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地政總署
LANDS DEPARTMENT

Urgent By Fax & By Post

22 December 2003

Public Accounts Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong
(Attn : Mr Colin CHUI)
[Fax: 2537 1204]

Dear Sir,

**The Director of Audit's Report on the
results of value for money audits (Report No. 41)**

Chapter 5 : Provision of noise barriers for mitigating road traffic noise

I refer to your letter of 12 December 2003 and in response to the points raised in the second paragraph thereof (reproduced hereunder for easy reference) would advise as follows.

"The Committee noted that in February 1998, when making the decision to construct the noise barriers along Trunk Road T7 in lieu of the noise barriers to be provided by the developer within his lot boundary, the Environmental Impact Assessment (EIA) Study Management Group agreed that the Territory Development Department (TDD) should follow up with the Lands Department (Lands D) on the land premium implications (paragraph 4.11 of the Audit Report refers). The TDD said that in the same month, the Environmental Protection Department had copied the minutes of the EIA Study Management Group Meeting to the Lands D (paragraph 4.12 (a) refers). In this connection, the Committee would like to know whether the Lands D had taken any follow-up actions on the matter; if so, of the details of the actions taken and the relevant documents; if not, the reasons for that."

2. STTL 446 was sold by tender in February 1996 to the highest bidder. Special Condition SC 50(a) in the Conditions of Tender reads as follows :-

"The Grantee shall within six months from the date of this Agreement submit to the Director for his approval in writing proposals to mitigate environmental problems identified by the Director of Environmental Protection who shall as soon as practicable after the execution of this Agreement notify the Grantee in writing full details of such problems and upon receipt to the Director's approval to the said proposals the Grantee shall at its own expense implement the approved proposals in all respects to the satisfaction of, and within the time limits stipulated by the Director."

3. The construction of a noise barrier within the site by the Grantee was not a specific requirement in the Special Conditions of Grant but was proposed by the Grantee after liaising with the Environmental Protection Department (EPD) as part of its environmental mitigation measures. However on 6 February 1998 at a meeting of the Environmental Impact Assessment Study Management Group (SMG) for Road T7, which was chaired by EPD (Lands Department was not represented on this Group), it was stated in paragraph 7 of the minutes that "it was understood that the developer would install a 5-metre noise barrier within their site boundary to mitigate the traffic noise impact from Road T7. However based on the visual and noise reduction effectiveness consideration, the EIA recommended to provide 5-metre roadside noise barrier continuously at the road section fronting the STTL 446 site. With such mitigation measures at the road, it was considered that the noise barrier within the site itself would no longer be necessary for traffic noise mitigation purpose. EPD would write to DLO/ST informing such recommendation for them to pass the message to the developer for necessary action. For land premium implication if any, PM/NTE will follow up with DLO/ST later."

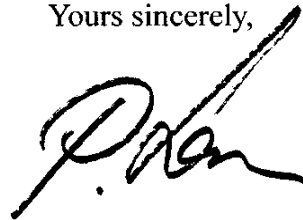
4. On 23 February 1998, EPD (by copy of a memorandum to PM/NTE) drew the attention of DLO/ST to paragraph 7 of the aforementioned minutes and asked that the developer of STTL 446 be informed about the recommended noise barrier at Road T7, so that the developer might take appropriate action as necessary. DLO/ST subsequently notified the developer of this fact on 6 March 1998 and suggested PM/NTE be approached for details of the EIA Study. As regards the question of land premium implications, if any, there is no written record in Lands D to indicate that, pending a follow-up request by PM/NTE as agreed at the SMG meeting, consideration was given by DLO/ST at the same time to any land premium implication. However, for the reasons explained in paragraphs 5 and 6 below, had this issue been considered at that time, the outcome would not have been different from the present situation.

5. On 12 June 2003, DLO/ST received a memo of the same date from PM/NTE referring to the memorandum from DEP of 23 February 1998 in paragraph 4 above and asking if DLO/ST had followed up the land premium implication with the developer and if not, to provide a reason. DLO/ST replied on 17 June 2003 advising that there was no provision under the Conditions of Grant governing STTL 446 for the Grantee to pay for any works outside the lot boundaries.

6. The decision that the noise barrier within the site STTL 446 was no longer necessary was made at the SMG Meeting. Lands D was not represented at that meeting and therefore could not have pointed out to the SMG that the Conditions of Grant only required the Grantee to carry out such measures as were deemed appropriate by EPD. With the certification by EPD that the Grantee's mitigation measures (without the noise barrier) were in order, and the implementation of those measures, the Grantee was deemed to have fulfilled his obligations under the land grant. In the circumstances, any request to the Grantee for a contribution to the cost of that section of the noise barrier provided by TDD fronting STTL 446 would have been entirely outwith the Conditions of Grant. In the absence of a contractual obligation on the Grantee, we could not realistically expect an agreement to such a contribution as a matter of goodwill.

7. Arising from this Audit Report, Lands D has on 8 December 2003 issued LAO Technical Circular 734 (copy attached), applicable to all relevant cases not yet executed to add a related provision such that Government at its discretion may offer to provide the required or alternative environmental mitigation measures in place of the Grantee/Purchaser, if this can be agreed by the parties. In such event the Grantee/Purchaser shall pay Government the required costs as agreed.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'P. Lau', with a long, sweeping horizontal stroke extending to the right.

(Patrick Lau)
Director of Lands

c.c. Secretary for the Environment, Transport and Works
Director of Territory Development
Director of Environmental Protection
Director of Audit

LANDS ADMINISTRATION OFFICE

Technical Circular No. 734

**Clause allowing Government to provide
Environmental Mitigation Measures
in place of the Grantee/Purchaser**

At the request of departments, such as Environmental Protection Department, special conditions have been or may in the future be incorporated into our land documents requiring the Grantee/Purchaser to provide certain environmental mitigation measures at his own expense.

2. Arising from an Audit Report related to the provision of noise barriers, it is important to ensure that in such circumstances, a related provision should also be incorporated into the land document such that the Government, at its discretion, may offer to provide the required or alternative environmental mitigation measures in place of the Grantee/Purchaser if this can be agreed by the parties. In such event, the Grantee/Purchaser shall pay Government the required costs as agreed. This provision should be implemented with immediate effect to all applicable cases not yet executed. If possible such provision should also be extended to cases where binding agreement had been reached.

3. A sample clause at Appendix I can be used as a reference.

(Albert CHEUNG)
Senior Estate Surveyor/
Technical Information
8 December 2003

Distribution

All professional staff in LAO) by cc:Mail &
SPLE, PLEs, CLEs, SLEs and LEs) one hard copy to
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LD 18/5010/96 VII

**Clause allowing Government to provide
Environmental Mitigation Measures
in place of the Grantee/Purchaser**

- (a) *[Provisions for noise mitigation measures for the particular case with Noise Mitigation Features defined]*
- (b) Notwithstanding sub-clause (a) of this Special Condition, the Director may at his discretion, at the sole expense of the Purchaser but subject to the prior agreement of the Purchaser as to the design, construction programme and cost for the design, construction and maintenance therefor, design, provide, construct and maintain the Noise Mitigation Features within the lot or on Government land.
- (c) For the purpose of carrying out the works referred to in sub-clause (b) of this Special Condition, the Government, its officers, agents, contractors, workmen or other duly authorized personnel shall have the free and uninterrupted right at all reasonable times to enter into the lot or any part thereof and any building or buildings erected or to be erected thereon. The Government, its officers, agents, contractors, workmen or other duly authorized personnel shall have no liability in respect of any loss, damage, nuisance or disturbance whatsoever caused to or suffered by the Purchaser arising out of or incidental to the exercise by him or them of the right of entry conferred under this sub-clause, and no claim shall be made against him or them by the Purchaser in respect of any loss, damage, nuisance or disturbance.