

Man Kam Tong v Man Lin Tai

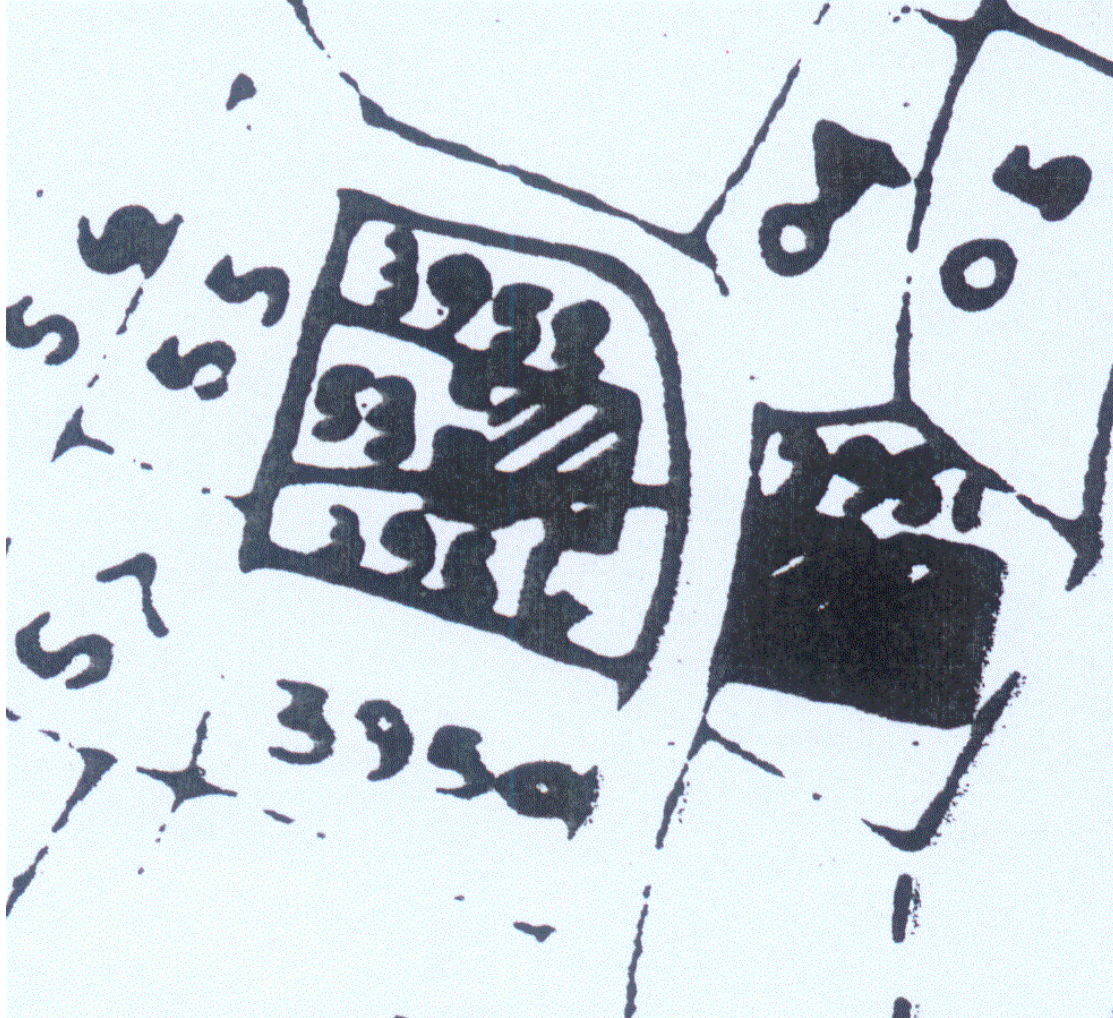
[1985] 2 HKC 299 ; HCA 5478 in 1981

Plaintiff Lot 3954

Defendant Pok Wai House Lot 114, 144

Defendant's lots not found on land records

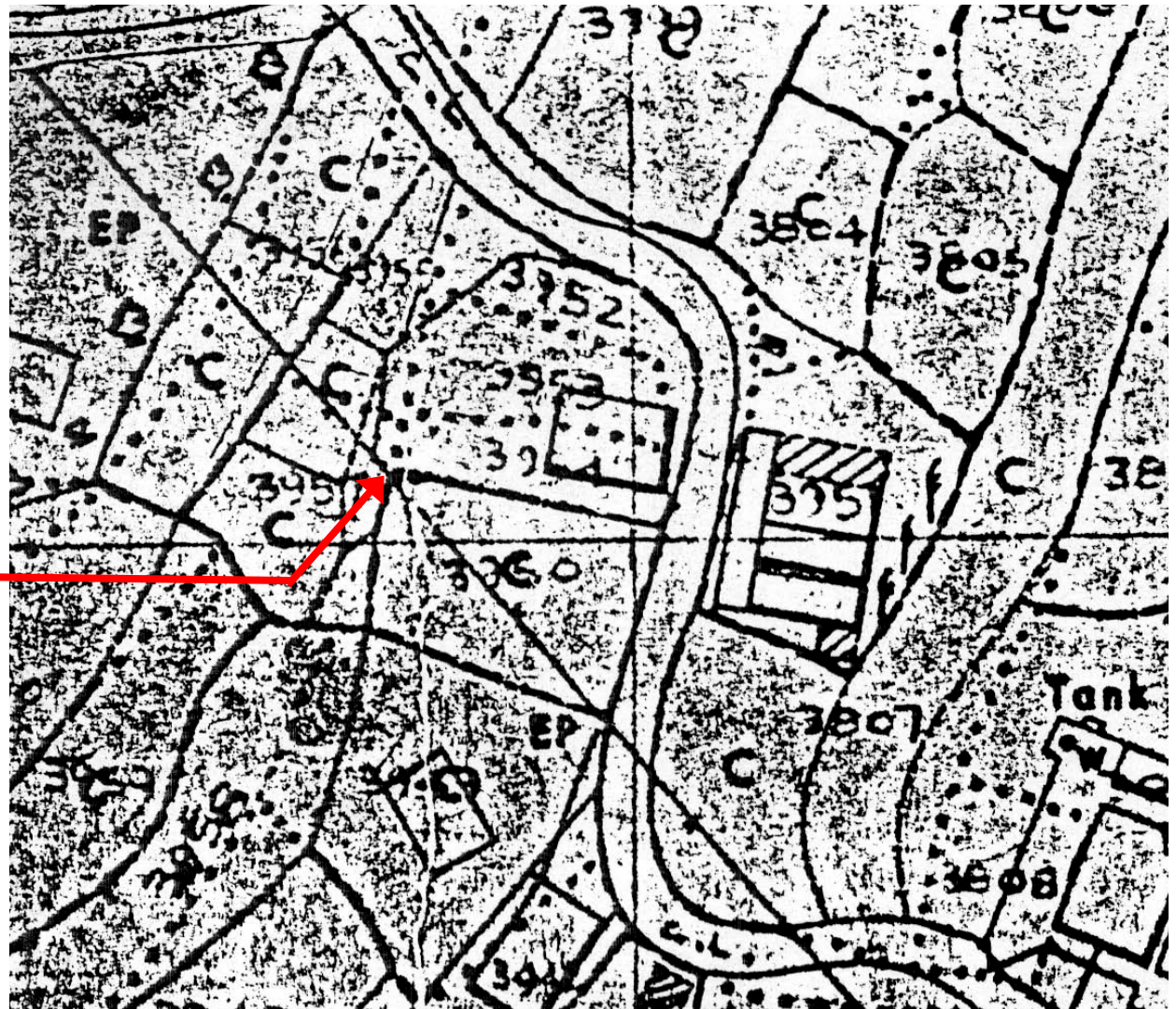
DD Sheet *(enlarged image)*



Same as
DLS

A Sheet (Cad/Svy Sheet)

DD104
Lot 3953
&
Lot 3954



Land Status Plan (around 1996)



Man Kam Tong v Man Lin Tai

HCA 5478 in 1981

Judge Hunter reconstructed the process of title acquisition and decided PWHL were on the same site.

Defendant's possessory title also succeeded

The Honorable Judge **urges the Govt** to improve current unsatisfactory situation

Niceboard Development Ltd v China Light & Power Company Ltd

- Lands Tribunal [HKLRD, 1994]
- Lot 1812RP DD 104 2.70 ac
- 1935 0.03 ac converted to house lot
- Power line passing through a corner of the lot
- Compensation amounted to HK\$5,200,000
- Scheme of Control Agreement

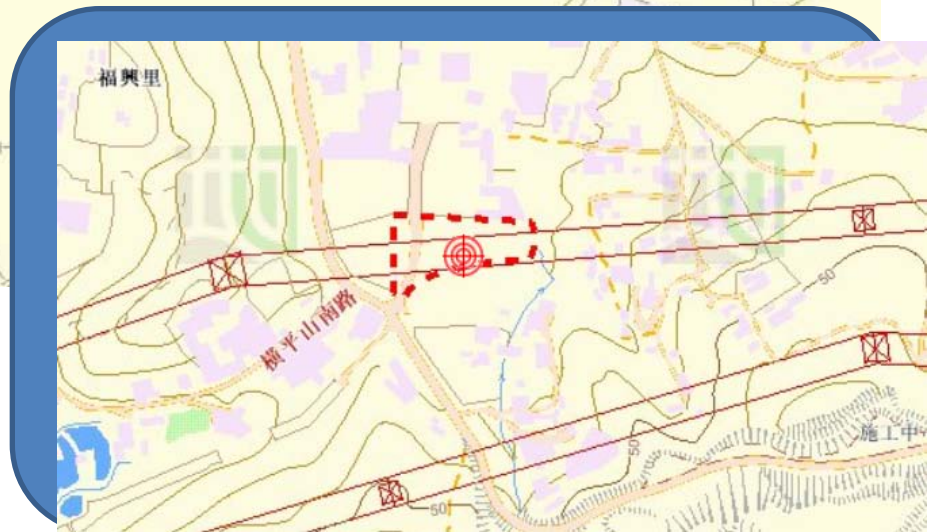
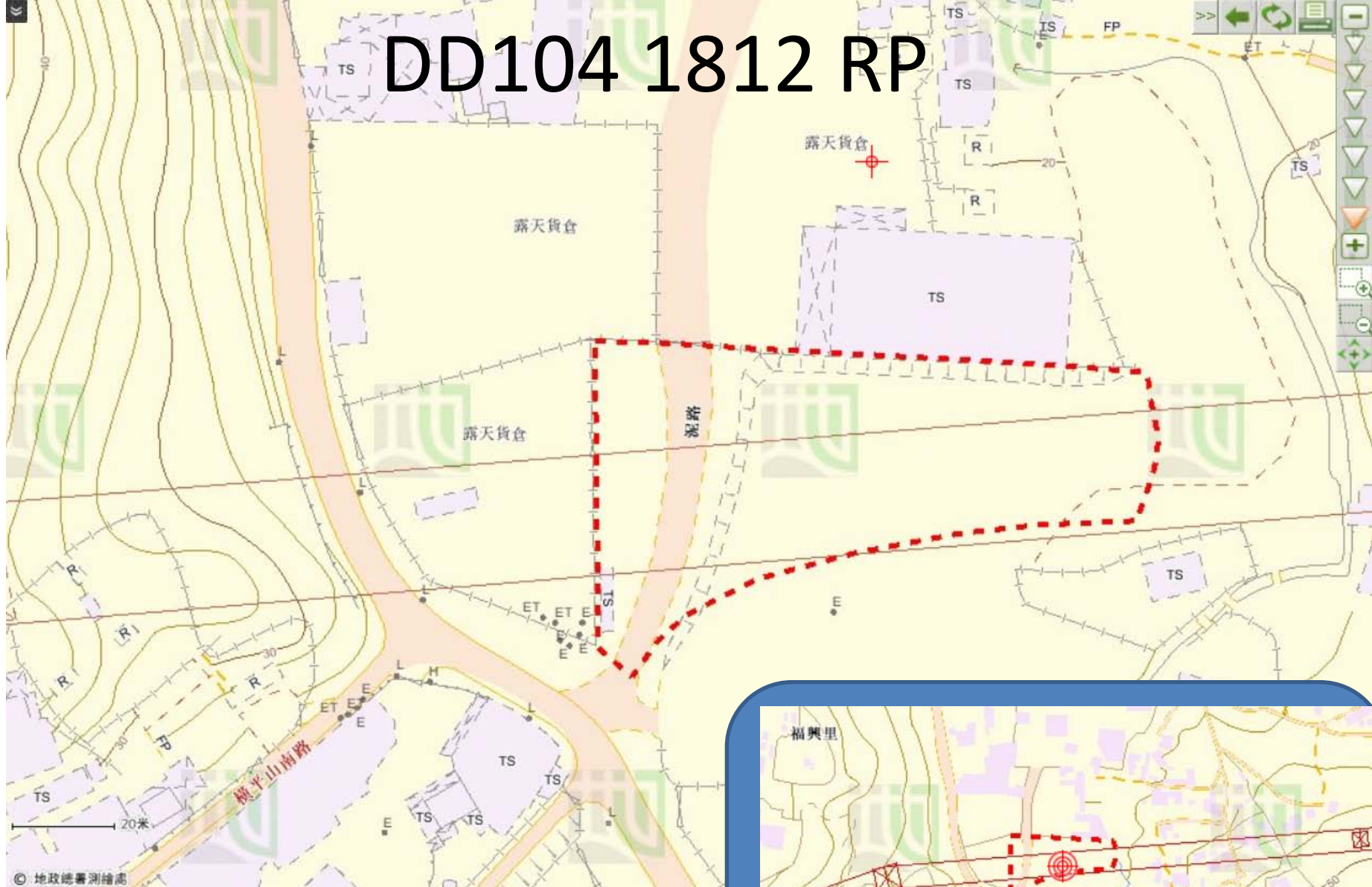
Potatoes grown

SCHEDULE OF CROWN LESSEES.

DISTRICT No. 164

Lot No.	Term of lease in years.	Area	Description of Lot	Name of Owner.			Crown Rent.		
				Chinese	Transliteration.	Address	Class	\$	cts.
1806	45	.06	Potatoes grown	黃兆興	Wong Chiu King	竹園	35		06
1807	"	.06	Dry Cultivation	李年就	Li hin Hean	"	"		06
1808	"	.07	"	"	"	"	"		07
1809	"	.02	Potatoes grown	陳宗壽	Chen Chung Shau	"	"		02 See lot 1619
1812	"	5.70	Potatoes grown	文華彭堂	Man Wa ching Tang	新田永平村	"	5	70
1813	"	12	"	文紹晉司理	Man Shiu So (Trustee)	"	"		
				文榕保	Man Gung Po	蕃田村	"		12

DD104 1812 RP



Ref: Hong Kong Map Service – Lands D



- Current – land boundary records related cases
 - Pre Land Survey Ord subdivision

People Involved

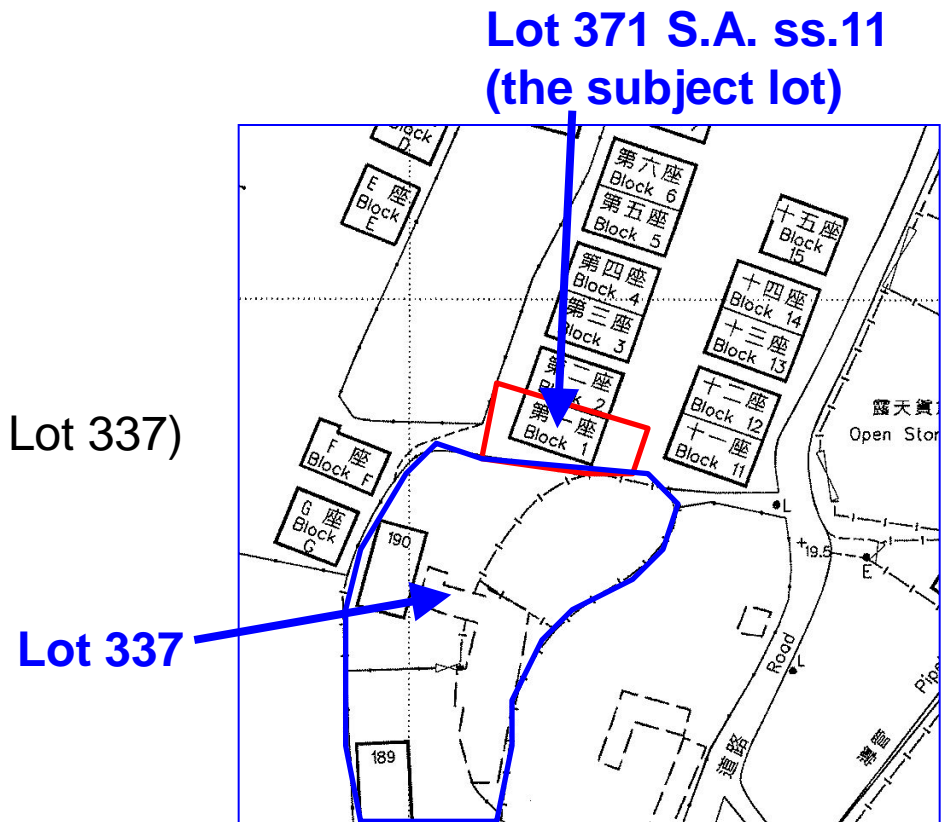
Plaintiff

1st :Lau Pui Yin Joewe (registered owner of Lot 371 S.A. ss.11)

2nd Chan Fung Kwan Amanda

Defendant

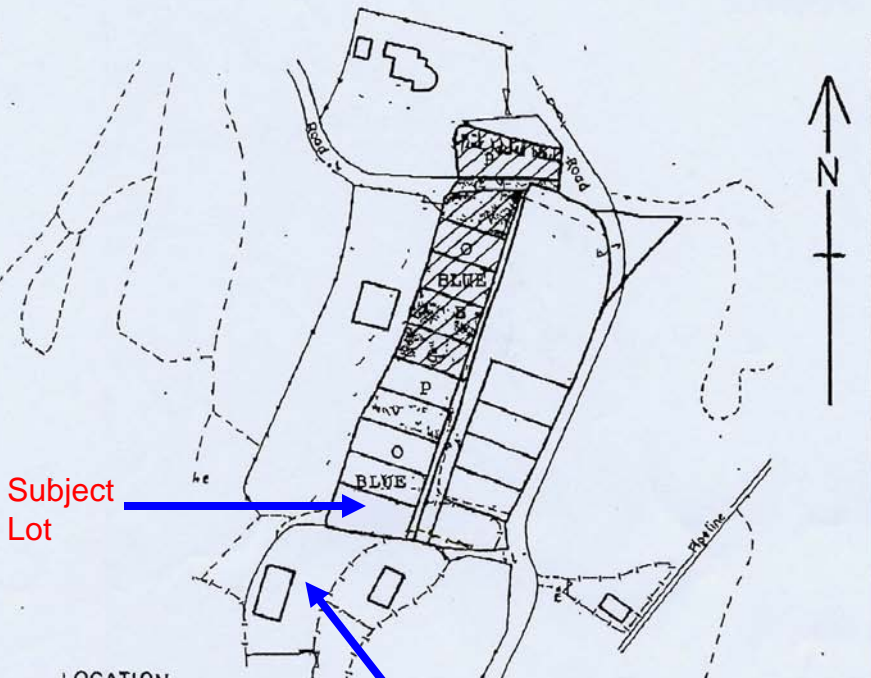
Lau Se Yau Andrew (Owner of Lot 337)



DIVISION PLAN

D.D. 112

Appendix 3



Subject Lot

Lot 337

LOCATION



Scale 1:20000

NOTE This plan shows the location of the lot transferred from the Office Record Plan. Since complete reconciliation between the old and the new surveys is not possible, the boundaries must be regarded as approximate. The District Lands Office can accept no liability or responsibility for accuracy.

Subdivision	Area	Class	Cr. Rent	Owner's Name
371 A1	190m ²	1st	15¢	
371 A2	124m ²	1st	12¢	
371 A3	108m ²	1st	9¢	
371 A4	106m ²	1st	9¢	
371 A5	114m ²	1st	9¢	
371 A6	113m ²	1st	9¢	
371 A7	108m ²	1st	9¢	
371 A8	117.5m ²	1st	9¢	
371 A9	121.4m ²	1st	9¢	
371 A10	121.4m ²	1st	9¢	
371 A11	137m ²	1st	12¢	
371 ARP	217.92m ²	1st	18¢	

Prepared by: Knight Frank Kan & Baillieu
 Project No.: YL-LSD-92-1617
 Date: 16 January 1992



16 JAN 1992

Project No: YL-LSD-92-1617

Plan No: YL-P908-156

Date: 16 January, 1992

Scale: 1:1000

Survey Sheet No: 6-NE-18B

Knight Frank Kan & Baillieu

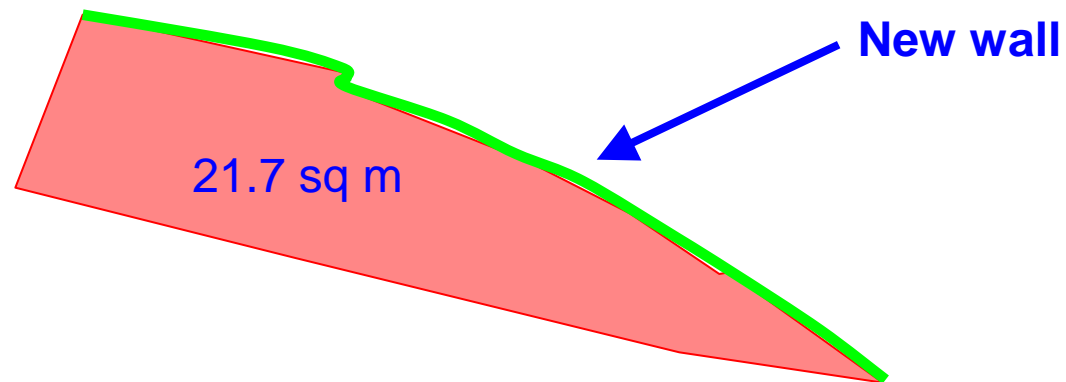


Evidence of Plaintiff

Registered area of the subject lot: 137 sq m

Surveyed area include red area: 142 sq m

Surveyed area not include red area: 120.3 sq m

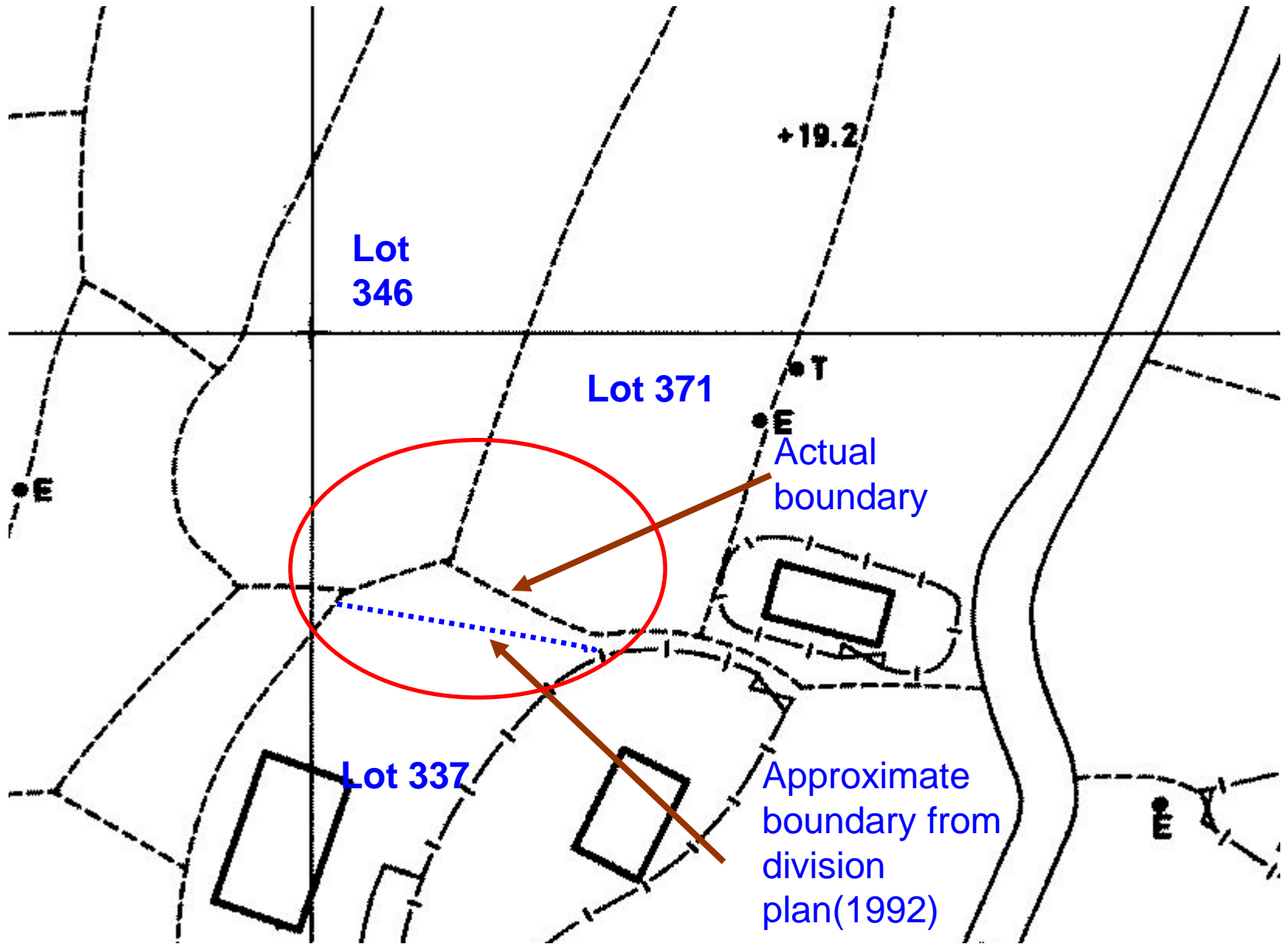


1963 aerial photo

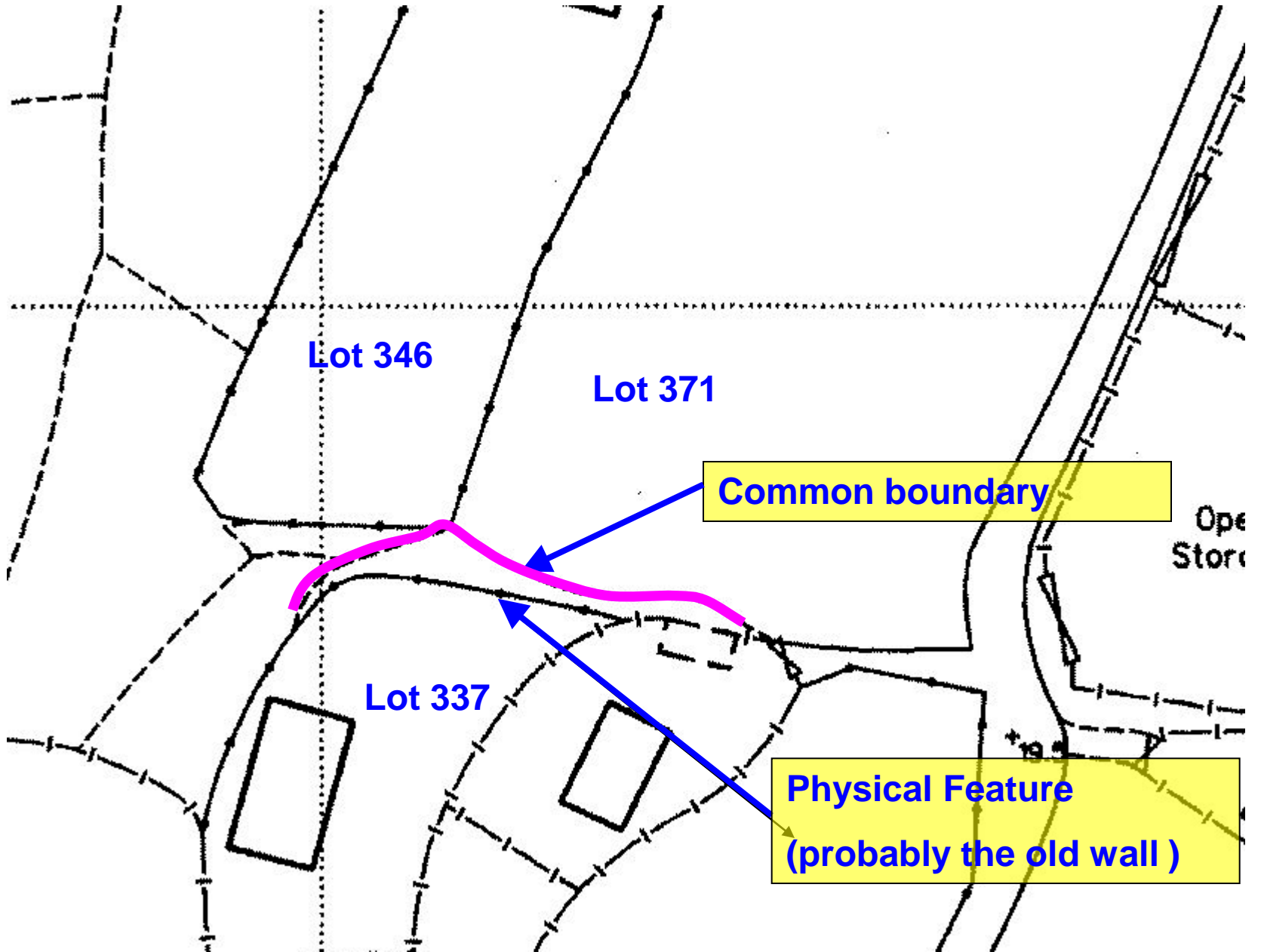


The highlighted area is just for indication of the lots. Not drawn to scale

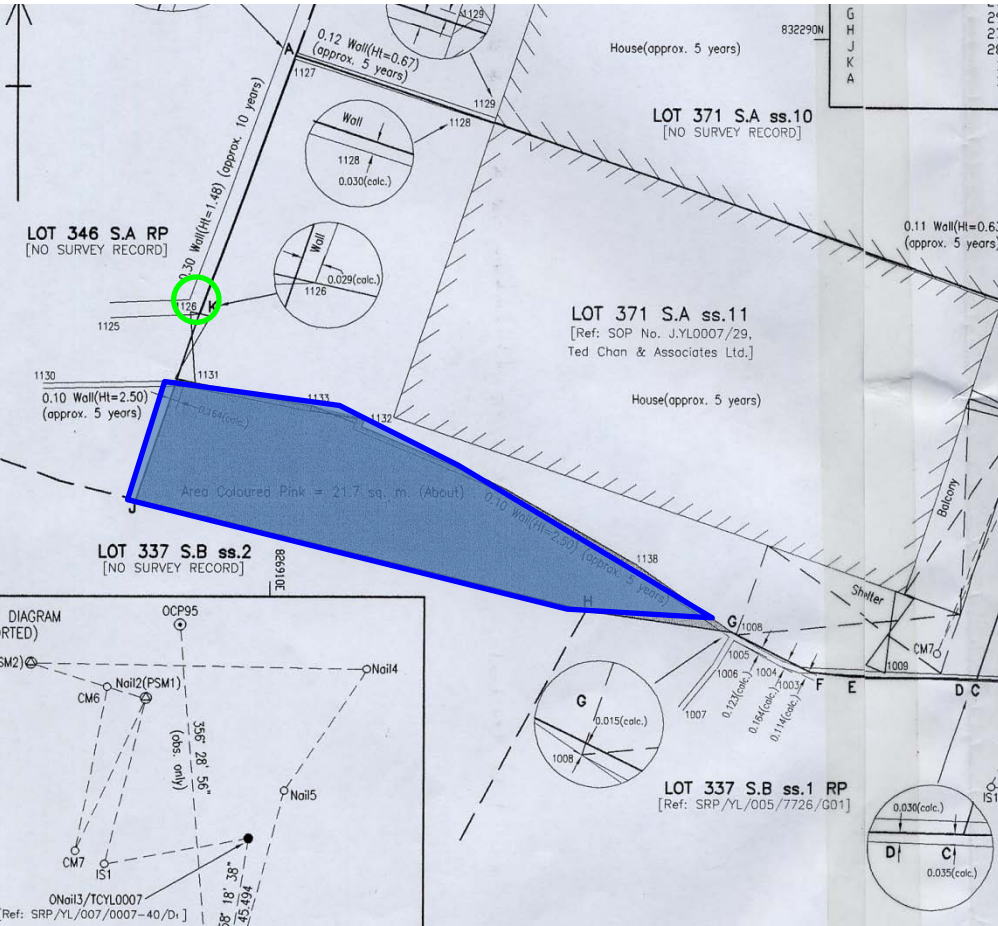
1979 survey sheet



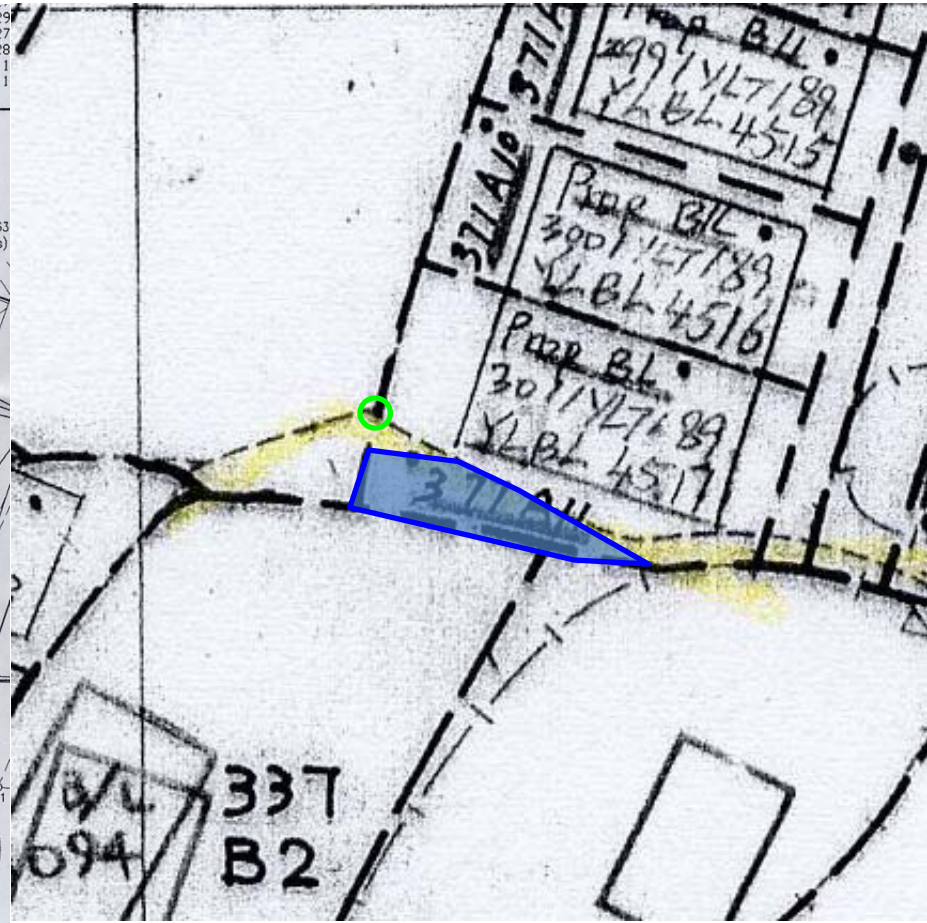
1992 Survey Sheet

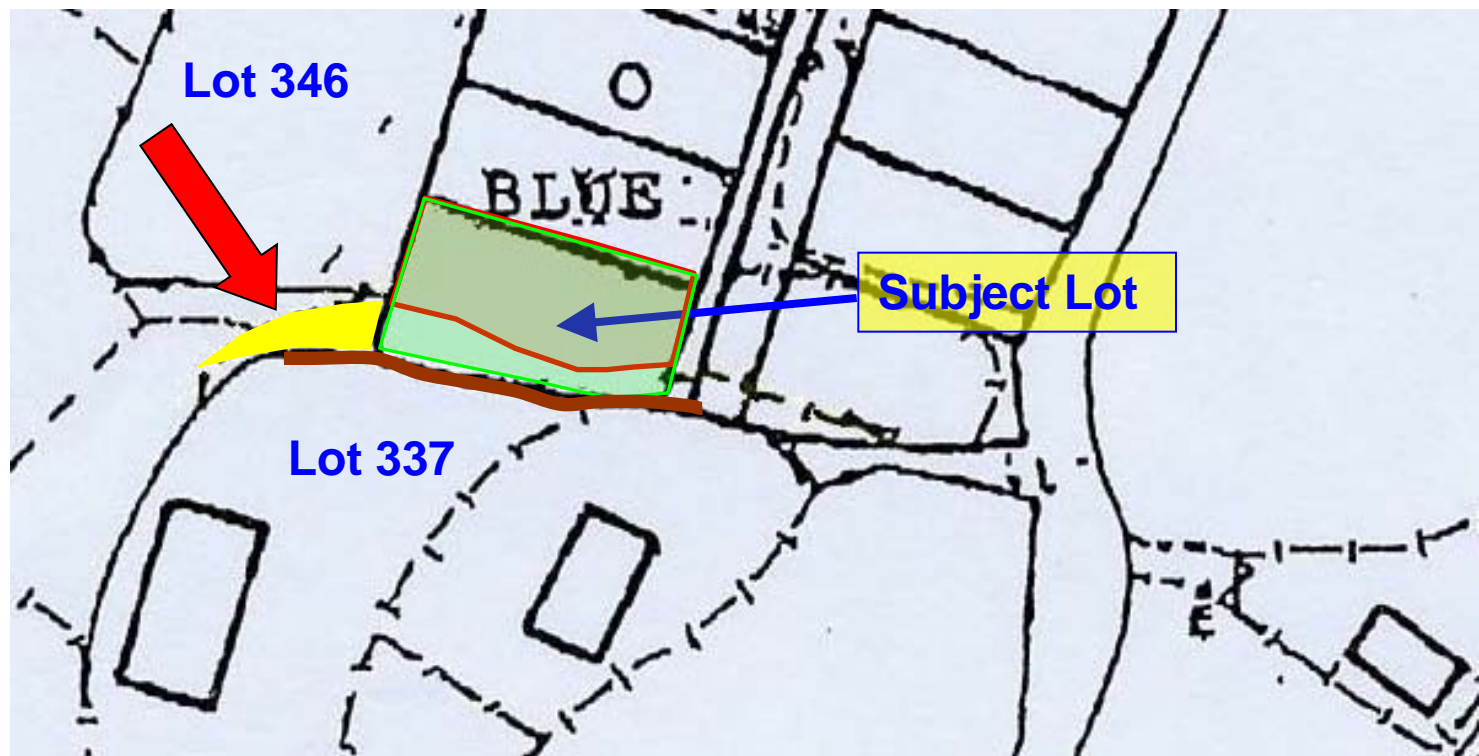


Dimension Plan



Land Record 1979





Conclusion

The boundary of the division plan was incorrect and the registered area of the subject lot is wrong

There is not enough evidence to prove the new wall is encroached in the subject Lot

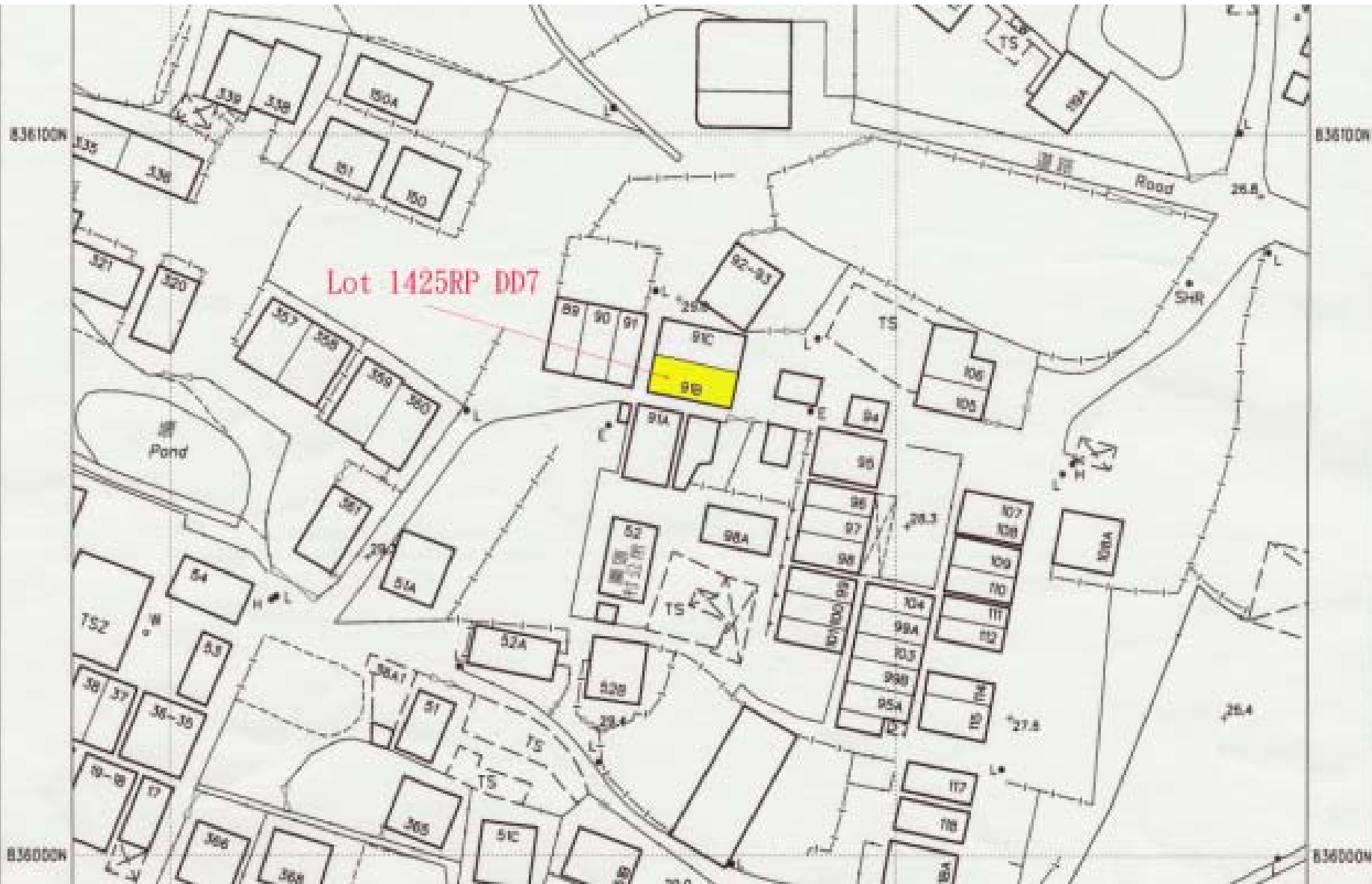


Current – land boundary records related cases

– NTEH

[2000] HCMP 1091 Ng Hung Hing case

- 1907 DD - barely legible
- Certificate of Compliance “for reference only”
 - An ALS proved “as-built house had fallen within its legal title boundary position”



Lot 1425RP DD7



■ Part 3 Aerial photo applications

Aerial Photo Interpretation

Interpretation from single aerial photo

Interpretation from multi aerial photos



Aerial Photo Interpretation case

[2001] HKLRD (Yrbk) 514; [1998] HCA 13711

1. D has no factual possession (action did not amount to dispossession)
2. D's boundary marking exercise was inconsistent with the adv-poss intention

Lot 356RP & 360RP in DD 91

Miss Chan (P) v Mr Watten [sic] (D)

Aerial photo interpretation case 2

- [2004] 1 HKC 119 – Kong Sau Ching v Kong Pak Yan & ors
- (SC Leung v Barrett) vehicle road use in 1960s
- “Chances are that the base sheet in 1990 may be the same as in 1960” Tong YC.
 - Reyes J: A new version of a survey sheet did not necessarily revise all details

Aerial photo interpretation case 3

- [2006] 4 HKC 221
- Longan tree
 - Prof CY Jim 14.7 yr
 - Mr. Au 30 yr
 - McCoy (Recorder) : not more than 30 yr (the age of the tree proves nothing)
- 1973 photo B/W **fenceline is obscured**
- 1998 photo fence detected
- The 2006 survey by Henry Chan using 1:100 (is fairly comparable to & more valuable) that by Andrew Lau of 1:150 in 2002
- Adv Poss – D adv poss 3rd party land

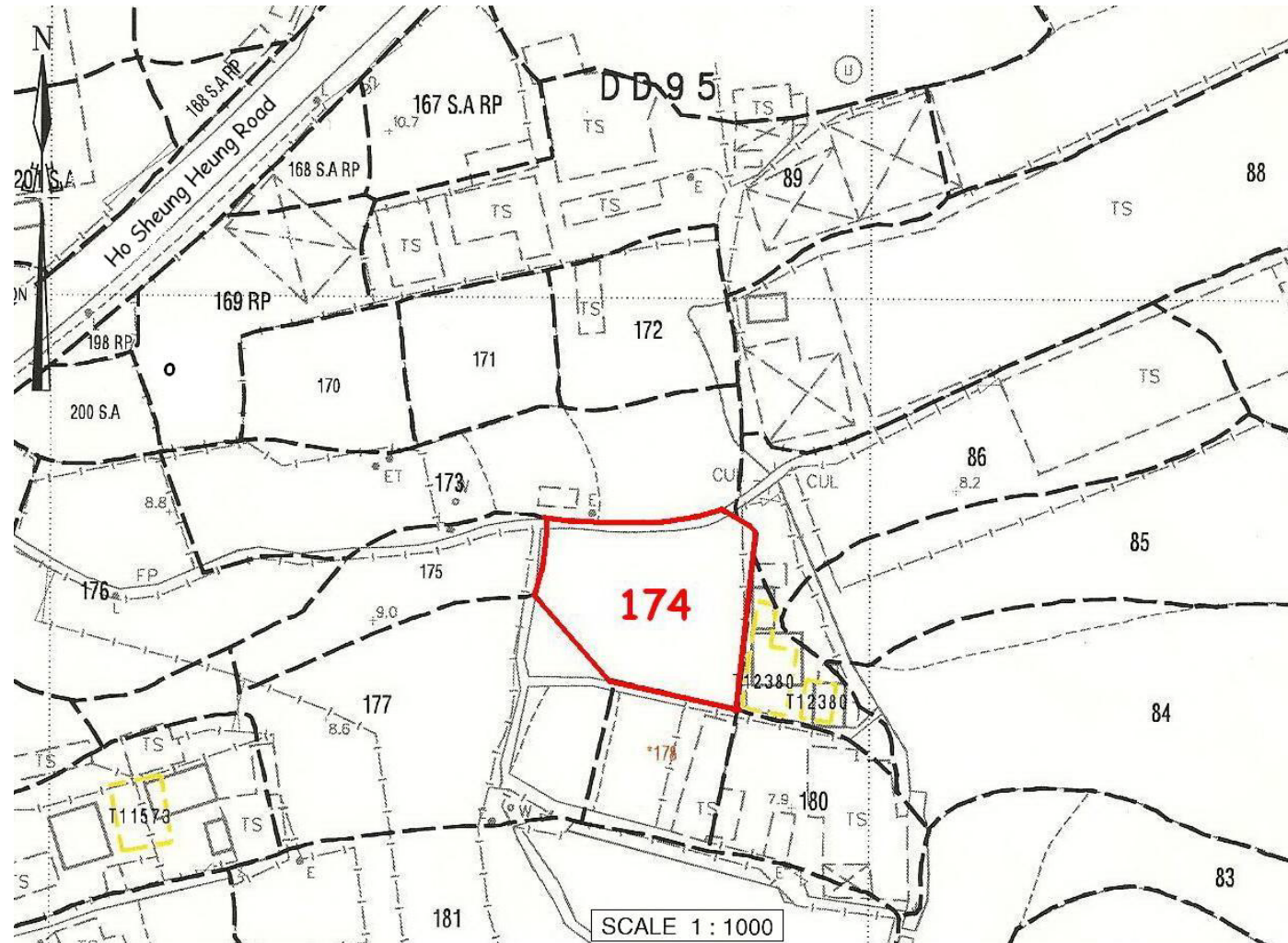


Cases in this presentation

- Case 1 HCMP 2807/2003 (land use identification).
- Case 2 DCMP 2096/2002 (feature identification)
- Case 3 HCA67/2006 (boundary feature identification)
- Case 4 HCA 18217/1999 (building lot dimension & encroachment)

Case 1 HCMP 2807/2003

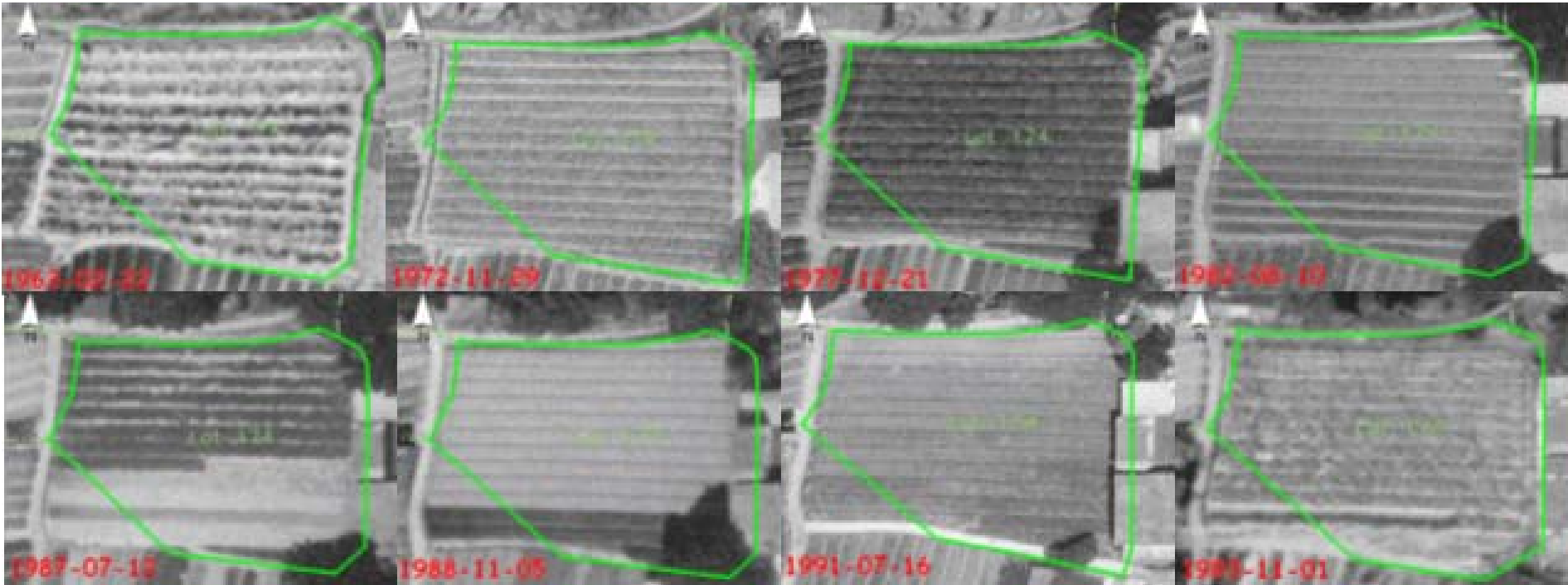
- Lot 174,
DD 95
- Kwu Tung,
North, NT



Lot Index Plan from DSO / North

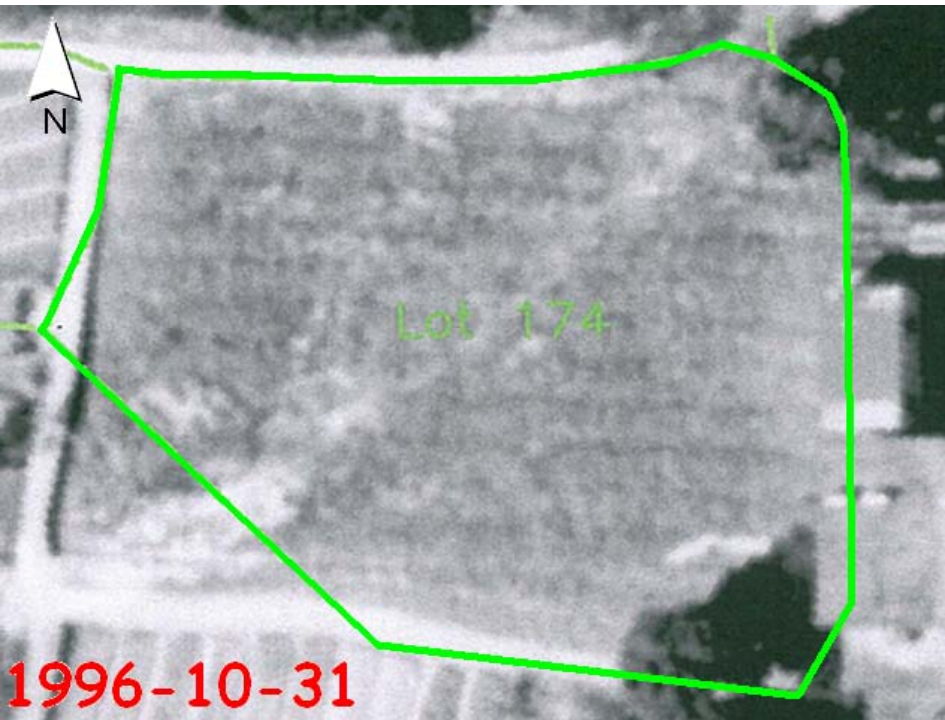
Farming from 1963 - 1995

- Row crops – furrows identified
 - 1963 1972 1977 1982
 - 1987 1988 1991 1993

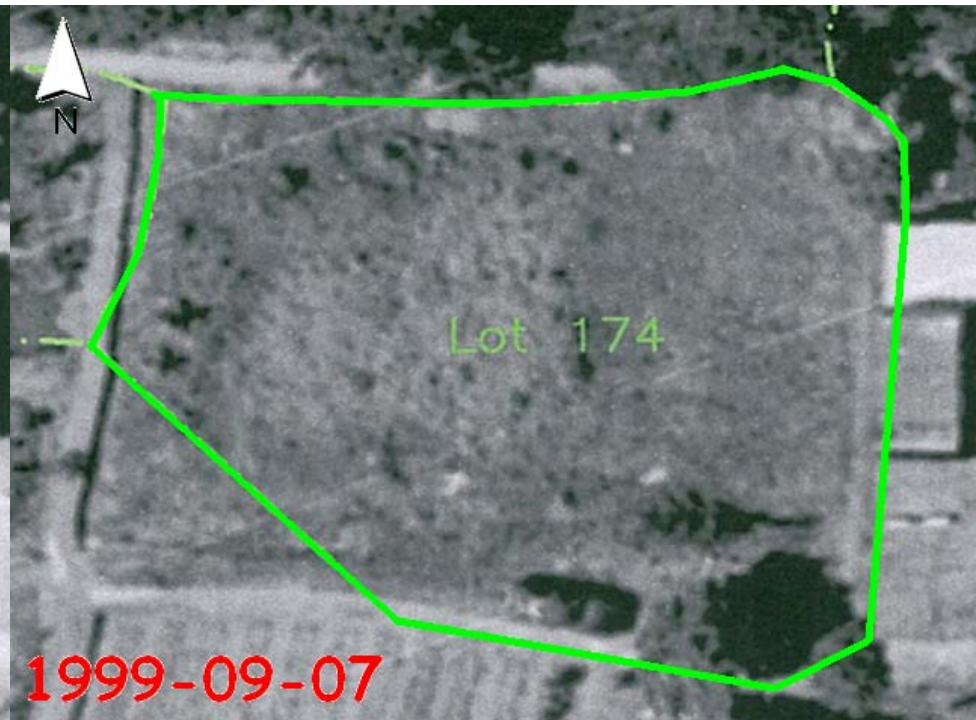


(Ref No. 9974, 2659, 16694, 20511, A15530, A26163, CN5038)

- 1996 - illegibility of row crops
- 1999 - Overgrown vegetation



(Ref No. CN15332)

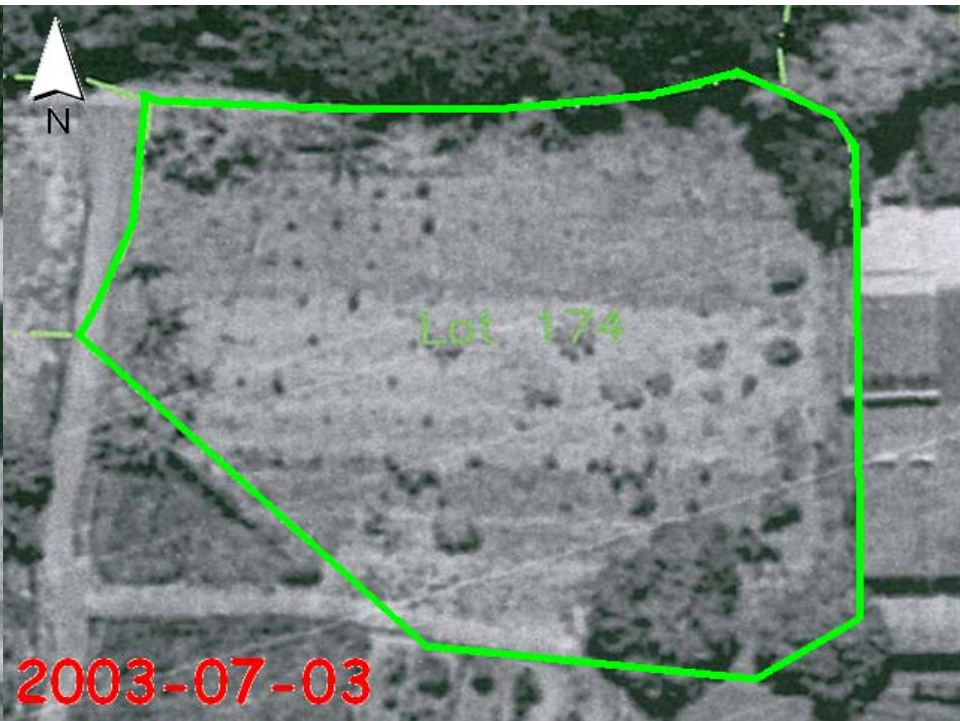


(Ref. No. A49259)

- 2002 Bare ground
- 2003 Overgrown vegetation extend



(Ref. No. CW41430)

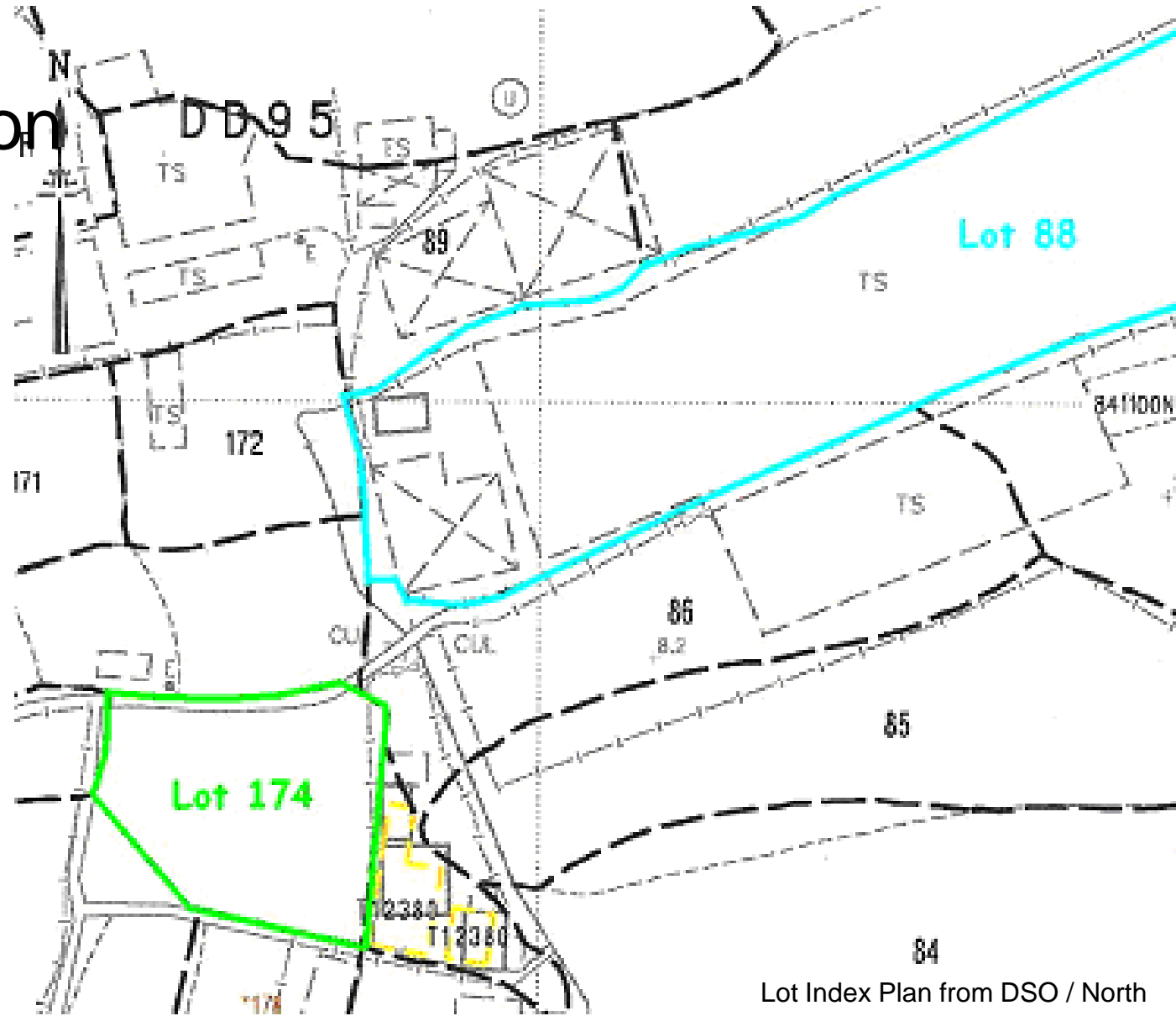


(Ref. No. CW46725)

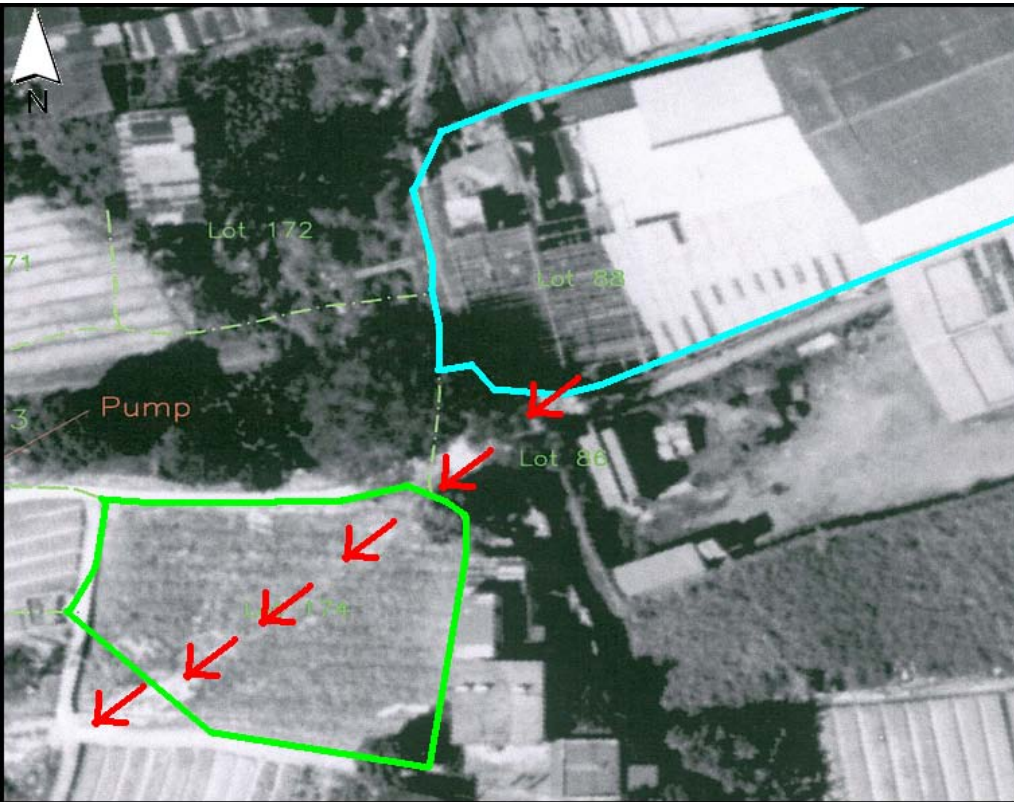
■ Aerial Photo → D's possession fail

Incidents 1: Tracks




- P: Permission to remove heavy machinery in 1996
- D: No entry on the subject lot

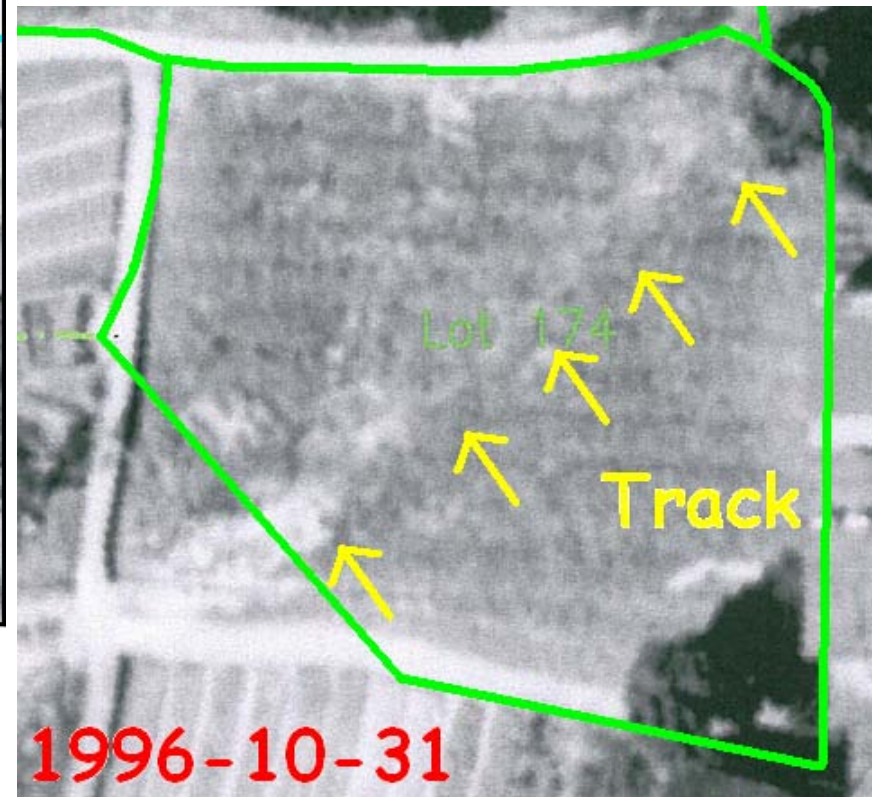


- Both SC & Helen agreed: Caused by heavy vehicle



Legend

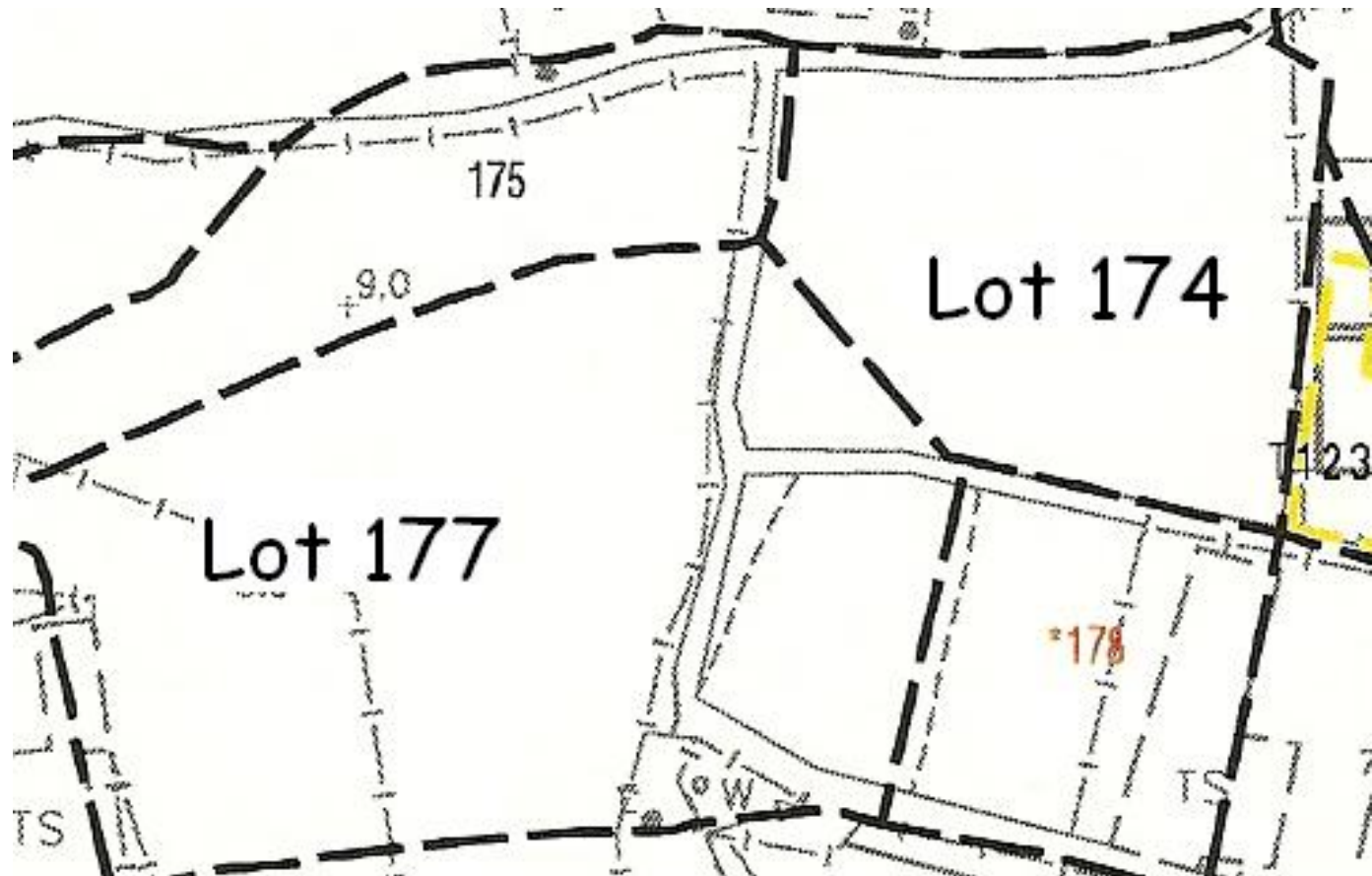
-  Area of Rattan factory on Lot 88
-  Area of Lot 174
-  Route of heavy vehicles



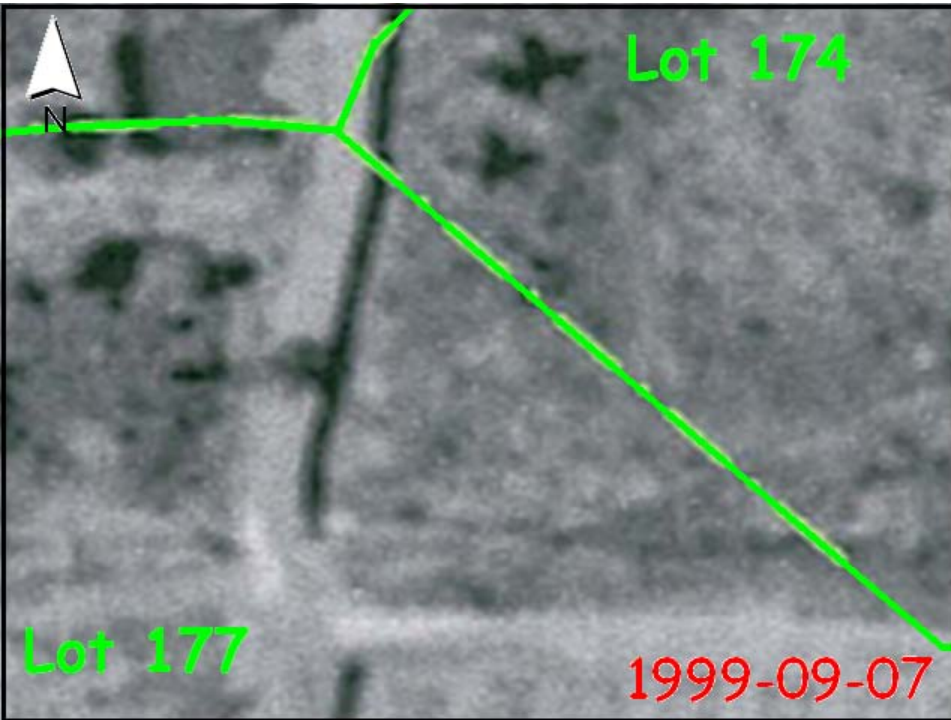
(Ref.No.CN15332)

Incident 2: The Hilder fencing

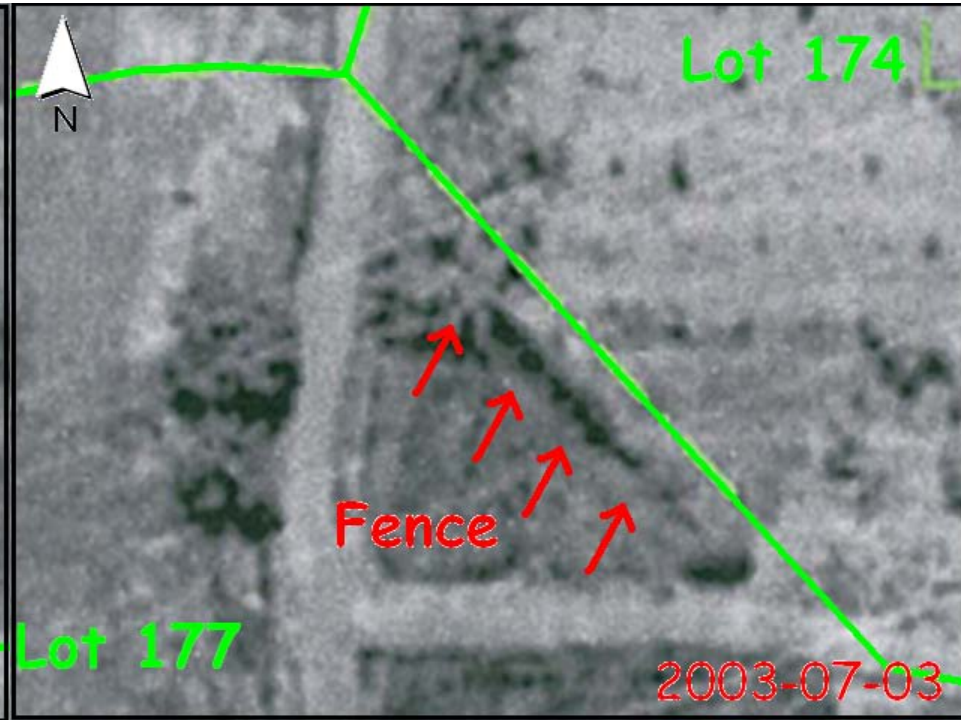
- Fenced off Lot 177 by the owner in 2002
- P presented to ensure no encroachment upon the subject lot
- P had possession



- Helen: Wire-Fence in 2002,2003 visible !



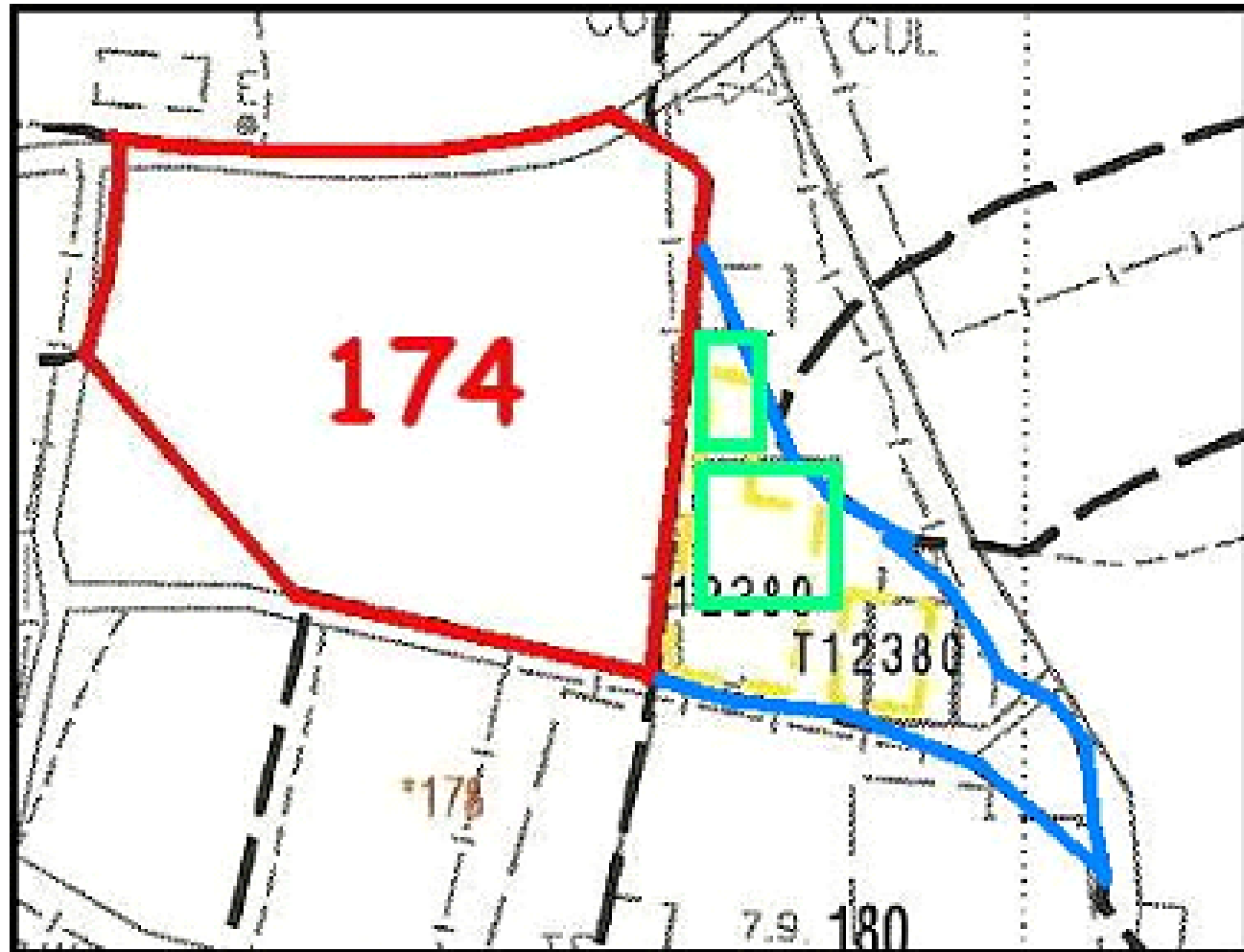
(Ref.No.A49259)



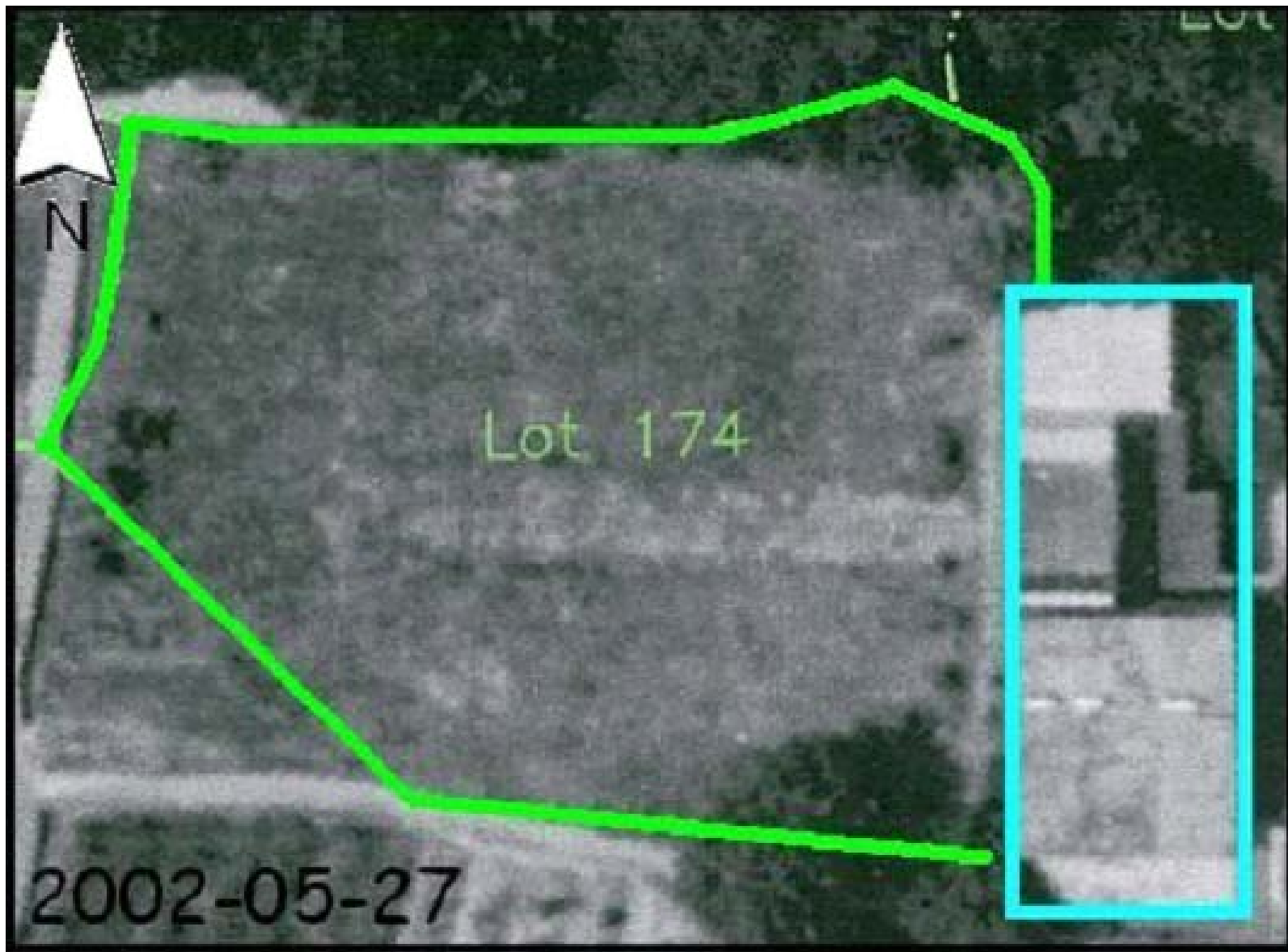
(Ref.No.CW41430) (Ref.No.CW46725)

Incident 3 : Cutting grass

- P: Required by D to cut grass in front of his house in 2002
- D: no reply



- 2002
- No grass



- P: cut grass once only
- D : P is inconsistent with Helen



Court Decision

- D has no possession after 1995
- D could not establish AP after 1963
- P's claim succeed

Case 2 DCMP 2096/2002

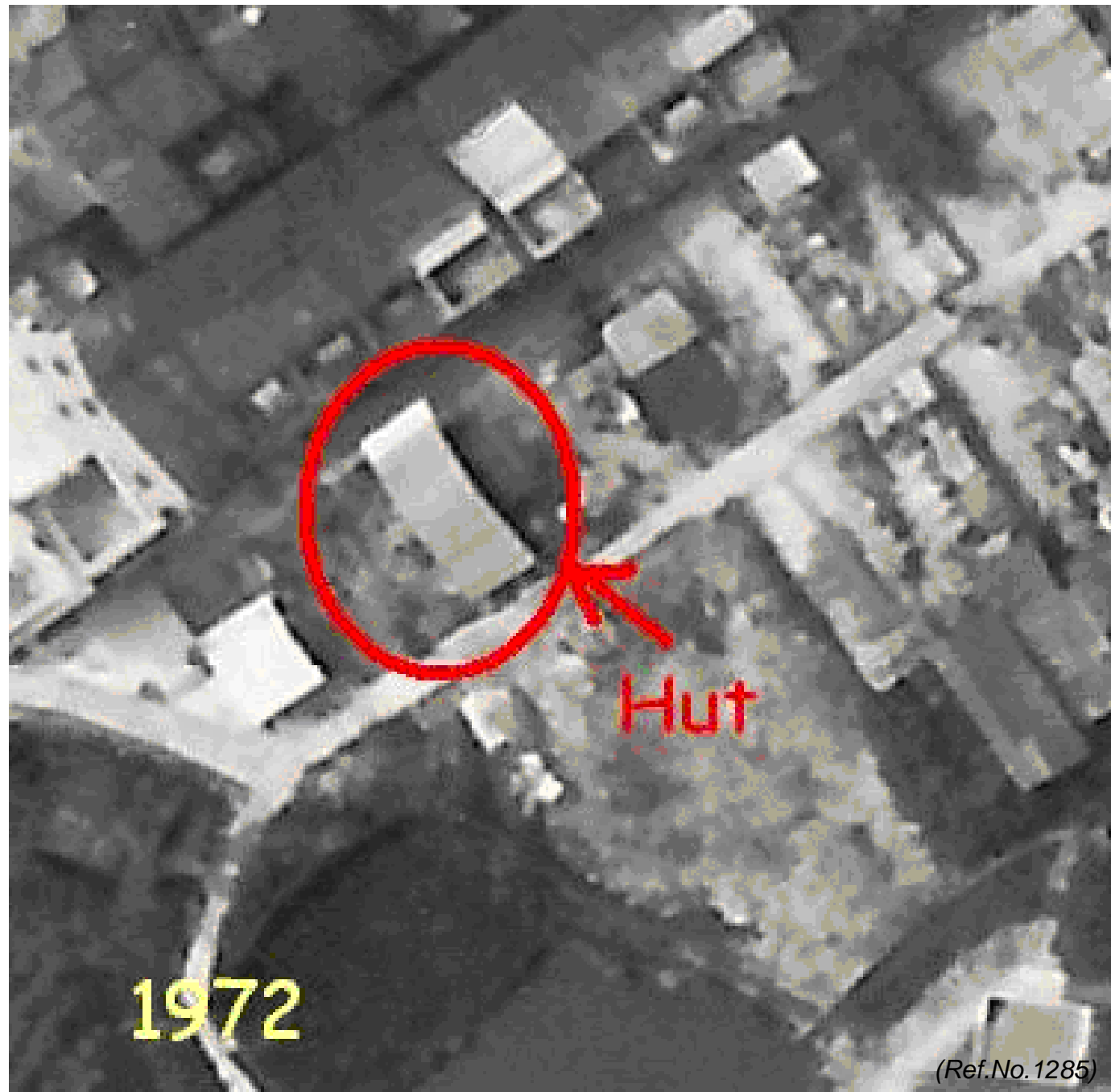
- Section E of Lot 274 in DD 120
- Shui Pin Tsuen, Yuen Long



Disputed area



- D :
existence
of the hut
since 1972



- D: 1980, 1996, 2003

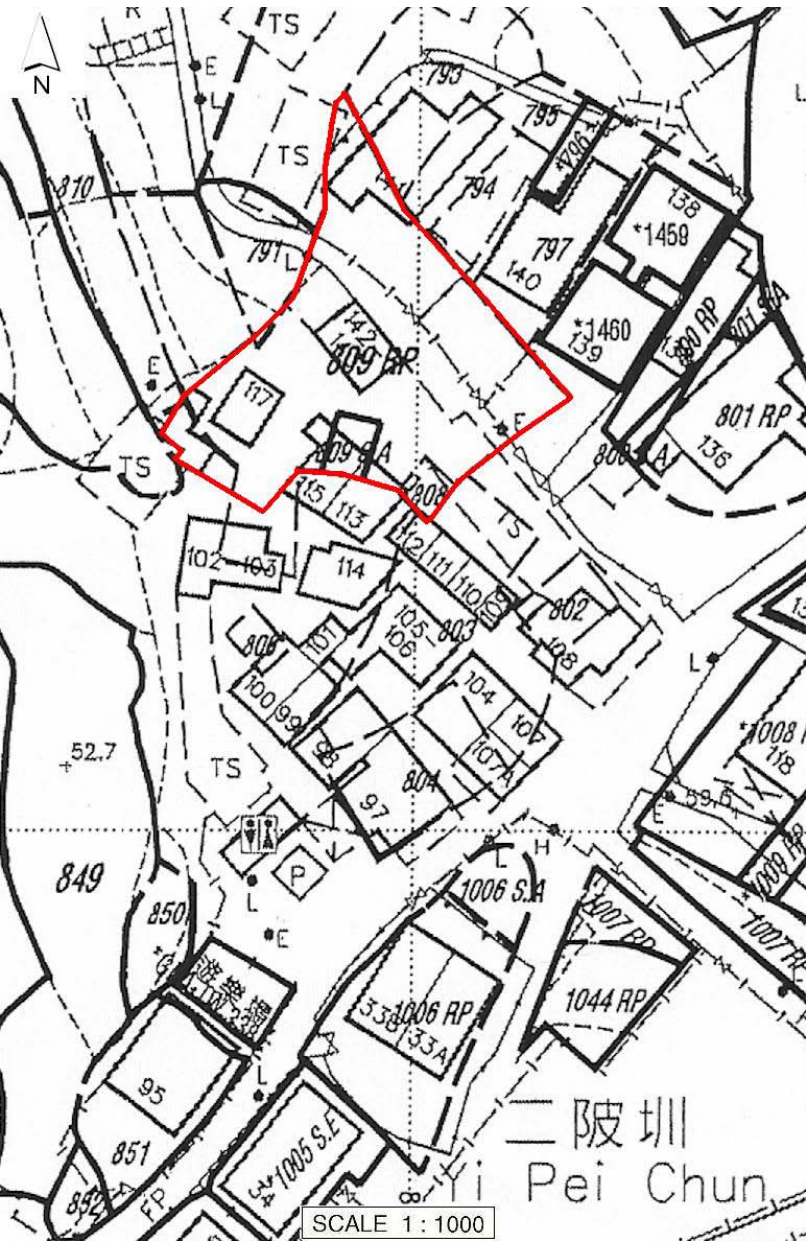


Court decision

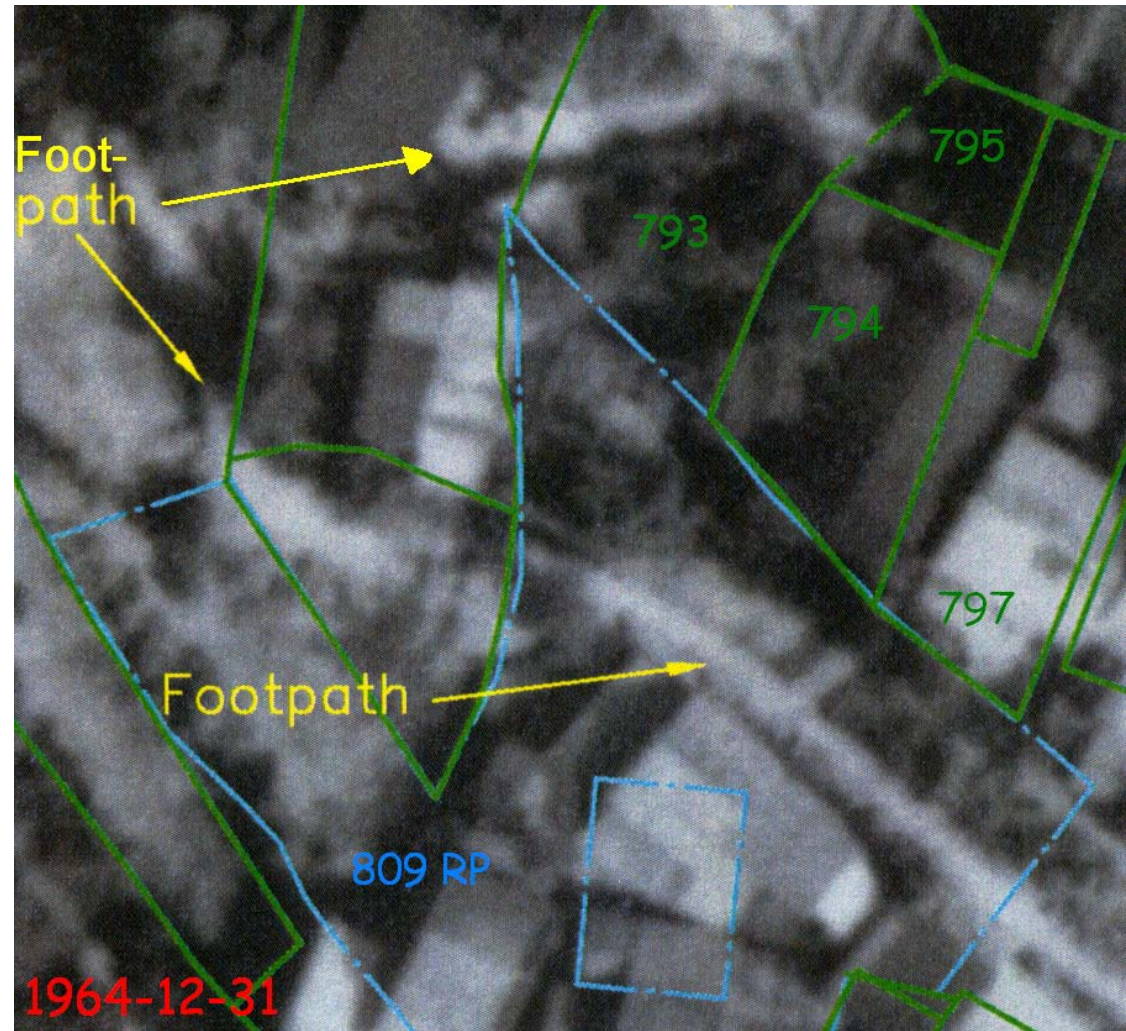
- D proved the **Hut** existed in **1972**
- Aerial photo is an evidence
- **But !** D could not prove AP
- P's action succeed

Case 3 HCA67/2006

- Lot 809 RP, DD 453
- Yi Pei Chun, Lo Wai Village, Tsuen Wan.



- Helen for P
 - 1963, 1964, 1967, 1972, 1976, 1980, 1981, 1982, 1985, 1990, 1995, 2000, 2004, 2005
 - Wire-fences were erected along the footpaths
 - enclosed some temporary structures with some bare land



(Ref.No.5344)

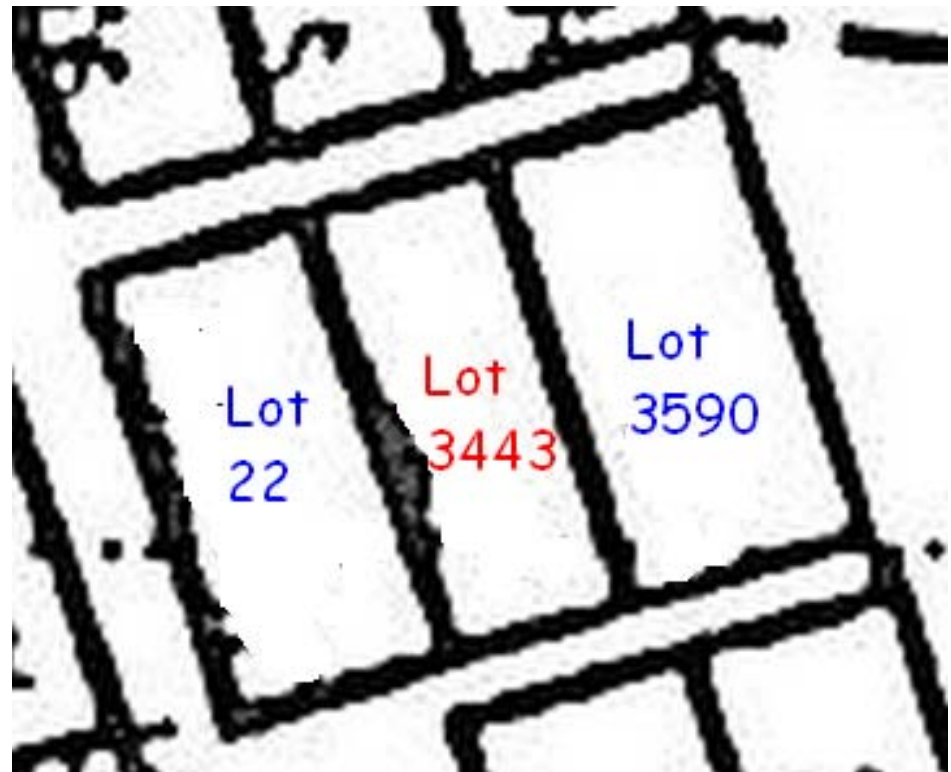
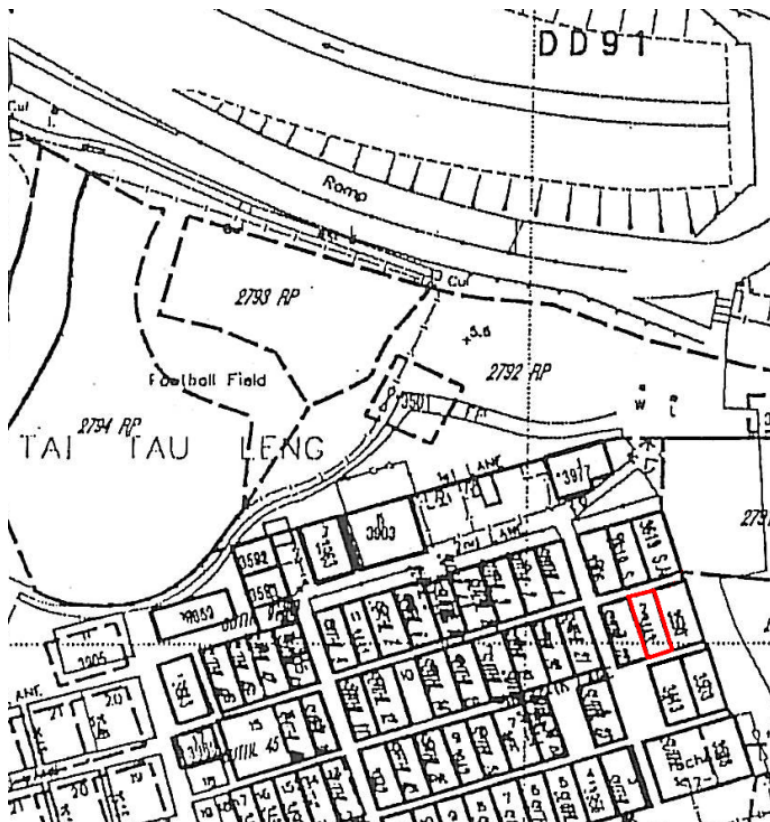
Court decision

- Assistance using Old Survey Sheet
- Kwong for D also acknowledge this fact
- Enclosure points failed

- P's claim succeeded; acquired possessor title
- D's title extinguished.

Case 4 HCA 18217/1999

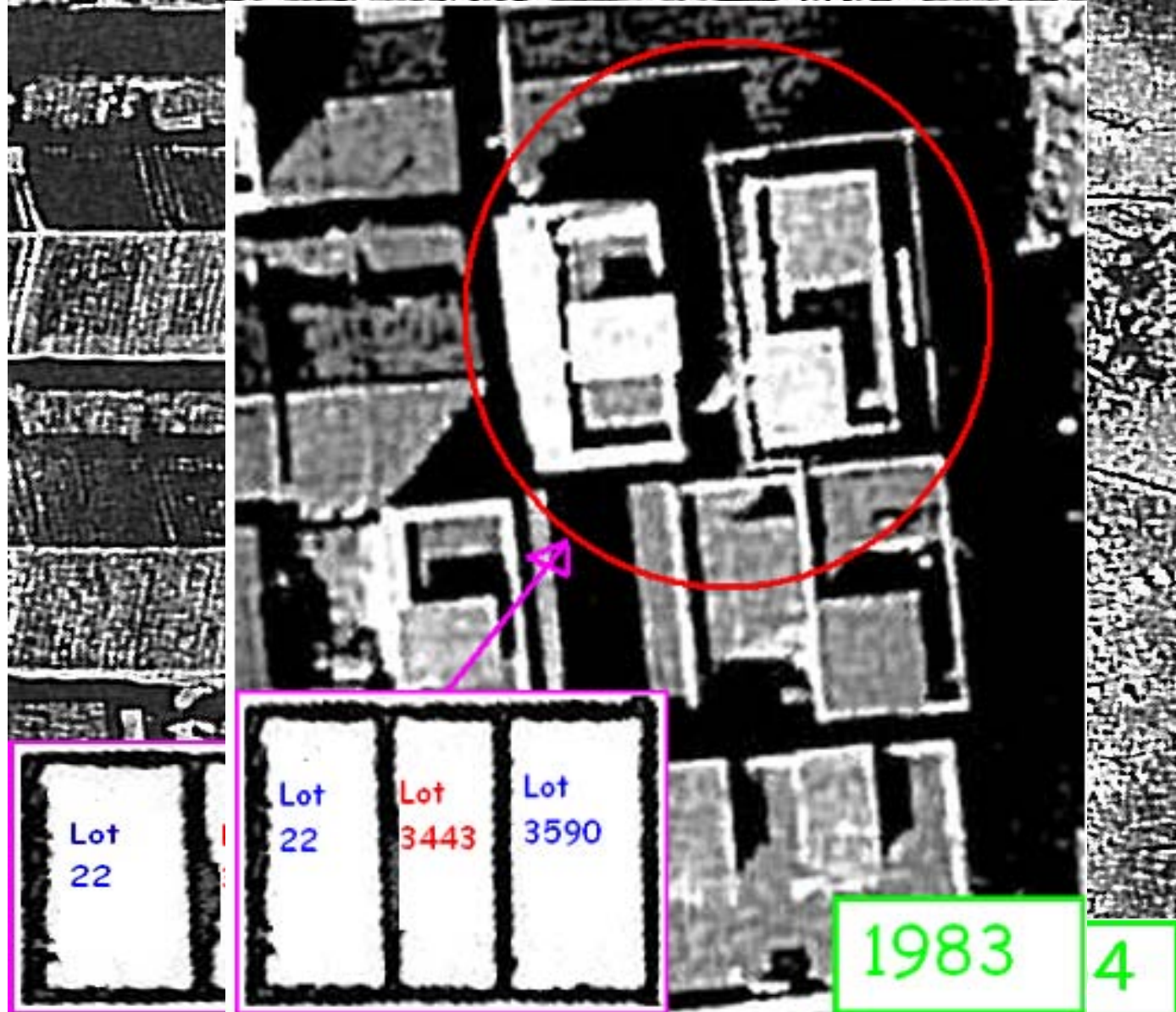
- Lot 3443, DD 91
- Tai Tau Ling Village, Sheung Shiu, New Territories.



Houses on 1964 & 1983 photos

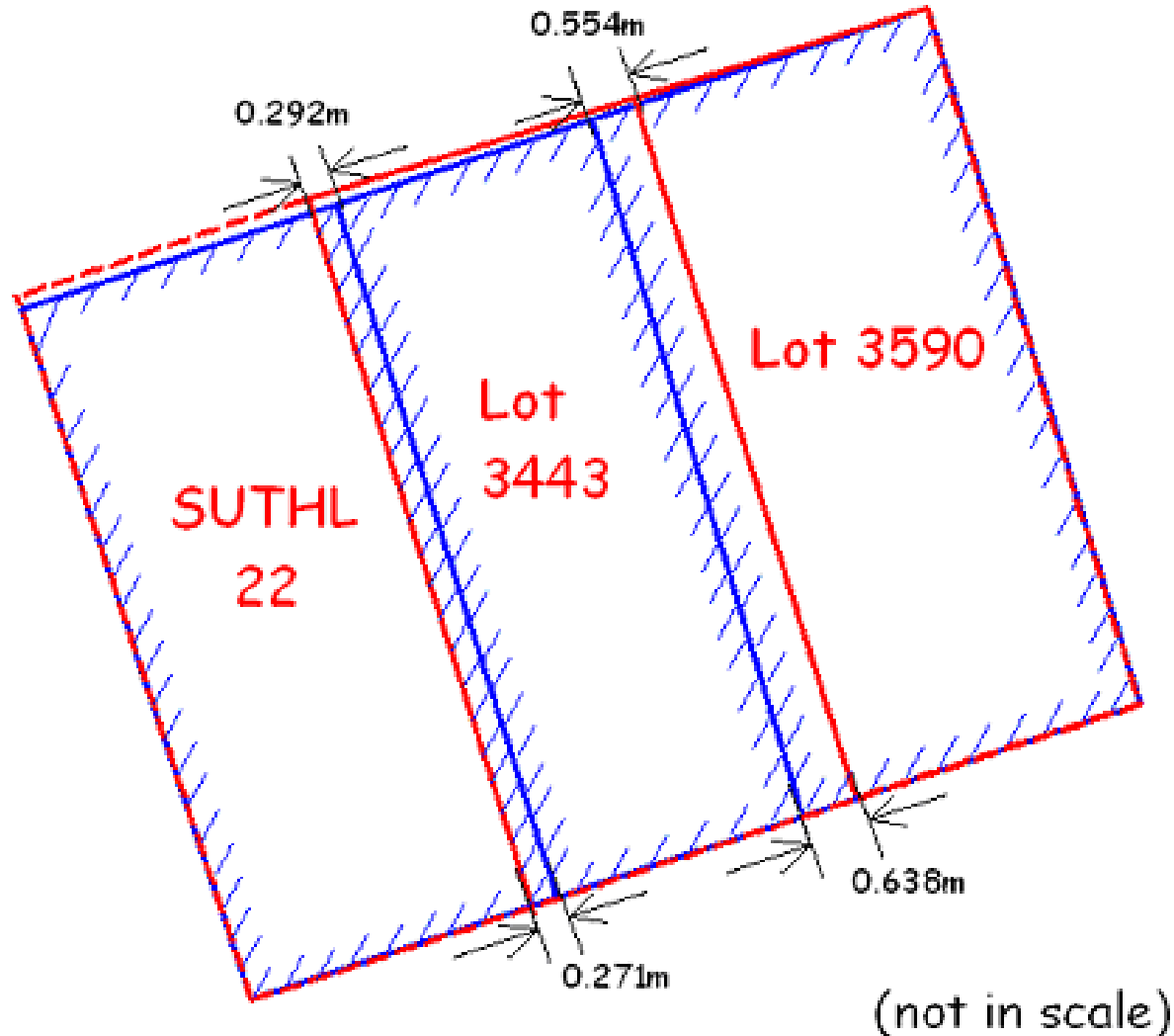
- 1964-Single Storey traditional Village House

- 1983- 3 storey house



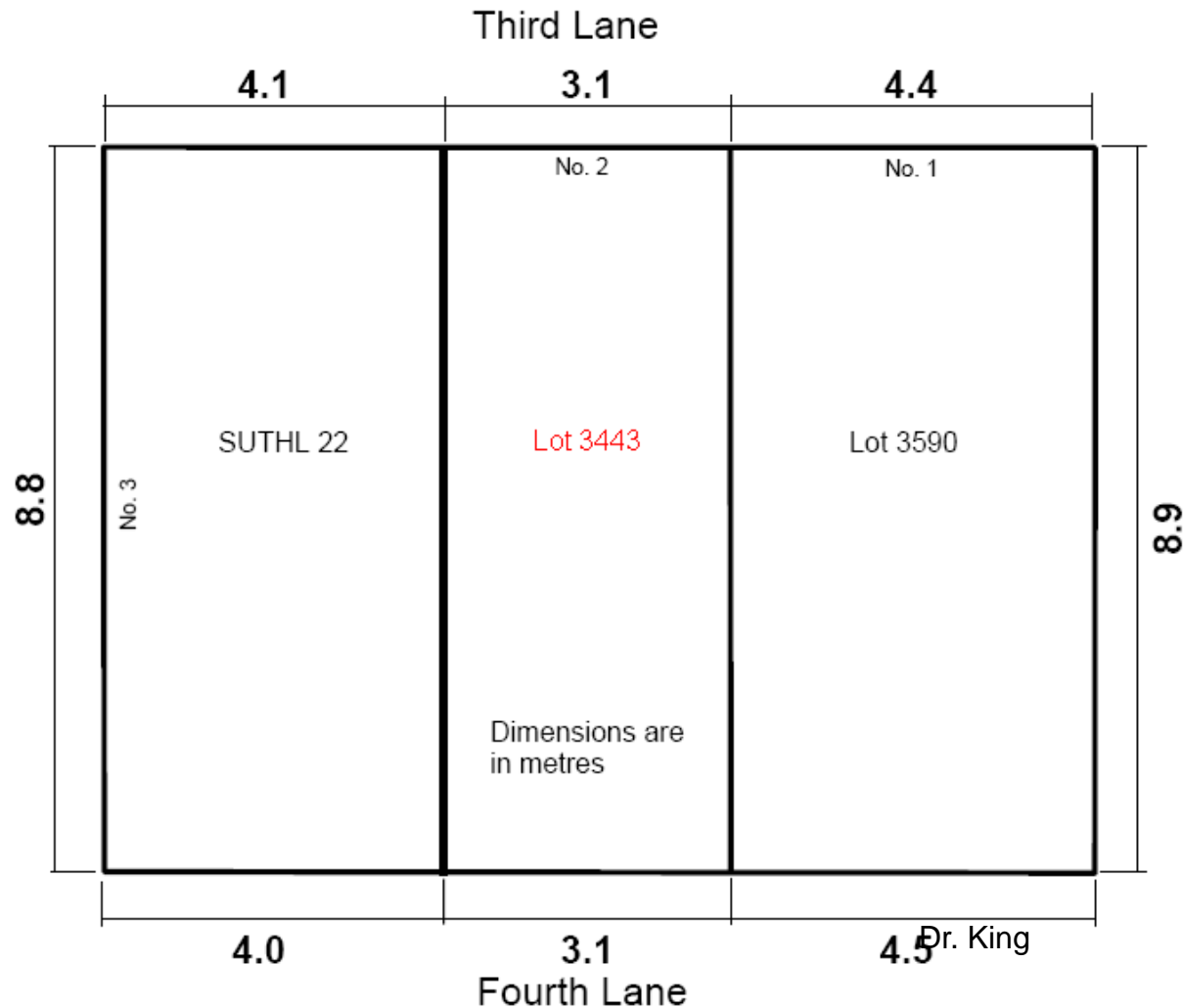
Year of encroachment

- Helen: house on Lot 3590 encroached upon the subject lot
- P: Began 1983
- D: Began 1964



Dr. King's measurement

- Dimension Plan
- Front dimension
→ 4.4m
- Present encroachment
→ 4.396m

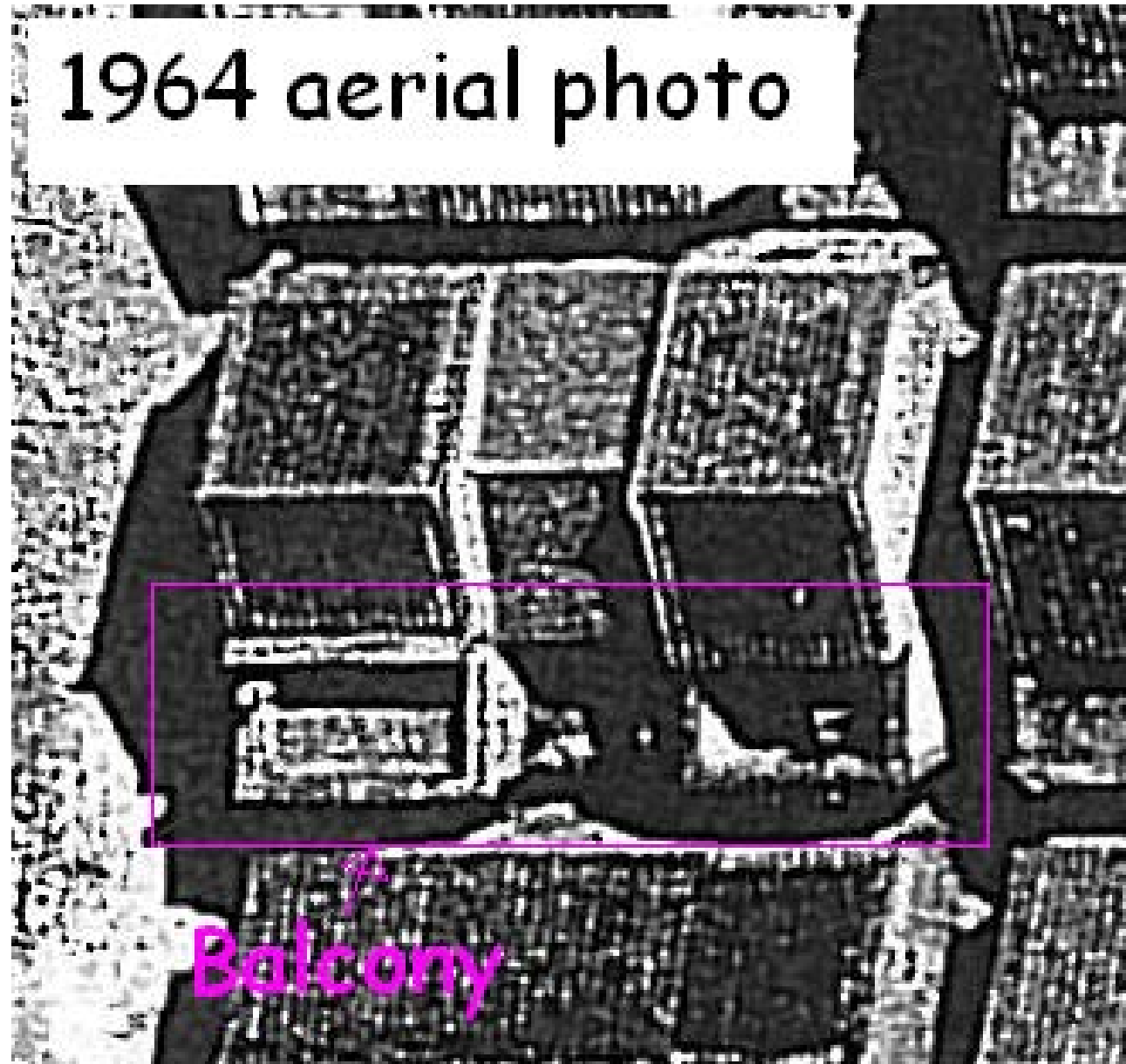


Mr. Leung's Measurement

- Stereoscopic pair
- balcony measuring
- tile counting

Balcony measuring

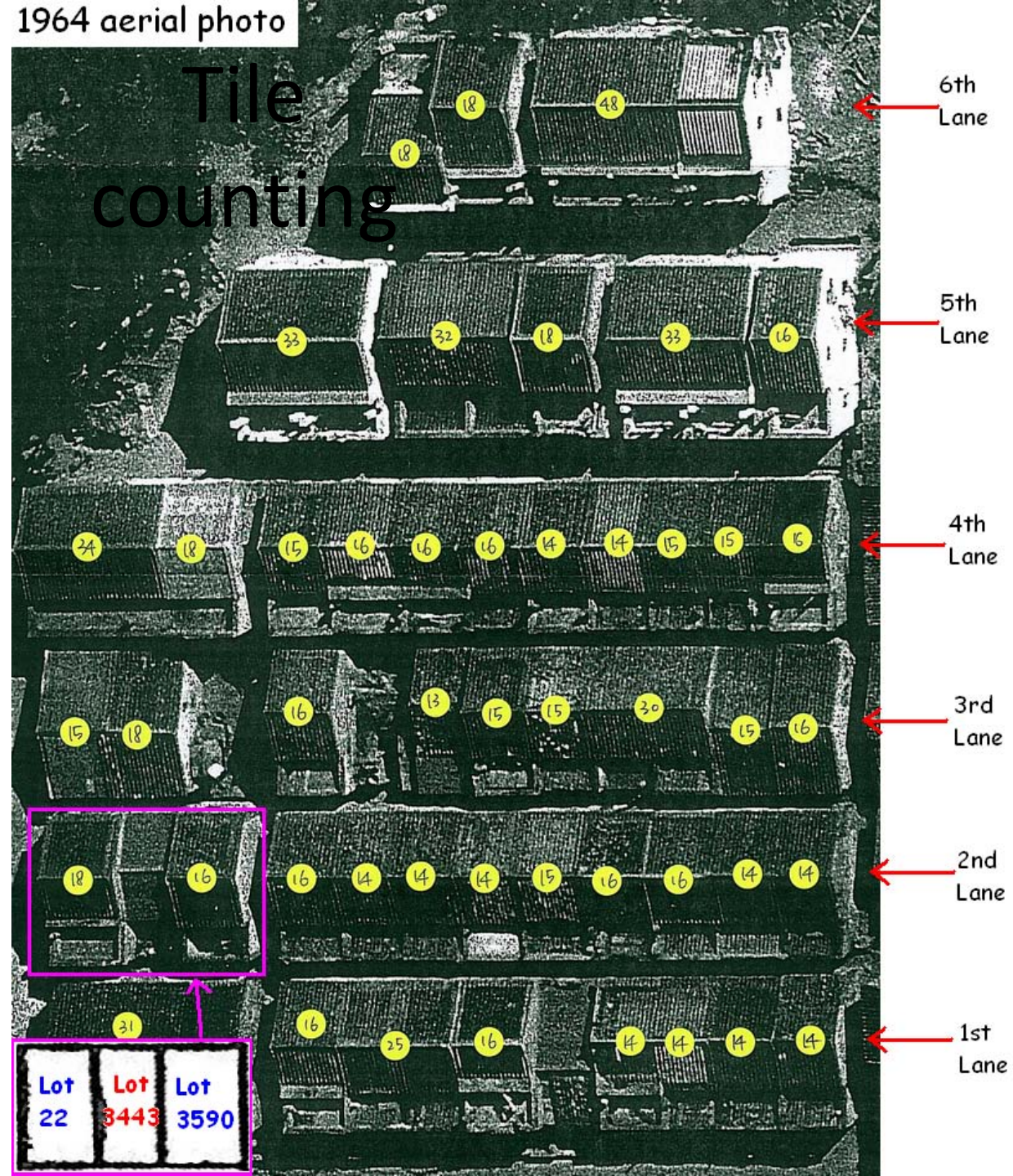
- Mr. Leung
→ 3.9 : 3.3 : 4.4
- Dr. King
→ 4.1 : 3.1 : 4.4



1964 aerial photo

Tile counting

- Tile's size
→ 0.243m
- House 3590
→ 18 Tiles
→ 4.4m



Mr. Lee's measurement

- Problems of Stereoscopic measurement
 - RMSE
 - Image Quality
 - Accumulated error
 - overhanging structure

Overhang Structures

- Court of first Instance
→ sufficiently insignificant
- Court of Appeal
→ No firm conclusion
- Court of Final Appeal
→ No basic assumption
→ Absence of evidence



Court decision

- Court First Instance : D occupied >20 years
- Court of Appeal : same decision
- Court of Final Appeal
- Alleged encroachment of house on Lot 3590 upon Lot 3443 has not been proved
- P succeed
- Aerial photo – measurement on roof ; not on the ground



THANK YOU!