

政府總部
發展局
規劃地政科



香港添馬添美道二號
政府總部西翼十七樓

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Planning and Lands Branch
Development Bureau
Government Secretariat

17/F, West Wing,
Central Government Offices,
2 Tim Mei Avenue, Tamar, Hong Kong

電話 Tel.: 3509 8804

傳真 Fax : 2845 3489

6 February 2012

Clerk to the Panel on Development
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
(Attn: Ms Sharon CHUNG)

Dear Ms CHUNG,

Panel on Development

Letter from Hon LEE Wing-tat regarding Stanley Plaza

I refer to your letter of 11 January 2012 conveying the issue on the extension works of the Stanley Plaza in breach of the lease conditions by the Link raised by the Hon LEE Wing-tat in his letter dated 9 January 2012 to Prof Hon Patrick LAU Sau-shing, SBS, JP, the Panel Chairman. The relevant information is set out in detail at the **Annex**. We should be grateful if you would ask Members to note in particular that the Lands Department is now seeking legal advice on the issue, and thus, open discussion of the details at this stage would be inappropriate.

Yours sincerely,

A handwritten signature in blue ink that reads 'Judy Chung'. Below the signature, the name '(Ms Judy CHUNG)' is printed in black.

for Secretary for Development

c.c.

Director of Lands
Director of Buildings
Director of Housing

**Extension works of the Stanley Plaza in breach of the lease conditions
by The Link**

Background

The Buildings Ordinance (BO) aims to regulate the planning, design and construction of buildings and associated works on private land, and for this purpose, to prescribe building design and construction standards regarding building structure, fire safety and sanitation. The Buildings Department (BD) shall approve building plans and applications for commencement of works according to the BO. If the applications comply with the relevant requirements under the BO, the BD is obliged to approve the plans and give its consent in writing for the commencement of works. It is not provided amongst these provisions that the lease conditions shall be met. The BO also stipulates that the approval of building plans or consent to the commencement of works granted by the BD shall not be deemed to act as a waiver of any term in any land lease.

A land lease is a contract signed by the Government, through the Lands Department (LandsD) in the capacity of a landlord, with a lessee (commonly known as “land owner”) for the use of a piece of land. Different land leases are executed at different times having regard to different land conditions. Where the building plans approved by the BD deviate from the lease conditions, the land owner may apply to the LandsD for modification of lease conditions or seek necessary approval. The LandsD will consider the application in the capacity of a landlord and may decide to approve or reject it. In the case of approval, the LandsD may impose conditions such as payment of premium (if applicable).

The Stanley Plaza (the Plaza) in Ma Hang Estate, Stanley, was originally owned by the Hong Kong Housing Authority (HA) and thus exempted from the provisions of the BO. In 2005, the HA divested the Plaza, among certain commercial and car park properties, to the Link Real Estate Investment Trust (The Link). Upon divestment, these properties are subject to the BO, and The Link as the owner of these properties is required to obtain approval and consent from the BD in accordance with the BO before commencing works for the property concerned. According to information from the BD, the building plans of the alterations and additions works for the Plaza were first approved by the BD in February 2010, and the BD gave consent in writing in September 2010 to the commencement of the building works.

The Administration's response to the issues raised in the Hon LEE Wing-tat's letter

Q 1: "What are the gross floor area and other types of areas of the Plaza (e.g. the total commercial gross floor area and total area of common area, as well as the internal gross floor area, total lettable area and total internal common area inside the Plaza) respectively when it is divested before and after the listing of The Link? What follow-up action has been taken by the Administration?"

A 1: According to the lease, the gross floor area (GFA) of the commercial facilities in Ma Hang Estate (including the Plaza) shall not exceed 15 528 square metres.

Under the BO, apart from the total GFA of a building, an applicant is not required to provide such information as the total commercial GFA, total area of common area, total internal lettable area and total area of internal common area of the building, when submitting the building plans for approval. In connection with the alterations and additions works for the Plaza, the applicant did not provide such information in the building plans. According to the practice note of the BD regarding the inspection and copying of building plans and related documents, and under the obligation to confidentiality, the BD will permit public inspection or issue copies of the building plans or documents submitted to it for the purpose of the BO, after the subject works have been fully completed. As the building works for the Plaza approved by the BD have not yet been fully completed, based on the above principle, the BD is unable at this stage to provide information on the approved GFA of the Plaza as shown in the relevant building plans.

Following the procedures outlined in A2 below, the District Lands Office/Hong Kong West and South (the District Lands Office) received the referral from the BD the building plans submitted by The Link for the alterations and additions works of the Plaza, and liaised with The Link regarding the building plans, asking it to provide further information in accordance with the lease conditions, and convening a meeting whereby The Link was requested to make its representation. As mentioned above, the BD granted approval and consent in writing for the building works in February and September 2010 respectively; and in its letters to that effect, the BD

explained clearly to The Link that the building plans were vetted and approved under the BO, and that the BD's approval did not exempt The Link from the duty of fulfilling the lease conditions.

According to information from the LandsD, the latest situation is that in January this year, the District Lands Office received further information submitted by The Link in response to the District Lands Office's enquiry. The District Lands Office is now considering such information together with information received earlier from The Link. Legal advice is also being sought. Open discussion of the details at this stage would be inappropriate, as it may affect the position and actions to be taken by the District Lands Office in future.

Q 2: "Upon receipt of applications for alterations and additions from The Link, do the BD and the Independent Checking Unit (ICU) of the Housing Department (HD) have any established mechanism in place to notify the LandsD of such applications? Is there any mechanism for informing The Link whether there is a need for it to obtain consent from the LandsD before commencement of the works?"

A 2: As mentioned above, the statutory vetting and approval mechanism under the BO is independent of the land lease administration mechanism. The BD shall vet and approve building plans and applications for commencement of works according to the BO. If the applications comply with the relevant requirements under the BO, the BD is obliged to approve the plans and give its consent in writing for the commencement of works. Under the BD's existing centralised processing system for building plans, upon receipt of building plans submitted by authorized persons for approval, the BD will refer the plans to the relevant government departments (including the LandsD) for advice within their respective purviews related to the BO. The aforesaid arrangement is applicable to the proposed building works of all private buildings (including those owned by The Link). Moreover, the BD will send copies of letters notifying the authorized persons of the vetting results to all the relevant government departments, so that the authorized persons can follow up directly with those departments. The approval and law enforcement arrangements of the ICU of the HD are consistent with those of the BD.

On the other hand, a land lease is a contract signed by the Government, through the LandsD in the capacity of a landlord, with a land owner for the use of a piece of land. Different land leases are executed at different times having regard to different land conditions. Where the building plans approved by the BD deviate from the lease conditions, the land owner may apply to the LandsD for modification of lease conditions or seek necessary approval. The LandsD will consider the application in the capacity of a landlord and may decide to approve or reject it. In the case of approval, the LandsD may impose conditions such as payment of premium. The land owner can perhaps submit the revised building plans to the BD for approval so as to meet both the requirements of the BO and the lease conditions.

In connection with the alterations and additions works for the Plaza, since the relevant building plans comply with the relevant requirements under the BO and its subsidiary legislation, the BD is obliged to approve the plans according to the BO. In its letter notifying The Link that approval has been given to the building plans, the BD has specified that the approval of any building plans by the BD shall not be deemed to confer any title to land, or to act as a waiver of any term in any lease or licence. The District Lands Office is now considering the information submitted by The Link. Legal advice is also being sought. Open discussion of the details at this stage would be inappropriate, as it may affect the position and action to be taken by the District Lands Office in future.

Q 3: “Under what circumstances will the applications for alterations from The Link be approved by the BD? Are there any cases in which such applications were approved by the BD?”

A 3: The Plaza is governed by the BO. Under the administrative arrangement between the BD and the HD, the ICU of the HD has been authorized by the Building Authority to approve the applications for alterations and additions for the properties sold to private sectors (including those divested to The Link) by the HA, subject to certain conditions.

Under the above delegation of authority, the ICU of the HD may process applications for indoor alteration works and some minor

external building works, such as those for refuse collection chambers or pavilions, etc. As far as the Plaza is concerned, since some of the proposed building works fall outside the above delegated authority, such building plans are required to be approved by the BD. As for whether there are any cases in which applications for alterations from The Link were approved by the BD, the BD does not have such statistics.

Q 4: *“Are there any projects managed by The Link in which alteration works have commenced without obtaining prior consent from the LandsD to the modification of the lease conditions? If yes, please provide the details and advise how the LandsD handled the cases.”*

A 4: The LandsD does not have such statistics.

Q 5: *“In the past, were there any private development projects in which alteration works had commenced without obtaining prior consent from the LandsD to the modification of the lease conditions? If yes, please provide the details and advise how the LandsD handled the cases.”*

A 5: As regards how the LandsD handles cases of private development projects in which alteration works have commenced without obtaining prior consent from the LandsD to the modification of the lease conditions, reference can perhaps be made to the Secretary for Development’s written reply to the Hon Paul TSE in the Legislative Council on 16 November 2011, concerning a case involving a shopping centre at Repulse Bay.

Q 6: *“What solutions does the LandsD have for the problem of alterations in breach of the lease conditions in private development projects? Will it make a request of reinstatement according to the lease conditions, or be forced to give consent to the modification of the lease conditions? Are there any such examples?”*

A 6: The land owner is obliged to comply with the lease conditions. A land owner who commences construction before approval is granted

by the LandsD runs the risks associated with the violation of lease conditions. As lease conditions vary with individual cases and the actual circumstances (including the extent of violation of lease conditions) are different, the LandsD will take appropriate lease enforcement actions in the capacity as the landlord when breaches of lease conditions are established.

On the other hand, land leases are executed at different times, and the LandsD will consider the building plans and take follow-up action (if applicable) in the capacity of a landlord according to the relevant lease conditions. For example, the maximum floor area stipulated in some land leases may be lower than that permitted under the BO when the building plans are vetted by the BD. If the land owner would like to achieve the maximum limit permitted under the BO, the land owner should first apply to the LandsD for modification of lease conditions or for approval. When approving the modification or granting the approval, the LandsD may impose conditions as appropriate, including payment of premium (if applicable).

Q 7: “What measures does the Administration have to stop such practice of ‘construction before approval is granted’?”

A 7: The BD will carry out site inspection in the course of plan vetting to monitor if any building works have commenced before the building plans are approved. Upon receipt of complaints or referrals, the LandsD will follow them up according to the relevant lease conditions. Even if the building works have commenced before the building plans are approved by the LandsD as required, the LandsD, in general, may take action according to the lease conditions.