地政總署
法律諮詢及田土轉易處
LEGAL ADVISORY AND CONVEYANCING OFFICE
LANDS DEPARTMENT

電　話 Tel: 2231 3725
圖文傳真 Fax: 2845 1017
本署檔號 Our Ref: LACO 11/316/2002 SF4 Pt IX
來函檔號 Your Ref: AFK/S6/04/179527/1

9 August 2005

By Post & By Fax 2103 5024

Messrs Johnson Stokes & Master
Solicitors
16-19th Floors
Prince's Building
10 Chater Road
Central
Hong Kong

Dear Sirs,

Kowloon Inland Lot No. 11076 : Hunghom Peninsula

I refer to your letter dated 27 June 2005 and my letter dated 18 July 2005.

Using the numbering of your "observations" in your letter under reply :-

1. It is unfortunate that you are having difficulties in coming to an understanding of the situation.

2. It is the practice of Lands Department when drafting modifications to take the opportunity to delete Special Conditions which are spent of effect. This is done because such Special Conditions are historic and are redundant. Also, their deletion saves a lot of resources which would otherwise be expended on dealing with enquiries such as whether the relevant approvals or consents have been given and, in the case of SC(6)(c) and (d), whether the development has been built in compliance therewith i.e. deletion avoids having to respond to requisitions. Accordingly, SC(6)(c) and (d) were deleted in the initial draft to the modification prepared by LACO in September 2002 as these Special Conditions related only to **development** of the lot and in developing the Lot the requirements of those Special Conditions had been met. In any event, these Special Conditions were redundant as the developer had already submitted a MLP which showed compliance with these Special Conditions. By Special Condition (11)(a) the developer was and is bound to develop (and redevelop) in accordance with the MLP.

Following LACO's preparation of the initial draft of the modification there were discussions between your client and the Land Administration Office of this Department on the proposed modification. This discussion resulted in, for example, the addition of SC(69), a standard clause allowing for recreational facilities. There were other changes made to the draft modification as prepared by LACO in the modification offered on 7 February 2003 to your client.

It is not the practice of the Lands Department to rescrutinise draft modifications for the purpose of ascertaining if any special conditions have become spent of effect since the draft modification was prepared. This is because on rescrutiny the sole focus is on amendments necessary as a result of discussions between the parties. Hence SC(6)(a) and (b) and SC(3)(e) were not deleted.

3. Your assertions and assumptions are baseless as are your conclusions.

4. To which Special Conditions are you referring in the first sentence of this "observation"?

5. A conscious decision was made on the part of the Lands Department in the initial drafting of the modification to retain Special Condition (3)(a) for the reason stated in my letter dated 18 May 2005. That the decision was a conscious decision is evidenced by the refusal of the Lands Department to agree the request of Cheung, Chan & Chung in their letter dated 31 January 2004 for deletion of SC(3)(a) (and SC(11)(a) and (b)) and in their letter dated 11 February 2004 for deletion of SC(6)(b) and SC(7)(b). The Special Conditions requested to be deleted go as to the obligation on the part of your client to develop (or redevelop) in accordance with the MLP submitted by it with its tender and not to deviate from the MLP. As stated in the Lands Department's letter dated 12 February 2004 to Cheung, Chan & Chung the request for additional modifications was refused because they were unnecessary to achieve the mutual aim of modifying the Conditions to allow your client to sell the residential units into the private market.

With the greatest respect, the reasoning at "5(iii)" is specious. By SC(3)(a) the deposit of, inter alia, MLPs is required and this Special Condition specifically refers to the MLPs submitted in accordance with the Tender Notice. Further, SC(11)(a) requires development or redevelopment to be in accordance with the MLPs. SC(6)(a) in the First Schedule to the modification is concerned only with **development**.

6. I suggest that you re-read SC(3)(a). That Special Condition does not contain "a mechanism for approval of alterations to the MLP". Rather, it prohibits alterations unless the consent of the Director is obtained. Further, your assertion that it has never been the practice of Government to charge a premium for alteration to MLPs is erroneous. Even if the assertion had a factual basis, which it does not, for Hung Hom Peninsula it was a condition of the Conditions that your client complete the development in accordance with the MLP submitted by it before the award of the tender.

7. There is no question of the Director "contriving a case" as you wrongly assert. If you have re-read SC(3)(a) as already suggested it should be patently obvious to you that the power to consent to alterations is a power to consent to alterations in relation to the **development** of the lot.

8.(i) Government was not "aware" as you assert. At no time during the negotiations was it stated or intimated by or on behalf of your client that refurbishments would involve changes to the design, sizes or layouts of the flats. Rather, there was a common understanding that refurbishments would be limited to finishes and fittings.

(ii) As already explained in relation to your observation no.2, the deletion of SC(6)(c) and (d) does not have the effect for which you contend. The deletion of the technical schedule did allow for more flexibility in carrying out the refurbishments than it would have been possible if the Technical Schedule had been retained. The addition of SC(69) was and is irrelevant to the making of alterations to residential units.

9. I note with interest your concession that the "upgrading proposal" requires the permission of the Director. In any event, upgrading involving, for example, the combining of two or more flats into one, is not permitted by the Conditions and there is no question of derogation of grant as you assert.

10. There is no inconsistency in Government's position as you appear to be suggesting. By agreeing to the incorporation of SC(69) into the modification Government agreed to a deviation from the MLP submitted in accordance with SC(3)(a). Also, as noted in relation to your "observation" no.2, the incorporation of SC(69) was agreed between the parties before the offer of modification on 7 February 2003.

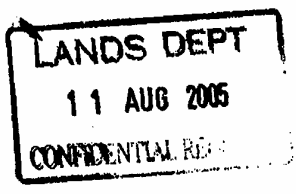
11. Irrespective of whether or not your client's request for additional modifications is irrelevant to the construction of the conditions as modified, and it is not admitted that your client's request is irrelevant, the fact is that your client did make the requests when it belatedly realized that the modification as agreed would not allow for the substantial alterations which your client wishes to make.

12. I maintain that the submission of MLPs revised as stated in my letter dated 18 May 2005 is consistent with Government's position. If your client really believed that it is entitled as of right to carry out works such as the combining of two or more flats into one, it would not have submitted revised MLPs showing floor plan different from those as referred to SC(3)(a).

As to the penultimate paragraph of your letter under reply I note your concession that the "approving" of the revised MLP is required ("approving" is a misnomer). In any event, your client has no right to damages as asserted nor does Government have an obligation to consent to the revised MLP.

I invite you to reconsider your client's position in the light of this letter and to provide a substantive response to my letter dated 18 May 2005.

Yours faithfully,



(A.L. Robertson)
Assistant Director/Legal
for Director of Lands

b.c.c. DD/G
8091 AD/K
SHPL (Attn : Miss Diane Wong) - 25224457
D of J (Attn : Mr Simon Lee) - 28690062