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24 January 2005

Clerk
Public Accounts Committee
Legislation Council Building
8 Jackson Road
Central
Hong Kong
(Attn: Ms Miranda Hon)
[Fax: 2537 1204]

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 13th January 2005 and as requested provide the following additional information.

- (a) *An elaboration of the basis for the legal advice that "the letter of 16.3.1983 created a relationship of landlord and tenant" (the reply to question (k) in the Director's letter of 8 January 2005 (PAC/R43/CH6/GEN/9) and paragraph 5.24(c) of the Audit Report refer).*

In considering Developer A's application for a Short Term Tenancy (STT) in July 2002, Lands D had taken legal advice on the status of

the encroached land. The advice was that Government had acknowledged the occupation of the land by Developer A in a series of correspondence over a number of years since March 1983 and had indicated in writing that the encroachment would be regularized upon issue of the Crown Lease at the completion of the whole development when Government would carry out a survey of the lot boundaries. In October 1996, Developer A applied for a STT of the encroached land. This was rejected at the time as the land was within the proposed extended limits of the Lantau North Country Park. Developer A reactivated their application for a STT in mid 2002, and this was approved by the District Lands Conference in July 2002.

Based on the foregoing sequence of events and course of conduct by Government in its dealings with Developer A regarding the encroached land between the time of Government becoming aware of the encroachment in 1982 and issue of a formal STT in 2002, legal advice to Lands D was that a form of tenancy would have been created. Since Developer A has been occupying the encroached land with the full knowledge and acquiescence of Government in this period (with the intention of regularization upon the completion of the development of Discovery Bay) it could not be said to be a trespasser. It was a tenant at will from the Government, subject to agreement of boundaries and any other terms, including rent or mesne profits payable for the period of its occupation prior to issue of the formal STT. It was on this basis that Government was entitled to demand the payment of the rent or mesne profits for the period from 1982 to mid 2002.

- (b) *Regarding the Chief Secretary (CS)'s decision in 1985 that there was no need to report to the Executive Council (ExCo) on the change in concept of the Discovery Bay development (paragraphs 2.19 to 2.21 of the Audit Report refer), Sir David Akers-Jones stated in his reply of 5 January 2005 to the question on 2.21 (L2) (p.8 of Part 2) that he "accepted DPC's advice that it was unnecessary to refer to ExCo since the resort concept was maintained and the changes did not represent a major change in principle". In this connection, the Committee would like to know whether, apart from the file minute dated 17 October 1985 from Mr J R Todd (SLW) to the CS, there are any other documents/information relating to the DPC's advice to the CS***

and the process leading to CS's decision, which has not been provided to the Committee. If there is such documents/information, the Committee would like to be provided with a copy of the documents and/or the information.

I would confirm that, to the best of our knowledge, apart from that already provided to the Public Accounts Committee, there are no other relevant documents/information relating to the DPC's advice to the CS and the process leading to the CS's decision.

With regard to answer (c) of my letter dated 8th January 2005 relating to your letter of 17th December 2004 I would supplement as follows :

- (c) *Whether the exclusion of the encroached government land at Wong Chuk Long from the boundary of 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.*

The boundary of Lantau North (Extension) Country Park originally proposed in 1996 on the one hand included part of the golf course area on encroached Government land but on the other hand excluded another part on encroached Government land. Following consultation among concerned Government departments, the Director of Agriculture, Fisheries and Conservation excluded the entire encroached area from the proposed boundary of Lantau North (Extension) Country Park in 1999. This was reflected in the draft map for the Lantau North (Extension) Country Park gazetted in July 2001 and the Discovery Bay Outline Zoning Plan gazetted in September 2001. There was no information on record that the STT applications by Developer A had influenced the determination of the proposed boundary of an extended Lantau North Country Park.

The PAC has also requested information on the estimated amounts of premium involved in each of the changes made in the MLPs prior to 7 June 1994 based on the market conditions at the time when the changes were made (your letter of 2 December 2004 refers). I would revert on this question separately.

The PAC may also be interested to know that the dimension plan survey for the Discovery Bay development boundary has now been completed by the District Survey Office/Islands, and the setting out work will be completed by end of March 2005 (paras. 5.5 and 5.12(c) of the Audit Report refer).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Patrick Lau', written over a diagonal line that extends from the bottom left towards the top right.

(Patrick Lau)
Director of Lands

c.c. Secretary for Housing, Planning and Lands
Secretary for Financial Services and the Treasury
(Attn: Mr Manfred WONG)
Director of Audit