

## Chapter 1

### The acquisition and clearance of shipyard sites

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As stated in the Audit Report, the Government may acquire land for public purposes either by resumption, or by negotiation with the landowners for the surrender of land. For land let out under a short term tenancy (STT), the Government may terminate the STT so as to acquire the land for public purposes. In 1997, the Government resumed six leased shipyard sites and terminated 15 STTs at North Tsing Yi, Kwai Tsing (the NTY shipyard site) for the construction of district open space and government/institution/community facilities. In 2001, the Government negotiated with the lessee for the voluntary surrender of a leased shipyard site at Penny's Bay, Lantau (the PB shipyard site) for the development of a theme park project. Audit conducted a review on the acquisition and clearance of the above shipyard sites.

#### Resumption and clearance of the North Tsing Yi shipyard site

##### *Responsibility for clearance of the shipyard sites*

2. The Committee noted that there were conditions in the STTs, as set out in paragraph 2.6 of the Audit Report, stipulating that the tenants were responsible for clearing the structures at their own expense on termination of the STTs. However, as revealed in paragraph 2.12 of the Audit Report, Audit could not find evidence showing that the Lands Department (LandsD) had attempted to take action to enforce the STT conditions. In the event, the Government had spent some \$5.5 million to clear the site for the 15 STTs.

3. The Committee also noted that despite the explanation given by the Housing, Planning and Lands Bureau (HPLB) in paragraph 2.8, the Financial Services and the Treasury Bureau (FSTB) still considered that there needed to be a good reason for the Government not to exercise the discretion conferred on it by the STTs to require the tenants to restore the sites to the original condition. The FSTB's view was that the LandsD should consider amending the relevant policy if any of the STT conditions proved to be unenforceable in light of operational experience. In this connection, the Committee asked about the basis for the LandsD exempting the 15 STT tenants from clearing the site.

4. **Mr Patrick LAU Lai-chiu, Director of Lands**, stated at the public hearing and the **Secretary for Housing, Planning and Lands** stated, in his letter of 8 December 2003 in *Appendix 5*, that:

- between September 1996 and July 1998, a number of Legislative Council (LegCo) Members expressed concerns about and showed sympathy for the plight of the affected shipyard operators. The general view of these Members was that the Administration should provide appropriate assistance

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to the shipyard operators whose business and investment would be adversely affected by the clearance. At a case conference held on 24 October 1997 on this matter, some LegCo Members requested the Administration to provide more concrete assistance to the affected shipyard operators; and

- since some LegCo Members supported the shipyard operators and the public had also shown sympathy for them, the requirement for the shipyard operators to demolish the structures might be considered unreasonable and might arouse criticism. In the circumstances, the LandsD considered that it might be difficult for the Government to enforce the STT conditions effectively because:
  - (a) the tenants might be reluctant to clear the site;
  - (b) although there were conditions requiring the STT tenants to demolish and remove the affected structures on termination of the tenancies, it was both politically and practically difficult, if not impossible, to enforce the conditions effectively. It was very likely that the tenants would resist the clearance; and
  - (c) if the LandsD insisted on asking the tenants to clear the affected structures and the latter refused, the LandsD might have to institute legal action. Eventually, the Government might have to face a lot of criticism and the North Tsing Yi project might be delayed.

5. According to paragraph 2.13 of the Audit Report, the LandsD had not stated in the Lands Administration Office Instructions the specific justifications under which an STT tenant might be exempted from clearing the site. In this regard, the Committee enquired what the exemption criteria would be for dealing with similar cases in future. The **Director of Lands** responded at the hearing and in his letter of 5 January 2004, in *Appendix 6*, that:

- whether exemption would be granted in future cases would depend on the circumstances of each case. The HPLB would be consulted before a decision to grant exemption was made; and
- the LandsD, in principle, agreed to Audit's recommendation to seek the prior approval of the Secretary for Financial Services and the Treasury for any proposed waivers of, or variations to, the STT conditions, if such waivers or variations would have financial implications to the Government. The LandsD had consulted the HPLB on this matter and, on the advice of the

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Bureau, the LandsD would further discuss the matter with the FSTB. Land instructions would be clarified following the outcome of the discussion.

6. Having regard to the Director of Lands' response in paragraph 2.15(c) of the Audit Report that it was not uncommon not to strictly enforce all the terms of tenancies when STTs were terminated to make way for government projects, the Committee enquired:

- about the reasons for not strictly enforcing all STT terms; and
- whether there were any cases in the past five years (from 1998 to 2003) in which the LandsD had successfully asked the lessees or tenants to clear the structures on the sites upon termination of the leases or STTs in order to make way for government projects; if so, details of the cases; if not, why not.

7. The **Director of Lands** said at the hearing and in his letter of 5 January 2004 that:

- the LandsD had not strictly enforced all the terms of tenancies when STTs were terminated to make way for government projects because the Government needed to ensure that the site was recovered in a timely manner. If the LandsD left the site clearance to the tenant, there would be uncertainty as to whether the tenant could vacate the site at the time specified. If the tenant failed to vacate the site, the Government could only take legal action to recover the site. This would be a prolonged process and was likely to jeopardise the timetable of the public project. Moreover, the cost incurred in taking legal action might be higher than that required for clearing the site. Hence, the LandsD considered that in some cases, it was more desirable for the Government to undertake site clearance; and
- there was a total of 35 STT cases from 1998 to 2003 where the LandsD had successfully asked the tenants to clear the structures from the sites upon termination of STTs in order to make way for government projects.

8. The Committee appreciated the Government's need to ensure timely recovery of the site and to carry out the necessary clearance in order to meet the project timetable. However, it considered that the LandsD had the responsibility to ensure that the STT condition, which empowered the Government to recover the demolition cost from the tenant, was strictly enforced. The **Director of Lands** responded that the LandsD would consider the views of the Committee.

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### *Decontamination cost of the NTY shipyard site*

9. The Committee noted that after the leased sites had reverted to the Government in April 1997 and the STTs had been terminated between April and July 1997, about 75,000 cubic metres of soil were found contaminated. The Government had to incur about \$64.5 million to decontaminate the sites. Audit found that there were conditions, as set out in paragraphs 2.23 and 2.24 of the Audit Report, in all the six leases and five of the 15 STTs prohibiting contamination of the site. With these conditions, the lessees and the STT tenants concerned might have responsibility for decontaminating the sites. In view of the above findings, the LandsD had asked the Department of Justice (DoJ) as to whether these lessees and STT tenants had breached the conditions relating to contamination.

10. The Committee also noted from paragraphs 2.20 and 2.21 of the Audit Report that in May 2001, the Territory Development Department (TDD) had informed the LandsD that \$60 million would be required for decontaminating the site. The TDD considered that the decontamination cost was significantly out of proportion when compared with the project estimate of \$117 million for the whole North Tsing Yi project. It had, therefore, asked the LandsD to advise whether the STTs contained conditions requiring the tenants to undertake decontamination at their own expense on termination of the STTs. At that time, the LandsD replied that there was no such condition in those STTs. In this connection, the Committee questioned about the basis for the LandsD making such a statement.

11. **Mr John Corrigan, Deputy Director of Lands (General)**, explained that:

- in the view of the LandsD, the conditions referred to in paragraphs 2.23 and 2.24 of the Audit Report were not obvious clauses relating to contamination; and
- the LandsD had subsequently asked the DoJ for advice on the liability of the six lessees and the 15 STT tenants in view of the terms and conditions of their occupation and use of the shipyard sites, and whether any of them was liable for the contamination found at the site. The DoJ had considered the problems and was seeking the opinion of an outside counsel.

12. It appeared to the Committee that the conditions mentioned in paragraphs 2.23 and 2.24 of the Audit Report, such as General Condition No. 9 of the lease conditions of the six NTY shipyard sites, which read “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

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see that all such matter is removed daily from the premises in a proper manner.”, already gave the Government a clear mandate to require the shipyard operators to undertake decontamination at their own expense on termination of the STTs. The Committee queried why the LandsD had not taken prompt action to recover the decontamination cost from the lessees and tenants concerned, but had to seek legal advice.

13. To ascertain whether the LandsD had discharged its duty to enforce the terms and conditions in leases or STTs, the Committee also asked:

- whether the LandsD had, in the past, attempted to apply, or sought legal advice on the applicability of, the terms and conditions in leases or STTs prohibiting contamination to require lessees or STT tenants to remove contamination from the site; if not, why not;
- whether there were any cases in the past five years (from 1998 to 2003) in which the lessees or tenants were required to undertake decontamination at their own expense on termination of the leases or STTs; if so, details of the cases and the amounts of money saved; if not, why not; and
- whether, in the LandsD’s view, there were loopholes in the six leases or the 15 STTs which had rendered it impossible for the Government to recover decontamination cost from the lessees or the STT tenants; if so, whether it would consider amending the terms and conditions of STTs with a view to plugging the loopholes.

14. The Committee also requested the LandsD to provide a summary of the legal advice from the outside counsel when it was available.

15. The **Director of Lands** responded in his letter of 5 January 2004 that:

- the LandsD had not been aware of any cases involving the problem of contamination which necessitated the seeking of legal advice on the applicability of clauses similar to those set out in paragraphs 2.23 and 2.24 of the Audit Report. The LandsD had only been aware of two STT cases which had land contamination problem, when making land available for public projects; and

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- pending receipt of legal advice, the LandsD was not in a position to comment if there were any loopholes in the six leases and the 15 STTs. However, as a precautionary measure and to focus directly on the issue of contamination, the LandsD had already introduced an amended clause to impose decontamination costs on lessees. Such a clause had been included in the leases of a number of petrol filling station sites disposed of earlier this year. This new clause would be imposed in all new industrial-related land sales and grants, including shipyards. Moreover, the LandsD was also amending the indemnity clause in STTs to ensure that tenants were made responsible for decontamination costs.

16. In his letter of 27 May 2004, in *Appendix 7*, the **Director of Lands** further informed the Committee that:

- the LandsD had received a summary of the legal advice from the outside counsel prepared by the DoJ (a copy was attached to the Director of Lands' letter); and
- the DoJ had issued 21 protective writs against the various parties just before the expiration of the statutory limitation period. The Government had until 22 April 2005 to serve the writs. In the meantime, the LandsD was gathering further evidence in order to prepare statements of claim against the 21 defendants.

### Assessment of contamination at the PB shipyard site

17. The Committee noted that the PB shipyard site was surrendered to the Government on 3 April 2001. According to the lease conditions of the site granted in 1970, the Government was not empowered to inspect the site to ascertain whether there was any breach of the lease conditions. After carrying out a limited scale preliminary site investigation with the consent of the lessee, it was reported in early 2001 that there was only localised surface contamination at the site. However, after the acquisition of the site in April 2001 and the carrying out of a detailed site investigation, it was found in October 2001 that the level of contamination was more serious than originally expected. Dioxins were also found in the contaminated soil. In the event, the Government had to incur an estimated cost of \$440 million to decontaminate the site.

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18. The Committee also noted that in November 1999, the Civil Engineering Department (CED) commissioned an engineering consultant, Consultant A, to carry out an environmental impact assessment (EIA) study for the theme park project. In April 2000, the CED appointed another engineering consultant, Consultant B, to undertake the “Infrastructure for Penny’s Bay Development - Engineering Design and Construction” consultancy study. Consultant B was also tasked to assess the contamination at the PB shipyard site. According to the brief of the consultancy study and in connection with the decommissioning of the site, an independent environmental consultant, Consultant C, was appointed in April 2000. Consultant C was tasked to monitor the preparation and implementation of a remedial investigation work plan, as well as the implementation of the remedial activities in order to ensure that all related works were conducted effectively and safely in accordance with the relevant legal requirements.

19. The Committee also took note of the following incidents from paragraphs 3.10, 3.11, 3.12, 3.14 and 3.15 of the Audit Report:

- in January 2001, Consultant B estimated that \$100 million, which was substantially greater than the original estimate of \$22 million approved by the Finance Committee (FC) in November 1999, would be required for the decontamination of the site. At that time, Consultant B advised that the exact decontamination cost could only be accurately assessed after the completion of the EIA study;
- in February 2001, the CED reported to the Steering Committee, which was set up to oversee the development of the theme park project and chaired by the Financial Secretary, that the preliminary site investigation had revealed that there was only localised surface contamination. There was no widespread contamination in the open area;
- at its meeting on 17 March 2001, the Steering Committee was informed that Consultant C had found more contamination than expected. Consultant B was requested to conduct a detailed site survey to identify all the chemical wastes found at the site;
- in July and August 2001, the CED informed the Steering Committee that the extent of contamination was not considered very serious. However, in September 2001, Consultant C considered that the extent of contamination would be greater than expected. Consultant B was recommended to carry out additional trench work; and

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- in late September 2001, after the completion of the additional trench work, the Environmental Protection Department (EPD) considered that the level of contamination was more serious than expected. In October 2001, Consultant B found that the soil was contaminated by dioxins.

20. Against the above background, the Committee was concerned whether any government officials had made misleading comments or reports to the Steering Committee over the matter. In response, **Mr TSAO Tak-kiang, Director of Civil Engineering**, said that:

- he would not make any presumption over the possibility of government officials making misleading comments or reports about the matter; and
- the PB shipyard site occupied 19 hectares of land. According to Consultant B's estimate in January 2001, the cost required for decontaminating such a large piece of land would be about \$100 million. Given the huge size of the shipyard site, it was not unreasonable to believe that the level of contamination at the site was not serious, although some contaminants normally found at shipyard sites, such as petroleum hydrocarbons and metals, had been identified during the preliminary site investigation. This was the reason why the Steering Committee was informed at the meeting in February 2001 that there was only localised surface contamination and there was no widespread contamination in the open area.

21. The Committee pointed out that there had been quite a number of signs of contamination at the PB shipyard site before it was surrendered to the Government. The various signs included the following:

- in early 2001, the lessee allowed Consultant C to carry out a preliminary site survey at the site. During the site survey, Consultant C found more contamination than expected and recommended the collection of some disturbed samples of apparent waste or burn-pit materials for chemical analysis. However, the CED did not carry out further site surveys to re-assess the level of contamination of the site;
- there had been a general comment by green groups that shipyard operation generated contaminants such as toxic metals, persistent organic pollutants and other hazardous substances. According to the summary of environmental concerns of green groups provided by the Director of Civil Engineering in his



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letters of 9 and 31 December 2003, in *Appendices 8 and 9*, Greenpeace had reported that waste combustion would release toxic substances, including dioxins. According to paragraphs 3.17 and 3.23 of the Audit Report, during the 1990s, complaints had been made to the EPD about the open burning of wastes at the PB shipyard site; and

- some LegCo Members had, on a number of occasions, alerted the Administration to the possibility of a greater extent of contamination at the PB shipyard site. For example,
  - (a) Ir Dr Hon Raymond HO Chung-tai asked a LegCo question at the Council meeting on 12 January 2000 enquiring, among others, whether the Government had assessed the extent to which the PB shipyard site had been polluted. He pointed out that the soil on the site had been seriously polluted over the years by oils, heavy metals, dyes and organic solvents brought about by ship-breaking activities; and
  - (b) at the meeting of the Panel on Economic Services on 27 March 2000, Hon LEE Wing-tat expressed concern that the actual level of contamination at the PB shipyard site might be higher than the anticipated level and sought explanations from the Administration on how the situation would be handled. He also questioned the basis of estimating the decontamination cost at \$22 million.

22. The Committee considered that, in view of the various signs of contamination, the Administration should have had reasonable suspicion that the level of contamination at the site might be more serious than expected. Detailed site investigations should have been conducted to ascertain the level of contamination prior to the surrender of the site. However, it appeared that the CED had not taken any further actions despite the various signs. The Committee questioned whether it was the CED's intention to play the problem down.

23. The **Director of Civil Engineering** said that there was no question of playing the problem down. He explained that:

- as dioxins were not commonly associated with shipyard activities, they were therefore not targeted for testing. Based on past experience, shipyard operations normally generated contaminants such as petroleum hydrocarbons and metals, but not dioxins;

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- the crux of the matter was that the Government did not have access to the site for carrying out detailed site investigation before it was surrendered. In February 2000, Consultant A could only conduct limited site investigation at the periphery of the site. The results indicated that there was a low concentration of total petroleum hydrocarbons and metals;
- in fact, Consultant B had initially proposed a full scale site investigation but the proposal was rejected by the shipyard operator in July 2000. After discussion with the LandsD and the CED, the shipyard operator agreed to allow the drilling of 13 boreholes on condition that these boreholes were not drilled within the workshops, working areas or in any areas that would have an adverse effect on the shipyard operations;
- in December 2000, the field work for the preliminary site investigation was substantially completed. The preliminary results indicated that, of the 13 boreholes drilled, only one showed traces of fuel contamination. It was, therefore, considered that the contamination at the site “appeared localised and superficial”. To complete the remedial investigation work plan in accordance with the EPD’s guidance notes, a comprehensive site survey was still necessary. However, this could not take place until after the surrender of the site; and
- in estimating the decontamination cost of the site, reference had been made to the level of contamination of the former Kai Tak International Airport. Although the level of contamination of a shipyard site was not normally as high as an airport, the CED had adopted a prudent approach and used the same basis as that for Kai Tak International Airport, which was \$600 per square metre, in calculating the decontamination cost for the PB shipyard site, thus arriving at \$22 million.

24. To ascertain whether the Steering Committee had been fully informed of all related facts, the Committee requested the CED to provide the relevant papers and minutes of the Steering Committee. The **Director of Civil Engineering** provided in his letter of 10 February 2004, in *Appendix 10*, extracts from relevant papers and minutes of 17 meetings of the Steering Committee in relation to the acquisition of the PB shipyard site.

25. As regards previous complaints about open burning of wastes at the PB shipyard site and the environmental concerns expressed by green groups in their web sites, the **Director of Civil Engineering** clarified at the hearing and in his letters of 9 and 31 December 2003 that:

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- dioxins were mainly generated in trace quantities as the by-product of combustion and chemical processes, including the incineration of chlorinated organic substances and chlorinated wastes. The likely cause of dioxins was the open burning of plastic materials, but not general wastes. However, there was no evidence showing that the apparent waste and burn-pit materials found at the site during the preliminary site survey conducted in early 2001 were burnt residue of plastic materials. Therefore, Consultant C had not associated the burning activities with dioxins; and
- the taking of soil samples for dioxin testing was triggered by the findings of the detailed site investigation carried out after the surrender of the site, rather than by green groups. The details were as follows:
  - (a) in mid-2001 during the initial phase of detailed site investigation carried out after the surrender of the site to the Government, Consultant B revealed that there were burnt chlorinated wastes buried in the southern portion of the site. The Consultant considered that soils in these burnt pits might have been contaminated by chlorinated substances and pollutants such as dioxins, thus testing of dioxins was warranted. At that time, the CED had not received any comments from local green groups and environmentalists about the detailed site investigation and testing at the PB shipyard site. Consultant B, however, conducted a general review of relevant reports published at the time in the web sites of various green groups as well as relevant discussions in some international environmental forums;
  - (b) the general concerns of the green groups and environmentalists were that there was a strong association of dioxin emissions with uncontrolled open burning of plastic waste, such as Polyvinyl Chloride (commonly known as PVC). There was also a worldwide concern of the harmful effect of persistent organic pollutants, including dioxins, to the environment. International initiatives to implement measures to reduce or eliminate releases of persistent organic pollutants including dioxins into the environment was urged. The CED was advised of these concerns during its discussions with the Consultants on the implementation of the detailed site investigation in mid-2001; and
  - (c) after the revelation of the burnt chlorinated wastes and the review of the environmental concerns, Consultant B decided to take soil samples from the burnt pits at the site for dioxin testing. The CED agreed to the Consultant's prudent decision to complete a full appraisal of the contamination of the site and devise the most appropriate remedial measures to address the contamination problem.

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26. As complaints had been made to the EPD in 1995 and 1999 about open burning of wastes at the PB shipyard site, the Committee enquired whether the EPD:

- had detected any signs of contamination, e.g. dioxin contamination, during the investigation of the complaints; and
- during the site acquisition process, had alerted the relevant works departments to any contamination, e.g. dioxin contamination, on the site already known to the EPD.

27. **Mr Robert Law, Director of Environmental Protection**, responded at the hearing and in his letter of 9 December 2003, in *Appendix II*, that:

- the EPD had inspected the site following the two complaints in 1995 and 1999 against open burning in the shipyard site occupied by the then Cheoy Lee Shipyard (CLS). No actual burning activity had been observed during the inspections. Other than ashes and burnt remains on the ground surface, there had been no signs of land contamination detected during the inspections. While dioxins could be formed by any combustion process (e.g. even cigarette smoking), there was no reason to believe any significant quantities of dioxins that would have been formed on the site as there was no evidence that large quantities of plastics had been burnt which could have given rise to dioxin contamination on a large scale;
- between December 1990 and April 2001, the EPD had also conducted regular inspections to CLS to monitor the operation and the pollution situation of the shipyard. The site inspections did not reveal any leakages, spillage nor land contamination from the shipyard operation. Hence, the EPD had no reason to believe that the CLS site would be more contaminated than any other shipyard site;
- exchange of information on the key issues was part of the established procedures in an EIA process. In the EIA studies for the PB shipyard site, the CED was the project proponent and the EPD was the statutory Authority. There were different levels of inter-departmental co-ordination and monitoring of the progress and findings of the EIA studies. The EPD had convened Environmental Study Management Group meetings to provide a forum for detailed discussion on the requirements for the EIA study brief, the methodology and the initial findings of the EIA study, including the nature and extent of the contamination at the site, and liaison with the proponent department. Relevant authorities and works departments, including the

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District Lands Office, had attended meetings of the Group for detailed discussion. This was to ensure that a forum did exist to exchange information and to alert the relevant works departments of key issues related to the EIA process;

- three EIA studies had been conducted, namely, the Northshore Lantau Development Feasibility Study (NLDFS) EIA, the Theme Park EIA and the Decommissioning EIA for the PB shipyard site, all by the CED;
- the CED had conducted the EIA for the NLDFS in 1998. In this EIA, CLS had been identified as the only industrial operation that had the potential to cause soil and groundwater contamination within the project area of the North Lantau development. The types of contamination of concern were identified to be total petroleum hydrocarbons and metals. It highlighted the need for a separate subsequent EIA study to examine the land contamination upon the decommissioning of the PB shipyard site. The Theme Park EIA conducted in 1999-2000 had made due reference to this finding and had required that a detailed EIA study be carried out to investigate specifically the issue of contamination on the PB shipyard site. Subsequently, the Advisory Council on the Environment endorsed the Theme Park EIA in April 2000 with a condition that no work should commence at the PB shipyard site until a separate EIA study for the decommissioning of the site had been completed and an environmental permit issued;
- during the site acquisition stage, which took place between mid-2000 and April 2001, land contamination at the PB shipyard site was well known to all the parties concerned. The CED commissioned the Theme Park EIA (November 1999 to April 2000) and subsequently the Decommissioning EIA (April 2000 to April 2002) to determine the precise extent of the land contamination problem and to recommend an appropriate remedial proposal to clean up the site; and
- in the case of dioxin contamination, the presence had been revealed at a later stage after completing a comprehensive site investigation. Consultant B subsequently found that the soil was contaminated by dioxins, in addition to those contaminants such as petroleum hydrocarbons and metals which were normally found at shipyard sites. The preliminary study report was made known to the CED, EPD and other works departments in October 2001.

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28. The Committee was aware that the lessee of the PB shipyard site had been engaged in manufacturing fibreglass boats. Since it was widely known that the processing, such as opening burning, of fibreglass could generate a significant amount of harmful substances, the Committee asked about the reasons why, prior to acquisition of the site, the CED had not suspected that the use of fibreglass by the lessee in manufacturing boats might cause dioxin contamination at the site.

29. The **Director of Civil Engineering** explained in his letter of 31 December 2003 that:

- chemically, fibreglass was formed by continuous filament, and its composition consisted principally of oxides of silicon, aluminium, calcium boron and magnesium, fused in an amorphous vitreous state. Fibreglass was used for the ship mould works. The ship mould was originally made by laying fibreglass cloth over a wooden replica of the intended boat hull and applying small amount of epoxy resin. The wooden moulds were used once and the wood recycled where possible. The resulting fibreglass mould was fixed within a sturdy wooden frame and could be re-used many times. Small amounts of excess resins were cleaned off using acetone solvent. Due to the woven nature of the fibreglass, there was very little waste fibre. Any cloth off-cuts were re-used and applied on some other part of the mould. The small amount of waste fibreglass produced were swept up and collected in bins for disposal. Since fibreglass was not defined as a chemical waste, its proper disposal method was landfilling; and
- the above normal work processes of fibreglass materials would not release significant amount of harmful substances such as total petroleum hydrocarbons, volatile and semi-volatile organic compounds and polyaromatic hydrocarbons, and would also not release any dioxins. Open burning was not a normal manufacturing operation of fibreglass vessels. Prior to acquisition of the shipyard site, the CED had paid visits to the site and had not observed any open burning of fibreglass materials.

30. The Committee understood that the lease conditions of the PB shipyard site did not empower the Government to enter the site to conduct site investigation. However, given the Consultants' findings and recommendations that more contamination had been found at the site and further site investigations were necessary to ascertain the level of contamination, the Committee asked whether the CED had considered any other options to enable it to enter the site for inspection. For example, by virtue of the Waste Disposal Ordinance, the CED might enter the site to inspect whether there were any illegal practices by the shipyard operator or his workers.

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31. The **Director of Civil Engineering** answered in the negative. He explained that the reason for not invoking ordinances to gain access to the site was that the CED had not been aware of any suspected breach of relevant ordinances by the shipyard operator.

32. According to Note 17 in paragraph 3.12 of the Audit Report, in early 2001, Consultant C observed that there was suspected chemical waste disposal practice by the shipyard workers and alerted the EPD to such an incident. Upon receipt of the complaint, the EPD had taken action to stop the illegal waste disposal and prosecuted the shipyard operator for the illegal act in July 2001. The Committee questioned whether the shipyard workers' waste disposal practice observed by Consultant C during the preliminary site survey could have constituted a reasonable suspicion of their breach of the Waste Disposal Ordinance such that the CED might, based on the power conferred by that Ordinance, enter the site to conduct a detailed site investigation.

33. The **Director of Environmental Protection** explained that:

- Consultant C had observed the shipyard workers disposing of a container of paint in a pit on the site. After having been informed of this incident, the EPD, by virtue of the power conferred on it by the Waste Disposal Ordinance, entered the site for an investigation on grounds of a suspected breach of the Ordinance. After gathering sufficient evidence, the EPD prosecuted the shipyard operator for the offence of failure to deliver the chemical waste to a reception point, which was in contravention of section 8(1)(a) of the Waste Disposal (Chemical Waste) (General) Regulation;
- the EPD could only make use of very explicit offence provisions in the Waste Disposal Ordinance to enter a site to investigate a suspected breach of the Ordinance. In other words, the EPD could only enter a site for such investigation where it had reasonable suspicion that an offence against the Ordinance was being or had been committed at the site. The EPD could not make use of those provisions to allow another department to enter the site for routine inspections or site investigations of any kind, such as contamination assessment;
- the contamination found at the site, apart from dioxins, was within the reasonable level expected of a shipyard with long operating history. In fact, the contamination found was neither necessarily related to the shipyard workers' illegal waste disposal practice nor any breach of the Waste Disposal Ordinance. It should be noted that the land of a shipyard site would inevitably gradually become contaminated over many years of shipyard operations;

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- as regards dioxin contamination, he recalled that a representative of Greenpeace had agreed that no one could have reasonably foreseen the presence of dioxins at the site; and
- the overwhelming majority of the dioxins found at the site were one to four metres below ground level. Some of them were not in the vicinity of any sites of previous open burning activities, and some obvious sites of previous opening burning activities did not have any dioxins near them. Based on these findings, it might mean that not all the dioxins found on the site had been formed there.

34. In response to the Committee's enquiry, the **Director of Environmental Protection** supplemented, in his letter of 31 December 2003 in *Appendix 12*, that:

- during a meeting of the Panel on Environmental Affairs held on 19 March 2002, in response to a request from LegCo Members to express a view on the Administration's statement that the presence of large quantities of dioxins at shipyard sites was unusual and could not reasonably have been foreseen, Dr Luscombe (the Greenpeace representative) said: "Shipyards had not been widely recognised as a source of dioxins. He was intrigued by the level of contamination."; and
- it was clear from the context of the discussion at the Panel meeting that Dr Luscombe basically agreed with the contention that significant quantities of dioxins could not reasonably have been foreseen at a shipyard site.

### **Surrender of the PB shipyard site to the Government**

35. The Committee noted that on 3 April 2001, the lessee of the PB shipyard site executed the Deed of Surrender and received a compensation of \$1,506 million from the Government. On the same date, the lessee surrendered the site to the Government on an "as is" basis, meaning that the Government agreed to accept the surrender of the site in the state and condition as at the date of surrender. Before the surrender, the Government had not been well-positioned to estimate the final cost of cleaning up the contamination due to the limitations in the existing lease conditions. After the surrender, the Government found that the site was heavily contaminated and the estimated decontamination cost had further increased to \$440 million.



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36. The Committee enquired whether it was common to include an “as is” clause in Deeds of Surrender, and whether the level of compensation to be paid under voluntary surrender was different from that of resumption.

37. The **Deputy Director of Lands (General)** replied that:

- the “as is” clause was not a common clause in Deeds of Surrender. It had been included in the Deed of Surrender of the PB shipyard site at the lessee’s request; and
- the Government paid compensation to the landowners who voluntarily surrendered the land on the same basis as that under resumption of land.

38. Having regard to the Consultants’ assessments and other signs of contamination that had emerged before the surrender of the site, as elaborated in the earlier part of this Report, the Committee considered that the Government should have negotiated more strenuously with the lessee to agree on a voluntary surrender arrangement that was more favourable to the Government. To better protect its interest, the Government should have at least gained access to the site for conducting EIA investigations prior to agreeing on the terms of the Deed of Surrender. The Committee questioned why the LandsD had accepted the “as is” clause before it had:

- critically evaluated and submitted to the relevant policy bureaux for consideration the potential risks and financial implications of accepting such clause; and
- obtained explicit approvals from the relevant policy bureaux.

39. In response, the **Director of Lands** said that:

- in view of the anticipated significant financial benefits that would be brought about by the Hong Kong Disneyland Project, it was the Government’s objective to complete the project as early as possible. The LandsD appreciated that early availability of the PB shipyard site was crucial to the overall programme since some of the works under the project could not commence until after the site was available. Against this background, a major consideration of the LandsD at that time was the early resumption of the site, either by voluntary surrender or by resumption; and

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- as far as the LandsD was aware, there had never been any question of the Government taking action against an ex-lessee of a resumed property in respect of breaches of the lease. Once a site had reverted to the Government, the factual situation was that breaches of the lease ceased to be an issue. The acceptance of the surrender of the site on an “as is” basis accorded with the position that the LandsD had previously taken on resumption. What would have happened, had the Government not agreed to the “as is” clause being included, could only be a speculation.

40. The Committee noted from paragraph 4.12 of the Audit Report that in another case of land surrender involving a special purpose site at Tsing Yi, a clause had been included in the Deed of Surrender to indemnify the Government from liabilities in connection with contamination found after the surrender of the site. In 2000, when the LandsD was processing the surrender of this site, the lessee proposed to surrender a portion of the site, with some underground structures left intact, to the Government. To protect the Government’s interest, the LandsD had included an indemnity clause in the Deed of Surrender whereby the lessee undertook to indemnify the Government from liabilities in connection with contaminants found within seven years after the date of the Deed of Surrender. The Committee questioned why the LandsD had not followed such practice in the case of the PB shipyard site.

41. The **Director of Lands** said that:

- if such an indemnity clause was to be included in the Deed of Surrender of the PB shipyard site, it was most probable that the lessee would not have surrendered the site to the Government on a voluntary basis. In the event, the overall project programme might be affected; and
- the LandsD was seeking legal advice on whether the Government could recover the decontamination cost from the ex-lessee of the PB shipyard site or the shipyard operator.

42. It appeared to the Committee that the Government had to resume the site “on time” at all costs in order to launch the Disneyland Project. The Committee asked whether, before accepting the “as is” clause, the LandsD had discussed with the Steering Committee the potential risks and financial implications that might arise from the acceptance of such a clause. The **Director of Lands** informed the Committee that the decision of accepting the “as is” clause was made by the then Director of Lands.

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43. In view of the above reply, the Committee requested the Director of Lands to ascertain, by checking of past records, whether the decision to include the “as is” clause in the Deed of Surrender of the PB shipyard site had been made by the then Director of Lands on his own, despite knowing the significant increase in the decontamination cost by more than four times from \$22 million to \$100 million; if so, what the rationale behind his decision was.

44. The **Director of Lands** replied, via his letter of 5 January 2004, that:

- the checking of past records showed that the 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 CLS 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 had revealed that there was only localised surface contamination and there was 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; and
- the LandsD’s records also showed that the original proposal for surrender on an “as is” basis was made by the surveyor for the owners of CLS to allow the owners to surrender the lot with such structures and plant as remained on site. Considering that the outcome would have been the same if agreement could not be reached on the surrender and the site had been acquired by resumption, and since surrender was a speedier and more certain arrangement than resumption, the proposal was acceptable to the LandsD.

45. In the light of the Director of Lands’ above response, the Committee enquired whether the CED had formally alerted all relevant departments as soon as it knew of the assessments made by Consultants B and C concerning the higher level of contamination and significant increase in the estimated decontamination cost.

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46. The **Director of Civil Engineering** and **Mr YIP Sai-chor, Deputy Director of Civil Engineering (Special Duties)**, responded that:

- the findings of the site investigations had been included in the relevant draft EIA study reports and had been commented on by all relevant departments before finalisation. The EIA studies came under close scrutiny by the relevant Environmental Study Management Groups. These Groups comprised members from all relevant departments including representatives of the relevant District Lands Office and the EPD. They provided useful forums for detailed discussions about the requirements for the site investigations and the EIA studies, the methodologies and findings of the studies, including the nature and extent of the possible contamination at the shipyard site; and
- the CED had also convened and chaired regular inter-departmental co-ordination meetings to oversee the progress of, and discuss and resolve any issues relating to, the relevant EIA studies. The nature and possible extent of the contamination at the site had been a subject of concerns in these inter-departmental meetings.

47. At the request of the Committee, the **Director of Civil Engineering** provided, in his letter of 30 December 2003 in *Appendix 13*, the reports compiled by Consultants B and C in relation to the contamination of the PB shipyard site.

48. The Committee further enquired whether the FSTB and FC had been informed of the increase in the estimated cost of decommissioning the site from \$22 million to \$100 million after such increase was known to the relevant departments; if so, when the FSTB and FC had been informed; if not, whether that was in breach of the proper financial procedure.

49. The **Secretary for Financial Services and the Treasury** replied in his letter of 30 December 2003, in *Appendix 14*, that:

- the FSTB had checked its records and confirmed that the then Treasury Branch had not been previously informed of the increase in the estimated cost of decommissioning the PB shipyard site from \$22 million in November 1999 to \$100 million in January 2001. This piece of information came to its knowledge in the context of the first draft report circulated by the Director of Audit on 28 August 2003 for comments by the FSTB;

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- in the submission of 17 November 1999 to the Public Works Subcommittee (PWSC)/FC for acceptance in principle the financial implications at a rough order of \$13.6 billion for funding the infrastructure to support the development of an international theme park at Penny's Bay, the Administration included an estimated cost of \$22 million for miscellaneous works including decommissioning of the PB shipyard site. The submission also stated that the detailed design work for various components of the project had still to be undertaken and the capital cost estimates would be further refined as the Administration proceeded with the detailed design process. At the PWSC meeting, the Administration made clear that it would submit further funding proposals to PWSC/FC for upgrading the project works in phases to Category A of the Public Works Programme and that Members would have further opportunities to scrutinise the details of the project when considering the respective funding proposals. The Administration also undertook to carry out a detailed EIA study for the Disneyland Project to address potential environmental issues that might arise during the construction and the operation stages;
- as a normal practice in the planning of public works projects, works departments would refine the project estimates in the light of information available from site investigation, feasibility study, EIA studies and preliminary/detailed design. In that connection, works departments should ensure that the financial implications of a project, including the capital and recurrent cost, as set out in the PWSC/FC submissions were the most realistic estimates at the time of seeking funding approval and represented the best value for money. The Controlling Officer must seek funding approval from the PWSC/FC for any subsequent changes in the approved project estimates exceeding \$15 million with full justifications. For changes costing less than \$15 million, approval from the FSTB was required; and
- in the present case, the then Treasury Branch was not informed in early 2001 of the increase in the estimated decommissioning cost, which was still subject to the completion of the EIA study. However, all relevant departments/bureaux including the then Treasury Branch had been alerted to the more serious contamination and the likely increase in the decontamination cost due to the presence of dioxins after the completion of EIA studies on the decommissioning of CLS in late 2001. The project estimates were subsequently revised to include a higher and more accurate estimation of the decommissioning cost with justifications in the submission to the PWSC for funding approval for the Package 3 infrastructure works in May 2002. In that context, the FSTB considered that the preparation of the project estimates was in line with the normal practice.

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50. **Conclusions and recommendations** The Committee:

**Resumption and clearance of the North Tsing Yi shipyard site**

- expresses dismay that the Government:
  - (a) had not enforced the terms of 15 Short Term Tenancies (STTs) of the North Tsing Yi shipyard site, which stipulated that, on termination of the tenancy agreements, the tenants were responsible for clearing the structures at their own expense; and
  - (b) had to incur about \$64.5 million for decontaminating the North Tsing Yi shipyard site, notwithstanding that there were conditions in the six leases and in five of the 15 STTs prohibiting contamination of the site;
- notes that:
  - (a) the Government has sought legal advice from an outside counsel on the liability of the six lessees and the 15 STT tenants for the contamination found at the site, and has issued 21 protective writs against the various parties; and
  - (b) the Director of Lands will implement Audit's recommendations in paragraphs 2.14 and 2.28 of the Audit Report;

**Assessment of contamination at the Penny's Bay (PB) shipyard site**

- expresses dismay that the Government:
  - (a) had no legal authority to enter private sites for conducting environmental impact assessment site investigations; and
  - (b) had to incur an estimated cost of \$440 million for the decontamination work on the PB shipyard site after a detailed site investigation had revealed that the level of contamination was more serious than originally expected;
- notes that:
  - (a) the Director of Civil Engineering will implement Audit's recommendations in paragraph 3.25 of the Audit Report;

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- (b) the Director of Lands will implement Audit's recommendations in paragraph 3.26 of the Audit Report; and
- (c) the Secretary for the Environment, Transport and Works will notify all works departments of Audit's recommendations in paragraph 3.25 of the Audit Report;

### **Surrender of the PB shipyard site to the Government**

- expresses grave dismay that:
  - (a) the potential risks and financial implications of accepting the "as is" clause had not been critically evaluated by the Lands Department and submitted to the relevant policy bureaux for consideration, having regard to the fact that before the surrender of the site:
    - (i) Consultant C had found contamination at the site;
    - (ii) green groups had commented that shipyard operation generated contaminants such as toxic metals, persistent organic pollutants and other hazardous substances; and
    - (iii) some Legislative Council Members had, on a number of occasions, alerted the Administration to the possibility of a greater extent of contamination at the site; and
  - (b) the Lands Department had not included an indemnity clause in the Deed of Surrender of the PB shipyard site;
- notes that the Director of Lands:
  - (a) is seeking legal advice on whether the Government could recover the decontamination cost from the ex-lessee of the PB shipyard site or the shipyard operator; and
  - (b) will implement Audit's recommendations in paragraph 4.29 of the Audit Report; and

### **Follow-up action**

- wishes to be kept informed of the progress on the implementation of Audit's various recommendations.