



地政總署  
LANDS DEPARTMENT

電郵地址 *Email:* dofl@landsd.gov.hk  
 電話 *Tel:* 2231 3000  
 圖文傳真 *Fax:* 2868 4707  
 本署檔號 *Our Ref:* LD 1/2010/03 IV (TC)  
 來函檔號 *Your Ref:* CB(3)/PAC/R41

***Urgent By Fax & By Hand***

27 May 2004

Ms Dora Wai  
 Clerk  
 Public Accounts Committee  
 Legislative Council Building  
 8 Jackson Road  
 Central  
 Hong Kong  
 [Fax: 2537 1204]

Dear Ms Wai,

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

**Chapter 8: The acquisition and clearance of shipyard sites**

Further to my letters of 9 December 2003 and 5 January 2004, I have now received a summary of the legal advice from the outside counsel, prepared by the Department of Justice. A copy is enclosed herewith for the consideration of the Public Accounts Committee.

I wish to advise that the Department of Justice issued 21 protective writs against various parties just before the expiration of the statutory limitation period. The Government has until 22 April 2005 to serve the writs. In the meantime, we are gathering further evidence in order to prepare statements of claim against the 21 defendants.

Yours sincerely,

(Patrick Lau)  
 Director of Lands

c.c. Director of Audit [Fax: 2583 9063]

Summary of legal advice on the contamination of the  
North Tsing Yi Shipyards

Background

The 21 North Tsing Yi shipyard sites were required for district open space and Government, Institutions and Community facilities ("GICs"). Six of the shipyard sites were held under long leases and 15 of the shipyard sites were held under short term tenancies. The 6 shipyard sites which were held under long leases were resumed under the Lands Resumption Ordinance (Cap. 124) on 26 April 1997. 14 of the short term tenancies were terminated on 24 April 1997 and one of the short term tenancies was terminated on 24 July 1997.

2. Due to strong resistance of the lessees and tenants of the 21 shipyard sites, they were allowed to "holdover" after the leases and short term tenancies had terminated. In this connection, the Government had indicated to the lessees and tenants that the Government would be prepared to allow them to continue to occupy the sites for a further one year after their leases or short term tenancies had terminated. Copies of two of the Government's letters sent to the lessees and tenants are attached at Annex A. The lessees and tenants remained in occupation of the sites until November 1999 or June 2000 when they left the premises. The Government took possession of Lot No. 611 in D.D. 436 and STT 3029 on 2 November 1999 and took possession of the other 19 shipyards sites on 1 June 2000.

3. After taking possession of the 21 shipyard sites, the Government carried out a contamination assessment of the shipyard sites and discovered that the shipyard sites were contaminated with heavy metals and organic compounds. Contamination Assessment Reports were prepared by the Civil Engineering Department's consultant in May 2001 and November 2001. According to the contamination assessment reports, heavy metals and organic compounds were present in the soil in a concentration or quantity which was over the acceptable level. Thus remediation work

was required to be carried out to decontaminate the land to reduce the concentration or quantity of the heavy metals and organic compounds to an acceptable level in order to render the land safe and suitable for district open space and GICs. The decontamination costs incurred by Government was substantial.

4. A chronology of events is attached at Annex B.

#### Summary of legal advice

5. As regards the six lots held under long leases, the deposit of heavy metals and organic compounds in the soil was a breach of General Condition 9 of the long leases in that the deposit was noisome and noxious matters. The failure to remove the materials deposited which contaminated the land was a breach of the same condition on each day that the failure continued up to the end of the long leases in April 1997. The relevant conditions of the long leases are set out at Annex C. The deposit of heavy metals and organic compounds by the lessees of the six lots was also a breach by the long lessees of the law of waste in that it was voluntary waste.

6. As regard the 15 short term tenancies, certain provisions in the tenancies were broken by the tenants by their deposit of heavy metals and organic compounds. The tenants' failure to remove the materials deposited which contaminated the land at or before the end of a tenancy also constituted a further and separate breach of the relevant conditions. The relevant conditions of the short term tenancies are set out at Annex D. The deposit of heavy metals and organic compounds by the tenants of the 15 short term tenancies also constituted a breach of their duty not to commit voluntary waste.

7. By reason of the events that occurred, the lessees and tenants became Government's tenants for one further year after the determination of the initial long leases and short term tenancies and then became tenants at will until they left the sites in November 1999 or June 2000. Their obligations as regards the terms of the

tenancies and as regards voluntary waste continued in the same way under the tenancies for one year and the tenancies at will as they did during the initially granted period of long leases or short term tenancies.

8. The obligation not to deposit noxious substances is an obligation not to deposit substances which will adversely affect the use of the premises for any reasonable use to which the premises may be put at the end of the leases or tenancies. There is no justification for assuming that after the end of the leases and tenancies the premises will continue to be used for the same purpose for which they were used during the leases or tenancies. A landlord may wish to put the premises to a very different use after the end of a lease or tenancy. The measure of damages is the cost of the remediation works incurred by the landlord.

9. While it is noted that there are not any specific cases in which the deposit of materials commonly associated with shipyard operations or activities such as heavy metals and organic compounds was held to be a breach of a noncontamination or decontamination clause in the lease, each case would turn on its facts and the relevant clauses in the leases or tenancies. Even if the lessees and tenants could, to all intents and purposes, only use the sites as shipyards, such limitation as to use does not in principle provide an overall defence as to the breaches of their obligations noted.

10. It is considered that Government can seek to recover the costs of decontamination from the lessees and tenants of the 21 shipyard sites.

Annex A

- 1) The Government's letter dated 12 May 1997 to the tenant of Short Term Tenancy No. 373
- 2) The Government's letter dated 11 June 1997 to the lessee of Lot Nos. 600 and 601 in D.D. 436



地政處  
葵青地政處  
District Lands Office, Kwai Ts.  
LANDS DEPARTMENT

電話 Tel: 2402 1111  
圖文傳真 Fax: 2415 0703 & 2412 0505  
本署檔號 Our Ref: (200) in DLO/KT STT 373  
來函檔號 Your Ref:

By Recorded Delivery

12 MAY 1997

Hip Shing Timber Company Limited,  
STT 373, Tam Kon Shan Road,  
Tsing Yi North, Tsing Yi Island,  
N.T.

Dear Sirs,

**Short Term Tenancy No. 373**  
**Tam Kon Shan Road, North Tsing Yi**

I am prepared to recommend to the Government to allow you to occupy the premises ("the said premises") previously held under the above tenancy ("the previous tenancy") which has been terminated, after the termination of the previous tenancy, on the following terms and conditions :-

- (A) The occupation shall be for a fixed term of 1 year commencing from the date of termination of the previous tenancy (i.e. up to 23 April 1998). Upon the expiry of the fixed term of 1 year, you must vacate from the said premises and you shall not be entitled to any compensation whatsoever.
- (B) You agree that you shall not lodge any objection or claim in respect of any reclamation of any foreshores and sea-beds taking place at any time in relation to the said premises whether such reclamation takes place before or after the termination of the previous tenancy, and that you shall not be entitled to any compensation whatsoever whether under the Foreshore and Sea-bed (Reclamations) Ordinance (Chapter 127 of the Laws of Hong Kong) or otherwise in respect of such reclamation.
- (C) No rent or administrative fee will be payable to the Government.
- (D) The occupation shall be (where applicable or appropriate) on the terms and conditions under which the previous tenancy was held except as varied hereinabove and except as being inconsistent with the occupation for a fixed term of 1 year.

/p. 2. ....

- (E) You shall at all times during the said occupation period permit the Government, the Director of Lands and his officers, contractors and any persons authorized by him with or without tools, equipment, plant, machinery or motor vehicles, the right of free and uninterrupted ingress, egress and regress to from and through the premises for the purpose of carrying out any site investigation or geotechnical exploration or such other related works necessary for the implementation of the Reclamation Works for District Open Space and Government Institution and Community Facilities in North Tsing Yi.

The above offer is open for acceptance within 28 days from the date hereof. If written confirmation of the acceptance is not received within the aforesaid period, the offer shall be deemed to have been withdrawn.

Notwithstanding anything contained herein including your confirmation of the acceptance, or any previous correspondence, this offer is not intended to create any legal relation or legal obligations. The Government will not accept any legal obligations until a formal holding over letter has been duly signed by you and by the Government and issued out of this office.

To confirm your acceptance of the above terms and conditions, please sign the docket below and return the duplicate of this letter to me as soon as possible.

Yours faithfully,



(Ms. Eugina FOK)  
District Lands Officer, Kwai Tsing

WTC/EF/sll (12K16) p.11-12

---

I/We hereby accept the above terms and conditions as herein set out.

Signature :

Full Name :

2402 1111

**By Recorded Delivery**

2415 0703/2412 0505

( ) in DLO/KT 49/KTPA/59

11 June 1997

LAU CHEONG  
c/o Messrs. Alfred Lau & Co.  
Solicitors & Notaries  
705, Hong Kong & Shanghai Bank Building  
673, Nathan Road  
Kowloon

Dear Sir,

**New Grant Nos. 4172 and 4173  
for Lot Nos. 600 & 601 in DD 436  
Tam Kon Shan Road, North Tsing Yi**

I am prepared to recommend to the Government to allow you to occupy the premises ("the said premises") previously held under the above New Grant Nos. 4172 and 4173 ("the previous leases") which have been terminated, after the termination of the previous leases, on the following terms and conditions :-

- (A) The occupation shall be for a fixed term of 1 year commencing from the date of termination of the previous leases. Upon the expiry of the fixed term of 1 year, you must vacate from the said premises and you shall not be entitled to any compensation whatsoever.
- (B) You agree that you shall not lodge any objection or claim in respect of any reclamation of any foreshores and sea-beds taking place at any time in relation to the said premises whether such reclamation takes place before or after the termination of the previous leases, and that you shall not be entitled to any compensation whatsoever whether under the Foreshore and Sea-bed (Reclamations) Ordinance (Chapter 127 of the Laws of Hong Kong) or otherwise in respect of such reclamation.
- (C) No rent or administrative fee will be payable to the Government.
- (D) The occupation shall be (where applicable or appropriate) on the terms and conditions under which the previous leases were held except as varied hereinabove and except as being inconsistent with the occupation for a fixed term of 1 year.

/You shall at .....



- (E) You shall at all times during the said occupation period permit the Government, the Director of Lands and his officers, contractors and any persons authorized by him with or without tools, equipment, plant, machinery or motor vehicles, the right of free and uninterrupted ingress, egress and regress to from and through the premises for the purpose of carrying out any site investigation or geotechnical exploration or such other related works necessary for the implementation of the Reclamation Works for District Open Space and Government Institution and Community Facilities in North Tsing Yi.

The above offer is open for acceptance within 28 days from the date hereof. If written confirmation of the acceptance is not received within the aforesaid period, the offer shall be deemed to have been withdrawn.

Notwithstanding anything contained herein including your confirmation of the acceptance, or any previous correspondence, this offer is not intended to create any legal relation or legal obligations. The Government will not accept any legal obligations until a formal holding over letter has been duly signed by you and by the Government and issued out of this office.

To confirm your acceptance of the above terms and conditions, please sign the docket below and return the duplicate of this letter to me as soon as possible.

Yours faithfully,



(Ms. Eugina FOK)  
District Lands Officer,  
Kwai Tsing

JP/AC/EF/kc (JUN-0-3-0)

---

I/We hereby accept the above terms and conditions as herein set out.

Signature :

Full Name :

Chronology of events

- 24-4-1997 14 of the 15 short term tenancies were terminated  
(STT 330 was terminated on 24 July 1997)
- 26-4-1997 The 6 lots under long leases were resumed under the Lands Resumption Ordinance (Cap. 124)
- Feb to June 1997 The Government indicated to the lessees and tenants of the shipyard sites that the Government would be prepared to allow them to continue to occupy the sites for a further one year after their leases or short term tenancies had terminated
- April 1997 to April 1998  
(or July 1997 to July 1998 for STT 330) The lessees and tenants of the shipyard sites became tenants for a further one year after the determination of the initial long leases and short term tenancies
- April 1998 to Nov 1999 or June 2000 The lessees and tenants of the shipyard sites became tenants at will until the Government took possession of the sites

- 2 Nov 1999 The Government took possession of Lot No. 611 in D.D. 436 and STT 3029
- 1 June 2000 The Government took possession of the other 19 shipyard sites
- May 2001 A contamination assessment report was prepared by the Civil Engineering Department's consultant
- Nov 2001 A Further site investigation – contamination assessment report was prepared by the Civil Engineering Department's consultant

Relevant terms of the long leases of the 6 lots which were resumed

1) General Condition 9 of the long leases of the 6 lots which were resumed provides that :

“The purchaser shall not permit sewage or refuse water to flow from the lot on to any adjoining land or allow any decaying, noisome, noxious, excrementitious, or other refuse matter to be deposited on any portion of the lot and shall see that all such matter is removed daily from the premises in a proper manner.”

2) The user clause of the long leases provides that the lot and all buildings to be erected thereon shall not be used for any purposes other than ship/boat building and repairing.

Relevant terms of the 15 short term tenancies

1) STT 737, STT 600, STT 3006, STT 330 and STT 3029 contain a condition which is similar to General Condition 9 of the long lease of the 6 lots which were resumed which provides that :

“The Tenant shall not permit sewage or refuse water to flow from the Premises onto any adjoining land or allow any decaying, noisome, noxious, excrementitious, or other refuse matter to be deposited on any portion of the Premises and shall have all such matter removed from the Premises or any building erected thereon in a proper manner.”

2) STT 3181 contains a condition which provides that

“The Tenant shall not.....allow any waste matter which is not the final product from waste processing plant to be deposited anywhere within the Premises and shall have all such matter removed from the Premises or any building erected or to be erected thereon in a proper manner to the satisfaction of the Director of Environmental Protection”

3) However, there is no provision in STT 367, STT 374, STT 373, STT 376, STT 365, STT 379, STT 364, STT 381 and STT 380 which is similar to General Condition 9 of the long leases of the 6 lots.

4) STT 737 contains a condition which provides that :

“The Tenant shall not install or use on the Premises...any fuel or method or process of manufacture or treatment which might in any circumstances result in the discharge or emission, whether aerial or otherwise, on or from the Premises ....of any noxious, harmful or corrosive matter.....and which shall in the opinion of the District Lands Officer and the Commissioner for Labour be excessive in or unnecessary for the proper use and enjoyment of the Premises by the Tenant for the purpose for which the Premises is granted.”

5) The following conditions of the short term tenancies are also relevant :

- a) “To maintain and keep to the satisfaction of the District Lands Officer the Premises.....in good and tenantable repair and condition ...and so to hand over the same on termination of this Agreement.”
- b) “Not to do, cause, permit or suffer anything to be done..... in or upon the Premises or any part thereof which may be or become a nuisance or annoyance or which may cause damage or inconvenience to the Landlord.....”
- c) “To indemnify and keep indemnified the Landlord.....against all actions, suits, costs, claims, demands and expenses whatsoever arising directly or indirectly out of or in connection with the occupation and use of the Premises by the Tenant”.

6) The user clause of the short term tenancies are similar and provides to the effect that the premises shall not be used for any purpose other than boat and/or shipbuilding and repairing.