant of DB is 30 September 1982. The completed houses/flats in DB were assigned and occupied after the approval of MP 5.0 (approved on 25 February 1982) under which the non-membership golf course had already been abandoned. Therefore, the question of payment of compensation to DB residents in respect of the change is considered not relevant.

- (4) The total area of occupation on government land is in fact less than 4% of the total area of the golf course (about 104ha) within the private land in DB. It is considered that such a comparatively small additional area would not have any adverse impact on the residents of DB.

Kindly note that except for Annexes A and B, all other annexes either involve third party information or internal discussion and advice under the Code of Access to Information and should not be released to the complainant/District Council concerned.

Yours sincerely,



(Ms. Olga LAM)
for Director of Lands

Encls.

c.c. w/o encl. DPO/SK&Is, PlanD (Attn.: Ms. C.M. LI) Fax : 2890 5149
DEP, EPD (Attn.: Mr. Y.M. HUI) Fax : 2591 0558
DAFC, AFCD (Attn.: Miss C.Y. HO) Fax : 2377 4427
DO/Is, HAD (Attn.: Miss Kathy CHAN) Fax : 2815 2291
DLO/Is (Attn.: Mrs. Florence TSANG) Fax : 2850 5104

OLFT/LSK/ef

Annex F

16th March, 1983

(178) in LRD 1/13/PL/32 IX

Hong Kong Resort Co. Ltd.,
26/F, Realty Building,
71 Des Voeux Road, Central,
Hong Kong.

Dear Sirs,

Discovery Bay - Lot 385 in DB 352
Conditions of Exchange

Thank you for your letter dated 1st February 1983 which I have discussed with the Registrar General. I can now confirm that, subject to Special Conditions 9 and 10 of New Grant No. 6122, once I am satisfied that not less than \$200 million has been spent on some parts of the lot in respect of which a partial certificate of compliance has been issued you may under Special Condition 8(d) assign other parts of the lot solely for the purpose of development in accordance with the Master Layout Plan No. 5 and in compliance with the conditions in New Grant No. 6122.

I also confirm that your understanding in paragraph 4(a) (page 2) in respect of Special Condition 5(a) is correct, and that in view of the agreed Master Layout Plan No. 5 there is no need for a separate modification concerning the non-membership golf course. However, since the cable-car system is shown, a separate modification would in theory be necessary, but deletion of this in any future revision of the Master Layout Plan would obviate this necessity.

Although the original lease plan with the subsequent golf course extension, enlargement of the reservoir etc. is now largely historical, the present MLP No. 5 is not subject to Government survey and can only be a guide to your Company's present and future intentions. In other words neither plan at this stage is really satisfactory. It may therefore be more appropriate to await the issue of the Crown Lease at the end of the whole development whereupon Government will carry out a survey of the lot boundaries.

Finally, I agree that a formal letter should in due course be registered in the District Lands Office, Islands confirming the amendments so far agreed.

Yours faithfully,

(Sgd.) J. R. Todd
(J.R. Todd)
Director of Lands