



地政總署  
LANDS DEPARTMENT

5 January 2004

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Clerk to the Public Accounts Committee  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

(Attn : Ms Dora Wai)

Dear Ms Wai,

**The Director of Audit's Report on the  
Results of Value for Money Audits (Report No. 41)**

**Chapter 8 : The Acquisition and Clearance of Shipyard Sites**

Thank you for your letter of 17.12.2003.

Regarding paragraphs 2 and 3 of your letter, I have followed up the matter with the Housing, Planning and Lands Bureau (HPLB). As advised by HPLB, Lands Department (LandsD) will further discuss with the Financial Services and the Treasury Bureau (FSTB) on any proposed waivers or variations of the short term tenancy (STT) terms if such waivers or variations would have financial implications to Government. Land instructions will be clarified following the outcome of discussion with FSTB.

Regarding paragraph 4 of your letter, I would provide the additional information requested using the same numbering system :-

- (a) A schedule, at Annex A, is attached listing STT cases from 1998 to 2003 where LandsD has successfully asked tenants to clear the structures from sites upon termination of STTs, in order to make way for Government projects.
- (b) Apart from the two STT cases listed in a schedule at Annex B, we are not aware of any other land contamination problem cases in STT or leases when making land available for public projects.

(c) We are not aware of any such cases, involving the problem of contamination, which necessitated seeking advice on the applicability of clauses similar to those quoted in paragraphs 2.23 and 2.24 of the Audit Report..

(d) Pending receipt of legal advice (see (e) below), it is not possible to say if there are any loopholes in these leases and tenancies.

As a precautionary measure and to focus directly on the issue of contamination, we have already introduced an amended clause to impose decontamination costs on lessees. Such a clause was included in the leases of a number of petrol filling station sites disposed of earlier this year. This new clause is to be imposed in all new industrial related land sales and grants, including shipyards. A copy of the clause is attached at Annex C.

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We are also amending the indemnity clause in STTs to ensure that tenants are made responsible for decontamination costs.

(e) The outside leading counsel has provided certain advice to the Department of Justice (D of J) on the liabilities of the former lessees and short term tenants of the North Tsing Yi shipyards towards the decontamination costs. However, in order to allow the counsel to assess and advise definitely on the chance of success of any legal actions by the Government to recover the decontamination costs from any of the parties concerned, D of J has advised that further information relating to shipyard operations and Government practice and policies therefor should be given to the counsel for his consideration. The further information provided by the relevant departments has been sent to the outside leading counsel with further instructions to advise. Upon receipt of the further instructions, the counsel may take up to 4 weeks to advise, subject to his availability. A summary of the advice of the counsel will be provided as soon as possible thereafter.

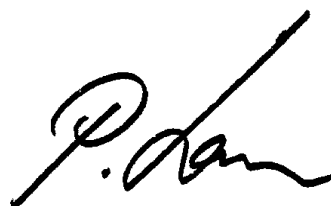
(f) Checking of past records shows that LandsD received copies of Consultant B's reports in June 2000 and February 2001 wherein the text stated that the exact cost of the decontamination work on the Cheoy Lee Shipyard site could only be accurately assessed after the completion of the EIA study. The LandsD's negotiating team led by the then Deputy Director/Specialist also understood through the Steering Committee meeting in February 2001 that the preliminary site investigation revealed

that there was only localized surface contamination and no widespread contamination in the open area. The \$100 million estimated provision for decontamination work was set out in a schedule of capital cost estimate appended to Consultant B's report in February 2001 and was not noticed at the time by the LandsD's negotiating team.

LandsD's records also show that the original proposal for surrender on an "as is" basis was made by the surveyor for the owners of Cheoy Lee Shipyard to allow the owners to surrender the lot with such structures and plant as remained on site. A copy of the surveyor's letter of 5 December 2000 is at Annex D. As this would have been the outcome if agreement could not be reached on the surrender and the shipyard had been resumed, and since surrender is a speedier and more certain arrangement than resumption, the proposal was acceptable to LandsD.

The decision by LandsD in March 2001 to accept a surrender on an "as is" basis was made in the circumstances explained in the foregoing paragraphs.

Yours sincerely,



(Patrick Lau)  
Director of Lands

Encls

c.c. Secretary for Housing, Planning and Lands  
Secretary for the Environment, Transport and Works  
Secretary for Financial Services and the Treasury  
(Attn : Miss Amy Tse)  
Director of Audit  
Director of Civil Engineering  
Director of Environmental Protection  
Commissioner for Tourism

Annex A

<u>STT No.</u>	<u>User</u>	<u>Project</u>	<u>Remarks</u>
3303	Open storage and/or loading, unloading and storage of containers from sea or land including container consolidation (stuffing and destuffing)	Reprovisioning of Tsuen Wan Public Cargo Working Area to Stonecutters Island	Only minor structures involved
3210	A fee-paying public car-park for the parking of motor vehicles (excluding container tractors and trailers)	GLA-KT No. 1132 to ED for Primary School	Only minor structures involved
3389	A fee-paying public car-park for the parking of motor vehicles (excluding container tractors and trailers)	Implementation of Village Layout	Only minor structures involved
3204	A fee-paying public car-park for the parking of private cars and light goods vehicles (excluding heavy vehicles, container tractors and trailers)	GLA-KT No. 1105 to LCSD for Public Promenade in Area 3 & 8 Tsing Yi	Only minor structures involved
3483	a) Open Storage of containers and fumigation treatment of container cargoes; b) a weigh-bridge & a fee-paying public car-park for the parking of motor vehicles; c) both a & b above	Route 9 between Tsing Yi and Cheung Sha Wan Project	Only minor structures involved
3437	A fee-paying public car-park for the parking of licensed motor vehicles (including container tractors and trailers)	Route 9 between Tsing Yi and Cheung Sha Wan Project	Only minor structures involved
3461	A weigh-bridge and a fee-paying public car-park for the parking of licensed motor vehicles (including container tractors and trailers)	Route 9 between Tsing Yi and Cheung Sha Wan Project	Only minor structures involved

<u>STT No.</u>	<u>User</u>	<u>Project</u>	<u>Remarks</u>
3465	A fee-paying public car-park for the parking of motor vehicles (including container tractors and trailers)	Route 9 between Tsing Yi and Cheung Sha Wan Project	Only minor structures involved
3489	Consolidation and handling of container cargoes or storage of containers and other non-offensive goods or a fee-paying public car-park for the parking of motor vehicles (including container tractors and trailers) or all or any combination thereof	Route 9 between Tsing Yi and Cheung Sha Wan Project	Only minor structures involved
3493	Consolidation and handling of container cargoes or storage of containers and other non-offensive goods or a fee-paying public car-park for the parking of motor vehicles (including container tractors and trailers) or all or any combination thereof	Route 9 between Tsing Yi and Cheung Sha Wan Project	Only minor structures involved
3500	Consolidation and handling of container cargoes or open storage of goods or a fee-paying public car-park for the parking of motor vehicles (including container tractors and trailers) or all or any combination thereof	Route 9 between Tsing Yi and Cheung Sha Wan Project	Only minor structures involved
3501	Consolidation and handling of container cargoes or open storage of goods or a fee-paying public car-park for the parking of motor vehicles (including container tractors and trailers) or all or any combination thereof	Route 9 between Tsing Yi and Cheung Sha Wan Project	Only minor structures involved

<u>STT No.</u>	<u>User</u>	<u>Project</u>	<u>Remarks</u>
517	Electricity Substation	Reclamation and Servicing of Tuen Mun Area 38 for Special Industries Lung Mun Road Improvement	
573	Open Storage	Foothill Bypass and Improvement Works along Wong Chu Road in Tuen Mun	Only minor structures involved
763	Container Storage and Warehouse	Foothill Bypass and Improvement Works along Wong Chu Road in Tuen Mun	Only minor structures involved
576	Public Fee Paying Car-park	Closure of Yuk Hong Street Exit to Tuen Mun Road Sliproad connecting Tuen Mun Road and San Wo Lane, Tuen Mun	Only minor structures involved
839	Open Storage	West Rail (Phase 1)	Only minor structures involved
991	Concrete Batching Plant	Improvement to Castle Peak Road between Ka Loon Tsuen and Siu Lam	
1023	Recreational Use	Works Area for Deep Bay Link Project	
T/A 564	Open storage and plant maintenance depot	Site Formation and Infrastructure Works for Housing Sites in Area 56	
T/A 565	Open storage and plant maintenance depot	Site Formation and Infrastructure Works for Housing Sites in Area 56	
T/A 576	Vehicles and plant and maintenance depot	Site Formation and Infrastructure Works for Housing Sites in Area 56	Only minor structures involved
T/A 619	1) A driver training center 2) A Transport Department Test Centre 3) Road Safety Centre for promotion of road safety	Site Formation and Infrastructure Works for Housing Sites in Area 56	
T/A 712	Cycle Recreation Park	East Rail Extension – Tai Wai to Ma On Shan (MOS Rail)	Only minor structures involved

<u>STT No.</u>	<u>User</u>	<u>Project</u>	<u>Remarks</u>
T/A 855	Shooting Range	Site Formation and Infrastructure Works for Housing Sites in Area 56	
T/A 1034	Storage of sand and cement	Sha Tin Treatment Works Stage III Extension	Only minor structures involved
T/A 1035	Storage of goods, plant and machinery containers, vehicles and building materials	Sha Tin Treatment Works Stage III Extension	Only minor structures involved
EHX0004	Open bus parking (excluding repairing and maintenance of buses)	HyD Road Widening Project	Only minor structures involved
EHX0183	Works Area	Development of a Primary School	Only minor structures involved
EHX0185	Storage of cable drums & asso. equip.	Promenade & Open Space	Only minor structures involved
EHX0003	Storage or fee-paying car-park	Development of Quarry Bay Park	Only minor structures involved
EHX0137	Storage/fee-paying car-park/waste paper collection	Quarry Bay Park Development	Only minor structures involved
EHX0154	Fee-paying car-park/waste paper collection	Quarry Bay Park Development	
EHX0206	Fee-paying car-park	PSPS Development	Only minor structures involved
EHX0213	Bus depot for parking, fuelling, cleaning & maintenance	Promenade development	Only minor structures involved

Annex B

<u>Lease/STT No.</u>	<u>User</u>	<u>Project</u>	<u>Remarks</u>
STT619 (ST)	Driver Training Centre	East Rail Extension – Tai Wai to Ma On Shan (MOS Rail)	Petrol tank and pump were built by the Tenant to facilitate fuelling of their vehicles. Tenant was requested to deliver the site to Government free from contamination. Some contamination was found. EPD agreed to accept the contaminated soil for disposal in the SENT landfill. This was carried out by the Tenant at no cost to Government.
STT677 (TM)	Open Storage	Foothill Bypass and Associated Slope Stabilization Works	Upon default of the tenant, an underground oil tank was cleared by Government with costs (\$112,500) deducted from the deposit held under the STT.



Standard Decontamination Clause

(a) The Purchaser shall take or cause to be taken such action as shall be necessary to avoid soil and groundwater contamination to the lot and any adjacent or adjoining Government land or any part thereof or any building or structure thereon (whether on, above or below ground level) arising out of the development, redevelopment or use of the lot or otherwise and shall at his own expense carry out all necessary works (hereinafter referred to as "the Preventive Works") to prevent such soil and groundwater contamination occurring.

(b) The Purchaser shall, within 18 calendar months or such shorter period as specified by the Director, before the expiration or sooner determination of the term hereby agreed to be granted carry out at his own expense a soil and groundwater contamination assessment (hereinafter referred to as "the Contamination Assessment") to the satisfaction of the Director of Environmental Protection in respect of the lot and any adjacent or adjoining Government land and thereafter submit a report on the Contamination Assessment to the Director not later than 12 calendar months before the expiration or sooner determination of the term hereby agreed to be granted or such other date as may be specified and notified in writing to the Purchaser by the Director. Upon demand in writing by the Director, the Purchaser shall at his own expense and in all respects to the satisfaction of the Director of Environmental Protection carry out in such manner and within such time limit as the Director shall specify such decontamination or other works as shall be required by the Director (hereinafter referred to as "the Decontamination Works") in respect of the lot and any adjacent or adjoining Government land.

(c) If the Purchaser shall in any respect neglect or fail to carry out the Preventive Works or the Contamination Assessment or the Decontamination Works in accordance with sub-clauses (a) and (b) of this Special Condition,

- (i) the Director may at his sole discretion execute and carry out the Preventive Works, the Contamination Assessment or the Decontamination Works (collectively referred to as "the Works") and the Purchaser shall on demand pay to the Director the cost thereof as shall be certified by the Director on a full indemnity basis; or
- (ii) the Purchaser shall on demand pay to the Director in one lump sum an amount equal to the estimated cost of carrying out the Works which estimated cost shall be determined by the Director of Environmental Protection at his sole discretion. In the event of the said lump sum payment being insufficient to cover the cost of carrying out the Works whether by the Director or by any person entrusted with the Works, the Purchaser shall on demand pay the shortfall to the Director on a full recovery basis.



F A C S I M I L E

DATE : 5 December 2000 NO. OF PAGES : 1 (INCLUDING THIS SHEET)  
 COMPANY : Lands Department FAX NO. : 2116-0859  
 TO : Mr John Corrigan FROM : David C Lee  
 SUBJECT : Penny's Bay PROJECT NO : 72900

(Please notify sender by phone 2802 8336 if message received incomplete or illegible.)

Dear John

Further to my fax to you of 4 December 2000, I would respectfully suggest that you consider the following wordings, in lieu of those contained in our fax under reference.

"PBI, will not be required to:-

1. Demolish any of the existing buildings or structures erected on the Property and/or any fittings therein;
2. Decommission or remove any plants and/or machinery which may have been installed at the Property and/or any other chattels or objects which may have been left as abandoned thereat;

and the Government shall accept the Property and the surrender thereof on an "As-Is" basis with all plants, equipment, chattels, articles and/or objects of whatsoever nature left as abandoned thereat."

I do apologies for the inconvenience caused but would mention that the Government's agreement to this proposal will significantly facilitate the surrender process.

If you should have any queries, please call me on my mobile no 9196-8898, as I will be out of town for a few days on business trip.

Regards

  
David C Lee, BBS, JP

DCL/mw/P:72900/corr:0072

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