



百年樹木 Ghost Pine Organization

September 3, 2010

Complaint OMB2010/0507-0510: Follow-Up Evidence and Question

An old and valuable tree (OVT), the 73+ year old, 20m high Norfolk Island Pine (commonly known as the “Ghost Pine”), was removed from the historical grounds of Maryknoll Convent School (MCS), Primary School Section, in Kowloon Tong on February 6, 2010. This letter is a follow-up to our complaint – reference number **OMB2010/0507-0510**, based on recently released public information. Please kindly provide a response in due course for any follow up actions you are planning to take against the parties mentioned.

Glossary of Key Terms:

- Maryknoll Convent School (MCS) – hereinafter referred to as “the school”.
- The 73+ years old 20-metre high Norfolk Island Pine, commonly known as the “Ghost Pine”, originally outside the Music Room beside the Primary School building of Maryknoll Convent School, within the monumental boundaries – hereinafter referred to as “the tree”.

| ISSUE & REASONING | SUPPORTING DOCUMENTS |
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| <p>ISSUE 1. The Leisure and Cultural Services Department, Buildings Department, Development Bureau, and Drainage Services Department did not fulfill their due diligence in the processes of:</p> <ol style="list-style-type: none"> a. assessment for issuance, and b. enforcement <p>of the Permit under Section 6 of the Antiquities and Monuments Ordinance (CAP. 53) – (Refer to Permit in Doc 1)</p> | <p>Doc 1</p>  <p>Permit(25) LCSAM21/41(P.T.4)07142009</p> |
| <p>REASONING FOR ISSUE 1:</p> <p>1ai. Failure to exercise due diligence in <u>assessing</u> construction work for compliance with Permit</p> <p>MCS Primary School Supervisor Mrs. Helen Yu indicated in her statement to Ming Pao on July 1, 2010, that the school’s consultant did submit drawings and work specifications relating to the drainage work to LCSD and AMO in advance of commencing the drainage work at the end of 2009, but admitted that the school failed to notify LCSD and AMO regarding the set date for the commencement of construction, with reason being the school not having been aware of the requirement to notify them of such specific dates. Before the drainage work commenced, Complainant - Ms. Winnie Chu, an Environmental Engineer - also had access to those drawings and found that the drawings clearly indicated that the work was to be doing AROUND THREE CORNERS</p> | |

of the root flare of the tree and directly UNDER the tree trunk.

Based on these drawings, and if Mrs. Helen Yu's statement is truthful, it would be inappropriate, erroneous and irresponsible for Leisure and Cultural Services Department and the Antiquities and Monuments Office to:

- allow such work to commence;
- brief the related project architects, engineers and contractors to be very careful about the monumental status the tree which has significant relation to the school, given that the tree is also located as close as within 1.5m from the school building's facade
- not stop the construction plan before it commenced; and
- not stop the work when drainage work was actually being carried out.

Based on these indications, the damage to the root flare of the tree could highly likely have been avoided if Leisure and Cultural Services Department and the Antiquities and Monuments Office had exercised their due diligence in reinforcing the Permit under Section 6 of the Antiquities and Monuments Ordinance (CAP. 53) – (Refer to Permit in [Doc 1](#)). Failure to exercise due diligence in properly **assessing** the construction drawings and related information, and failure to act to **stop** such drainage work in a timely manner while having full knowledge of the potential damage to the tree and its roots, resulted in the damage to a major root of the tree and contributed to the ultimate decision to fell the tree. Such failure to exercise due diligence constitutes **negligence** and **judgmental error** on the part of Leisure and Cultural Services Department and the Antiquities and Monuments Office.

1a.iii. Failure to exercise due diligence in the assessment and issuance of Permit in July 2009 after 18 counts of non-compliance of Permit Applicant

The school was declared a historical monument on **May 8, 2008**. In **December 2008** (refer to Declaration in [Doc 2](#)), the school felled 18 trees which formed part of the historical grounds.

- As confirmed in the [statement by Mrs. Helen Yu to Ming Pao on July 1, 2010](#), the school failed to inform the Antiquities Advisory Board to obtain approval prior to commencing such felling work (refer to Answers at LegCo in [Doc 3](#), 2nd last and 3rd last paragraphs).
- Also, the 18 trees were not warranted for removal based on expert opinion by (refer to Expert Report: Prof. Jim in [Doc 4](#), 3rd last paragraph).

Despite these **18 counts of non-compliance** on the school's part after the declaration of historical monument status for the school, the government agencies still **issued the Permit on July 15, 2009**, (refer to Permit in [Doc 1](#)) for the school to perform further work. This **judgment is erroneous** because it failed to take into consideration the recent non-compliant behavior of the Permit applicant shows that the government agencies involved in Issue 1 did not fulfill their due diligence in the **assessment and issuance** of the Permit, which subsequently led to the root damage to the 73-year old 20-metre high Norfolk Island Pine, which also formed part of the historical monument, as did the 18 trees felled in December 2008.

1b.i. Failure to fulfill due diligence in enforcing the Permit in December 2009 and January 2010 for drainage work that was conducted without obtaining prior approval

Doc 2



Monument Dec
LN135 05082008

Doc 3



LegCo Answers

Doc 4



Expert Report: Prof
Jim

Section 5.1 of the Permit specifies that the Permit Holder should notify the Antiquities and Monuments Office at least 15 working days prior the commencement of the work (*refer to Permit in [Doc 1](#)*). During the latest drainage work that led to the damage of the root system of the tree, the school failed to comply with section 5.1 of the Permit, as specified by Mrs. Carrie Lam, Secretary of Development on behalf of the [Development Bureau](#) at the Legislative Council on March 3, 2010 (*refer to Answers at LegCo in [Doc 3](#), 3rd last paragraph*), and confirmed by Mrs. Helen Yu's [statement to Ming Pao on July 1, 2009](#). The work started in the later half of December 2009 and continued into the second week of January 2010. During this period of close to a month, the government agencies involved in Issue 1 failed to:

- promptly inquire into the school's incompliant behavior against the Permit;
- order the work to be stopped; and/or
- revoke the Permit subsequent to repeated incompliance.

Subsequently, the Permit Holder continued to exercise the conditionally granted rights within the Permit and continued with the drainage work which subsequently led to damage of the tree's root system. This shows that the government agencies involved in Issue 1 did not fulfill their due diligence in **enforcing** the Permit.

1bii. Failure to fulfill due diligence in enforcing the Permit on February 6, 2010, for felling of the tree performed that was not within the provisions in Appendix III of the Permit

After the root of the tree was damaged in January 2010 by drainage work, according to the answers provided by Mrs. Carrie Lam, Secretary of Development on behalf of the [Development Bureau](#) at the Legislative Council to Hon. Margaret Ng on March 3, 2010, the felling of the Norfolk Island Pine on February 6, 2010, qualified as "Emergency Works" as specified in Appendix III of the Permit. However, according to numerous expert reports, the situation was not an emergency condition that required immediate felling of the tree. Instead, other immediate measures such as regular and close monitoring, area restriction, cable support and height reduction were recommended.

Refer to the following sources:

1. Expert Report: Dynamic Source in [Doc 6](#) – Page 3 of "Tree Emergency Inspection Report" > Section "VI. Suggestion" > "Hazard Treatment: Restrict Area (1 = immediate), Supporting (1 = immediate), Comment: Inspection by weekly".
2. Expert Report: Arbor Global in [Doc 9](#) – Page 9 > Recommendations on cabling and topping (height reduction).
3. Expert Report: Cons Assn in [Doc 10](#) > Recommendations on providing stabilizing structures for the tree before windy season.

None of these immediate measures were implemented. Instead, felling was done contrary to the expert judgment that the situation was not an "emergency" as specified in Appendix III. The decision to allow the felling of tree under a non-emergency situation and the failure to adopt the immediate measures as recommended by experts constitute failure of the government agencies involved in Issue 1 to fulfill their due diligence in **enforcing** the Permit.

Doc 6



Expert Report:
Dynamic Source

Doc 9



Expert Report: Arbor
Global

Doc 10



Expert Report: Cons
Assn

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| <p>ISSUE 2. Development Bureau did not exercise due diligence in the use of the HKD\$0.5 million tax dollars dedicated to the research for proper mechanisms for and the implementation of preserving the tree by:</p> <ol style="list-style-type: none"> Ensuring that experts hired deliver according to project timelines and expectations Considering and adopting expert advice related to preventative and preservation measures for the tree. Disclosing the progress and any information of the research report, whether finished or not, up till at the end of the 4-month research period. | |
| <p>REASONING FOR ISSUE 2:</p> <p>2a. Failure to fulfill due diligence in ensuring the best <u>use</u> of the HKD\$500,000 taxpayer money allotted to maintaining and protecting the tree based on <u>expert advice</u></p> <p>HKD\$500,000 of tax dollars was allotted by the government for the ongoing monitoring and protection of the tree. To date, the statement of expense breakdown or the whereabouts of this sum of money has not been made available to the public. Since the tree was felled instead of conserved, we have reason to believe that the HKD\$500,000 of taxpayer money was not spent on the prevention of damage, minimization of risks and conservation of historic fixture within the monument.</p> <p>According to expert reports from 2008 and 2009 before the root damage caused by the drainage work, experts advised that the tree was in good and healthy condition and had a low failure potential. Some management measures were recommended for tree sustainability:</p> <p>According to the report by Conservancy Association in November 2008, (<i>refer to Expert Report: Cons Assn 11202008 in Doc 5</i>):</p> <p>“1. Regular monitoring and measurement of the cracks on lower tree trunk is highly suggested.</p> <p>2. Increased degree of leaning and any ground lifting condition have to be monitored (especially after typhoon or monsoon wind). Assistant have to be sought immediately once the above situation(s) observed.</p> <p>3. Since the drain may affect and limit the development of the root system, if this is the case, the anchorage of the tree may have problem. Again, close monitor of the ground lift (i.e. root zone between the tree and the drain) is recommended for this reason.</p> <p>4. Since there is lawn covering the root flare and root area, cutting down of lawn under the tree have to be in extra caution. No machinery should be used for cutting the lawn under the tree. This is for preventing mechanical damage of the root flare and roots. Lawn cutting by hand is suggested.”</p> <ul style="list-style-type: none"> Contrary to this expert advice, heavy machinery was used and stationed on the ground directly where the root flare was located >>> (<i>Refer to Expert Report: Dynamic Source in Doc 6 page 5</i>). <p>According to the report by Conservancy Association in February 2009, (<i>refer to Expert Report: Cons Assn 02052009 in Doc 7</i>):</p> | <p>Doc 5</p>  <p>Expert Report: Cons Assn 11202008</p> <p>Doc 7</p> |

“According to the above test result, preliminarily the tree has no significant internal structural problem. However, since amount of cracks and dried resin were significantly increased between the 2 assessment in Nov 2008 and Feb 2009. It is suggested to carry out close monitoring by tree specialists monthly. Daily monitoring carried out by staff of the Maryknoll Convent School and reporting abnormal problems to tree specialist is also suggested.”

According tree preservation authority Professor Jim, “The tree is in good and healthy condition, but if the school is concerned about public safety, support mechanisms can be installed for the tree by placing concrete ballasts on the structural columns tops on the roof of the adjacent school building and attaching cables between the concrete ballasts and the tree,” (refer to *Expert Report: Prof Jim* in [Doc 4](#), 4th last paragraph).

None of these recommendations were followed through by committing financial resources or putting in real actions. Despite the HKD\$500,000 allotted for costs related to the regular monitoring of and damage and infestation prevention for the tree (refer to *Dev Bureau Response* in [Doc 8](#) - points 2 & 3), none of these types of preventative and maintenance work were performed. The expenses are still not communicated publicly to date. Failure on the government’s part to exercise the rights and responsibilities related to the use of the HKD\$500,000 taxpayer money shows that the government agencies involved in Issue 1 did not fulfill their due diligence in **enforcing** the Permit.

This failure to spend taxpayer funds designated for conservation and risk mitigation shows that the government agencies involved in Issue 1 did not fulfill their **due diligence in adopting expert advice to use public funds properly** and effectively for a sustainable future for the public and the city’s monuments.

2b. Failure to fulfill due diligence in reinforcing that the HKD\$500,000 taxpayer money allotted is used optimally to have qualified experts deliver according to project timelines and expectations

According to response from Development Bureau to Tanya Chan on August 3, 2009 (refer to *Response by SDev to Tanya Chan* - [Doc 11](#)), Development Bureau confirmed that a structural engineering consultant was commissioned on August 12, 2009, to embark on four months of works covering, among other things, structural survey and assessment of school building adjacent to the Norfolk Pine including site inspection and measurement, laboratory and in-situ tests, and underground utilities mapping works to the area surrounding the Norfolk Island Pine. Development Bureau was further committed to continuously maintaining close liaison with the school.

The structural engineering consultant commenced assessment in mid-September 2009 but failed to complete the tasks within the four months allotted. This delay and failure to deliver results led to a lack of professional advice being provided to the government for strengthening support for the tree when the matter was at the priority of public concern and was requiring urgent attention.



Expert Report: Cons
Assn 02052009

Doc 8



Dev Bur Response
08032009

Doc 11



SDEV to Tanya: Tree
is monument

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| <p>According to the obligations laid out in this response, the Development Bureau failed to exercise due diligence in the best use of the HKD\$500,000 public funds by reinforcing that the qualified experts hired adhere to project timelines and expectations during the four-month research period and at the time of writing this complaint letter.</p> | |
| <p>ISSUE 3. Development Bureau failed to demonstrate a clear understanding of:</p> <ul style="list-style-type: none"> the use of the HKD\$500,000 tax dollars dedicated to the research for proper mechanisms for and implementation of monitoring and preserving the tree the laws governing the department's role in monitoring and preserving OVTs wholly or partially located in private properties. <p>With this inconsistency of interpretation of the law and the allotted budget, Development Bureau erred in judgment and in delivering actions in issues relating OVTs wholly or partially located within private property.</p> | |
| <p>REASONING FOR ISSUE 3:</p> <p>According the letter to Tanya Chan by Development Bureau on August 3, 2009, a sum of HKD\$500,000 was allotted for costs related to the regular monitoring of and damage and infestation prevention for the tree (<i>refer to Dev Bureau Response in Doc 8 - point 2</i>).</p> <p>Contrarily, in another response to Tanya Chan from the Development Bureau dated July 30, 2010 (<i>refer to Dev Bureau Response in Doc 12 - point 9</i>), it is stated that since the tree was located within private property, it was deemed in appropriate to use public money to register or monitor the tree. This point of view is clearly contradicting against the one that the same Development Bureau made on August 9, 2009, to the same Tanya Chan.</p> <p>Subsequent to this contradiction and confusion, this guideline proves to be unclear among government departments and within Development Bureau itself. With such inconsistency and confusion over the interpretation of the laws and the responsibility of the use of the HKD\$500,000, the Development Bureau erred in judgment and delivering actions by failing to actively ensure that the allotted public dollars are spent to optimally meet the needs identified, and failing to demonstrate a clear understanding of the laws by communicating and acting accurately according to provisions.</p> | <p>Doc 12</p>  <p>Dev Bur to Tanya 07302010</p> |

Ghost Pine Organization (GPO) was founded by a group of alumni after the felling of the 73-year-old Norfolk Island Pine, commonly known as "Ghost Pine", on the monumental grounds of Maryknoll Convent School in February 2010. Without compromising public safety, GPO seeks to prevent unreasonable damage to historical trees and plant life via public education on ways to protect, conserve and provide a sustainable environment for their well-being.

Yours truly,

Winnie Chu 朱茵

「百年樹木」Chair 會長 Member of the Public and Taxpayers of Hong Kong

Tel 電話: 852-9040-6268

E-mail 電郵: chair@ghostpine.org

Web Site and Visual Archive 網址及圖象庫: www.ghostpine.org