

CABINET—SUBJECTS FOR CONSIDERATION, 11th January 19 88

02991

CABINET

SUBJECT

DOCKET

Not relevant



No. V. LATE 7.2

Re. sale of MV 'Troubridge'.

Hwys. 1080/1986

Decision

APPROVED

Not relevant



No.

Decision

No.

Decision

No.

Decision

No.

Decision

TO THE PREMIER  
FOR CABINET

SALE OF MV TROUBRIDGE

I PROPOSAL

That the Government;

- (a) cancels the contract to sell the Troubridge three days after formal Notice of Intention to resell, and
- (b) places the Troubridge on the open market after cancellation,  
  
Unless
- (c) Tamlay Ltd, the present purchaser, undertakes prior to the expiry of the three day notice, to meet of the order of 80% of the costs involved in holding the vessel.

II BACKGROUND

- 1. On 11 August 1987 the Government contracted with Tamlay Ltd (a subsidiary of Gold Copper Exploration Ltd) to sell the MV Troubridge during the period 7 September 1987 to 9 October 1987 (subject to notice) for \$405 000.
- 2. As the delay in commissioning the Island Seaway extended, two Addenda to the contract were agreed involving extending the delivery date at a cost of \$3 000 per day, payable on delivery.
- 3. Once the timing of the Island Seaway's commissioning was clear, delivery was arranged - for Monday 16 November 1987 (with the \$3 000 per day concluding on 15 November 1987 - at a total cost of \$111 000).
- 4. When the parties met on that day to settle the sale the purchaser indicated that Seamens Union (SUA) members were sitting in on the vessel and that in their view the Government was unable to 'deliver up possession' while those members remained on board.
- 5. After considering the legal, industrial and commercial aspects, Tamlay Ltd was told that day that the Government believed it was able and willing to settle under the terms of the contract and that it considered the purchaser to be in breach of the contract.
- 6. Since that day negotiations for an appropriate sharing of the holding costs have proceeded.
- 7. I met with the Managing Director of the purchaser Mr D Reinhardt on 23 November 1987.

8. Following considerable negotiation on holding costs and in the absence of a satisfactory offer, on 23 December 1987 I wrote a letter to Mr Reinhardt in terms requiring an offer of 80% of the holding costs. In default, termination of the contract was threatened.
9. No improvement on the offer made has been forthcoming. The best offer made constitutes less than 30% of the holding costs, which in total amounts to about \$8 000 per week.
10. The purchaser has recently indicated progress in its discussions with the Maritime Unions, but the timing of any resolution is not clear.

### III DISCUSSION

1. There are two options now facing the Government, as follows:-
  - (a) To accept the purchaser's offer to meet a small portion of the holding costs, and attempt to negotiate a time limit to exposure to holding costs and/or to reduce holding costs further.
  - (b) To give Notice of Intention to sell and in default of settlement within 72 hours notice, cancel the contract, unless prior to the expiry of that time Tamlay Ltd undertakes to meet of the order of 80% of the holding costs.

2. **10 Legal professional privilege**

3. Option (a) has the advantage of retaining a committed purchaser, albeit at a considerable cost to the Government.

The Broker has advised that prospects for resale are not favourable. Although the Alorean Syndicate have indicated an interest, previous dealings with that syndicate, and the feasibility of their proposals suggest a range of risks for the Government in dealing with them.

The costs of holding the Troubridge are set out in Attachment C. At this stage they total \$56 000 of which Tamlay has offered to meet \$17 000.

Tamlay's recent letter to me on holding costs suggests that there is little hope in negotiating further on holding costs and a time limit.

If this option were adopted and settlement proceeded on 31 January 1988, for example, the net revenue from the sale of the Troubridge would be \$231 000, as follows:-

	<u>\$'000</u>	<u>\$'000</u>
Sale Price		405
less - \$3 000 per day for extension of contract (up to 15 November)	111	
- holding costs net of Tamlay contribution	55	
- brokerage	<u>8</u>	<u>174</u>
		231

If settlement were as late as 31 March 1988 the net revenue would be \$191 000.

Commercially, this option is unattractive.

In effect the Government would be meeting costs for a purchaser who is in default because it has not been able to arrange manning for the vessel by the settlement date.

Unless the purchaser were to agree prior to the expiry of the Notice of Intention to sell to meet of the order of 80% of the holding costs this option is not recommended.

4. Option (b) 10 Legal professional privilege

This option frees the Government of commitment to Tamlay Ltd. The Government would have to minimise the damage it suffers as a result of Tamlay's breach by making reasonable efforts to resell the ship. It would give rise to an action in damages against Tamlay Ltd.

Under the contract the Government is entitled, in the event of a breach by Tamlay Ltd in payment of the purchase price to claim from the purchaser the amount of the deposit and of its other losses and expenses together with interest at the rate of 12% per annum.

The advantage of this option is that it would put pressure on the purchaser to meet the costs for which they are responsible or to settle.

Under this option, besides losing the vessel Tamlay stand to lose:-

- . their deposit (\$40 500)
- . the compensation of \$3 000 per day (\$111 000)
- . any loss on resale (e.g. if resold for \$150 000 they would lose a further \$103 500).

It is likely that under the contract Tamlay Ltd would also stand to lose;

- . holding costs - to date (\$56 000)
- for a further period required to resell  
(say until 31 March 1988, a further \$86 000)

10 Legal professional privilege

If the Government's legal advantage were to be sustained, the Government would recover net revenue amounting to the original sale price (less brokerage) - \$397 000.

If the legal advantage were not sustained the costs to the Government could be considerable, though they could be contained until the vessel was resold. In any event, the Government would know whether Tamlay was objecting to the Government's course of action well before a second sale would be completed.

There are signs that Tamlay are keen to ultimately acquire the vessel, and that they are likely to respond to further pressure (e.g. Managing Director's very recent personal undertaking to review offer on holding costs). If an acceptable offer on holding costs were forthcoming (at least 80% - reflecting some discounting for legal risk) then that would clearly be the desirable course for the Government.

This option also carries with it the risk that the vessel cannot be resold, though it does not preclude Tamlay Ltd from submitting a new offer to purchase.

5. In summary, Option (b) is attractive notwithstanding that it involves some risk. Under this option Tamlay Ltd stand to lose considerably and hence it will put pressure on them to reconsider their offer on holding costs or settlement.

While there is no legal impediment to Option (a), it would be very difficult to sustain from a commercial point of view, reducing considerably the net return from the sale.

The Option (b) is recommended.

IV RECOMMENDATION

That the Government;

- (a) cancels the contract to sell the Troubridge three days after formal Notice of Intention to resell, and
- (b) place the Troubridge on the open market after cancellation,

Unless

- (c) Tamlay Ltd, the present purchaser, undertakes prior to the expiry of the 3 days notice, to meet of the order of 80% of the costs involved in holding the vessel.

MINISTER OF TRANSPORT

8 /1/88

**Memoranda of Advice**

**16 pages removed**

**Exempt clause 10(1) – legal professional privilege**

HOLDING COSTS - MV TROUBRIDGE

	<u>Actually Incurred</u> <u>to 4/1/88</u> (7 weeks) \$	<u>If held to</u> <u>31/1/88</u> (10 <sup>6</sup> / <sub>7</sub> weeks) \$	<u>If held to</u> <u>31/3/88</u> (19 <sup>3</sup> / <sub>7</sub> weeks) \$
. Watchman (\$4 795/week)	33 565	52 060	93 160
. Power (\$600/week)	4 200	6 514	11 657
. Insurance			
16/11/87-30/11/87 \$2 959 p.w.	6 341	6 341	6 341
from 30/11/87 - Hull	5 000	5 312	10 712
- P & I (\$135 p.w.)	945	1 466	2 623
. Interest			
13% of \$405 000 - \$40 500 = \$911 p.w.	6 377	9 891	17 699
	<hr/>	<hr/>	<hr/>
TOTAL	56 428	81 584	142 192
<u>Less</u> Tamlay offer of \$2 400 p.w.	16 800	26 057	46 629
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Cost to Government if Tamlay's offer accepted	39 628	55 527	95 563

NOTE:

- . Total costs = \$111 000 on about 29/1/88
- . By the end of March total accumulated holding costs will approximate the vessel's scrap value.