Chapter 5

Grant of land at Discovery Bay and Yi Long Wan

The Audit Commission (Audit) carried out a review of the holiday resort and residential developments at Discovery Bay (DB) and Yi Long Wan of Lantau Island. The review focused on the following aspects:

- change in concept of the DB development;
- provision of facilities in the DB development;
- changes in Master Layout Plans (MLPs) and premium implications of the DB development; and
- site boundaries of the DB and Yi Long Wan developments.

2. The Committee held four public hearings on 8, 13 and 16 December 2004 and 12 January 2005 to receive evidence on the findings and observations of the Director of Audit's Report (the Audit Report). Representatives of the Administration attended all the four hearings. At the invitation of the Committee, Sir David Akers-Jones, former Chief Secretary (CS), attended the hearing on 12 January 2005.

Evidence obtained at the public hearings on 8, 13 and 16 December 2004

Change in concept of the Discovery Bay development

3. According to paragraphs 2.5 to 2.7 of the Audit Report, in December 1973, the Executive Council (ExCo) was informed that the basic concept of the DB development was to create a self-contained recreation and leisure community with a wide variety of recreational facilities. On 6 July 1976, the ExCo was informed that the user condition restricted the use of the land to the purposes of a holiday resort with limited residential and commercial purposes. Having considered the lease conditions, the ExCo advised and the then Governor ordered that the land at DB should be granted to a developer (Developer A) for a holiday resort and residential/commercial development at a premium of $61.5 million.

4. The Committee also noted from paragraph 2.3 of the Audit Report that the original concept of the DB development envisaged local families coming on day trips or purchasing holiday homes, and international tourists staying at budget or luxury class hotels, making use of the non-membership (i.e. public) and membership golf courses, tennis courts, swimming pools and other facilities. However, as it transpired, no public golf course or hotel was built in the DB.

5. It appeared to the Committee that there had been a fundamental change in the concept of the DB development. The Committee questioned whether the change was against the ExCo's decision of 6 July 1976 and went against public interest as some facilities that were supposed to be made available to the public were eventually not provided.

6. **Mr Michael SUEN Ming-yeung, Secretary for Housing, Planning and Lands**, responded that:

- the overall concept of the DB development came into place in 1973. At that time, Lantau Island was a barren piece of land and going there was a difficult trip. The development concept of the DB site was more like a dream which the developer would like to realise. As the development was a huge investment project, the developer should be given some flexibility in the implementation process to take account of commercial considerations and other relevant factors, like the demands of the public, and be allowed to amend the development concept accordingly;

- as he was not responsible for the project, he could only rely on the documents available to understand the situation at that time. He understood that the developer considered that the original facilities were no longer timely and proposed other replacement facilities, such as a promenade and a beach. The change was approved by the then Secretary for the New Territories (SNT); and

- according to the lease conditions of the DB site, the whole site should be developed in conformity and in accordance with the MLP to be approved by the SNT. Hence, the SNT was empowered to approve changes to the facilities.

7. In response to the Committee's request, the **Secretary for Housing, Planning and Lands** provided, in his letter of 11 December 2004 in ***Appendix 38***, the relevant extracts from the lease conditions of the DB site which authorised the SNT to approve subsequent changes to the development. He also said that under General Conditions Nos. 1 and 2, and Special Conditions Nos. 6, 7 and 19, the authority to approve the construction and demolition of buildings on the lot and to approve the MLP rested with the SNT.

8. The Committee asked the Secretary for Housing, Planning and Lands whether he would report back to the ExCo, if he were the SNT at that time authorised by the ExCo to implement its decisions and if he were to make decisions that did not comply with the ExCo's authorisation.

9. The **Secretary for Housing, Planning and Lands** replied in the affirmative. He said that, regarding the public golf course, as replacement recreational facilities had been proposed by the developer, the SNT was empowered to approve its deletion. However, he had doubts about not reporting to the ExCo on the deletion of the hotels, as this was a fundamental change.

10. In view of the Secretary for Housing, Planning and Lands' reply, the Committee asked whether, in his opinion, the SNT had hidden facts from the ExCo and, if so, the kind of rules that the SNT had violated.

11. The **Secretary for Housing, Planning and Lands** said that:

- his understanding of the situation was based on the available documents and minutes of meetings. While he considered that it was inappropriate that the changes in the DB development had not been brought back to the ExCo, he might come to another conclusion if he knew the actual situation and all the relevant information at that time. Thus, it would not be fair for him to criticise the SNT; and

- as mentioned in the Audit Report, the officers concerned had held meetings and discussed the matter thoroughly before deciding not to report to the ExCo. They considered that the changes were still within the scope of the original ExCo approval.

12. The Committee understood from paragraph 2.6 of the Audit Report that the ExCo's permission in December 1973 for the DB development to proceed was given subject to satisfactory safeguards being included in the lease to ensure that the development would take place in accordance with Developer A's undertakings. Paragraph 2.8 further stated that on 10 September 1976, the SNT executed the lease for the DB development. However, the lease conditions did not specify the maximum and minimum gross floor area (GFA), and the gross site area of the facilities (such as the resort accommodation) to be provided by Developer A. In addition, the lease conditions did not restrict the owners to using their flats as holiday homes only.

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13. As the ExCo decided in July 1976 that the land at DB should be granted for the purpose of a holiday resort, but the lease conditions drawn up in September 1976 did not include such a restriction, the Committee asked:

- whether the Administration agreed that the lease conditions went against the ExCo's decision and, if so, why this had happened; and

- who drew up the lease conditions.

14. The **Secretary for Housing, Planning and Lands** said that, as described in paragraph 2.8 of the Audit Report, the ExCo was aware that the lease conditions did not restrict the owners to using their flats as holiday homes only. He did not know why it had happened.

15. In his letter of 8 January 2005 in ***Appendix 39***, the **Acting Director of Lands** stated that the Lands Department (Lands D) had no record of how the lease conditions were drawn up or by whom.

16. As the development concept of the DB in 1976, as reflected in the lease conditions, already deviated from the concept plan approved by the ExCo in 1973, the Committee wondered whether the land grant executed by the SNT on 10 September 1976 was legal.

17. In his letter of 11 December 2004, the **Secretary for Housing, Planning and Lands** clarified that:

- the ExCo Memorandum in December 1973 intended to seek approval-in-principle for the DB development project to proceed. In crystallising the concept into a concrete proposal, the whole package was submitted to the ExCo in July 1976, with a copy of the "Particulars and Conditions of Exchange" attached as an annex to the ExCo Memorandum. This annex, except for some very minor details on the lots to be surrendered and the dates in the original blanks to be subsequently inserted, was basically the same as the eventual "Particulars and Conditions of Exchange" signed between the SNT and the developer on 10 September 1976; and

- the ExCo noted the deviation from the 1973 concept, the safeguards in response to the requirement of the ExCo in 1973, and most importantly the terms and conditions of the Conditions of Exchange. In brief, the ExCo took the decision in July 1976 on an informed basis. Therefore, the land grant was made by the SNT in September 1976 with full authority conferred by the ExCo.

18. According to paragraph 2.24 of the Audit Report, the Secretary for Housing, Planning and Lands had said that when the ExCo approved the DB Outline Zoning Plan (OZP) on 11 March 2003, it was aware of the planning intention for DB and he did not consider it necessary to seek the ExCo's endorsement of the development concept of DB.

19. As there had been significant changes to the development concept of DB in the past 30 years and such changes were effected by amendments to a number of MLPs rather than through a proper procedure, the Committee queried why the Secretary for Housing, Planning and Lands considered that it was not necessary to seek the ExCo's specific endorsement of the change in the concept of the DB development.

20. The **Secretary for Housing, Planning and Lands** explained that:

- during the 30 years from 1973 to 2003, a lot of developments had taken place at DB and such developments were witnessed by the public. Everyone knew what its community was like nowadays. There was no question of the development concept not being clear. On the other hand, there had not been any OZP for the DB area in the past 30 years. Therefore, in 2003, the Administration sought the ExCo's approval for an OZP for the DB area which specified the zones that should be used for residential, open space or other purposes;

- he shared the concern that there was a risk of abuse of power when land use control was achieved by the MLPs and one or two officers could make decisions without being monitored. But the situation had changed significantly since then. There was now an OZP for DB. The level of control imposed by an OZP was much more stringent than that by an MLP. The OZP contained all the details as to what was allowed or not allowed. If necessary, notes could be added to an OZP to the effect that certain extra procedures would have to be gone through if changes were to be made;

- if the land use specified in an OZP was to be changed, an application had to be made to the Town Planning Board (TPB) according to the Town Planning Ordinance. The TPB had to gazette the application and the public could lodge an objection in accordance with the Ordinance. If objections were received, the TPB had to hold hearings and go through other statutory procedures. Ultimately, approval had to be sought from the Chief Executive-in-Council. In other words, the whole process was open and statutory and the public were allowed to play a part in it; and

- the current procedure ensured that government officers could not circumvent the proper procedure or make decisions without seeking prior approval from the relevant authorities. As the purpose of going back to the ExCo had been served, there was no need to report to the ExCo again.

21. The Committee referred to paragraph 2.19 of the Audit Report in which the then Deputy Secretary for Lands and Works had said that "as flat owners were free to use their flats either as first or holiday homes, the original resort concept could not be enforced". The then Principal Assistant Financial Secretary (PAFS) had said that as the change had been taking place, there was no point in formally approving the change in concept. The Committee asked the Secretary for Housing, Planning and Lands whether, in his opinion, the PAFS was wrong in concluding that there was no need to seek approval from the ExCo regarding the change in concept because the change had been taking place.

22. The **Secretary for Housing, Planning and Lands** responded that:

- he personally was not clear about the original resort concept. If the original concept envisaged local people buying condominium units and staying there only during the weekend but not on the weekdays, he could not understand. When people bought a condominium unit, they would just move in and it became a residential unit. This was in fact what had happened. The households in DB all lived there. From this angle, he accepted and considered it not unreasonable to say that the original resort concept could not be enforced;

- while he accepted the rationale behind that statement, he did not accept the conclusion reached by the officers. As described in paragraph 2.20(b) and (c) of the Audit Report, the then Development Progress Committee (DPC) agreed that the requirement to build one or more hotels could be made optional rather than obligatory, and the proposal to change the overall concept of the development would not require formal approval. He did not accept that

hotels could be changed to residential units. The officers should have brought the case back to the ExCo; and

- he also considered that there were problems with the then CS's view that "there was no need to go to ExCo or the Land Development Policy Committee as the …… development followed on from the development so far approved and did not represent a major change in principle" (as mentioned in paragraph 2.21 of the Audit Report). There had indeed been a major change in the development concept.

23. As the Secretary for Housing, Planning and Lands also considered that there were problems with the decision of not reporting to the ExCo, the Committee questioned why he did not rectify the mistakes but allowed their perpetuation. It appeared to the Committee that by seeking the ExCo's endorsement of the OZP for DB, the Administration had tried to impose control on something wrong instead of putting it right.

24. The **Secretary for Housing, Planning and Lands** responded that:

- the Administration had already rectified the situation. The MLP, which was a loose form of control, had been upgraded to statutory control under the Town Planning Ordinance; and

- DB was already a community. It had existed for a long time and people were living there. It was impossible to start from scratch again. It was most important to understand what the problem actually was and solve it. The Administration had reported the development concept of DB to the ExCo. The ExCo knew the situation and approved the OZP.

25. The Committee further asked whether the Administration, in seeking the ExCo's approval of the OZP, had informed the ExCo of the history of the DB development and all the changes and omissions that had occurred since 1973, or whether it had only informed the ExCo of the latest situation of DB.

26. The **Secretary for Housing, Planning and Lands** replied that the subject of the paper to the ExCo was the OZP, not the DB development. It did not contain the same amount of details as the Audit Report. The Administration's intention was to inform the ExCo of DB's latest development. Given the Committee's view, he would consider making a separate report to the ExCo on the matter if necessary.

27. Subsequently, the **Secretary for Housing Planning and Lands** informed the Committee that after consideration, in order to put the matter beyond doubt, he decided that he would go back to the ExCo to seek its endorsement of the development concept of DB.

28. According to paragraphs 2.11 and 2.14 of the Audit Report, MLP 4.0, which changed the character of the development from a holiday resort to a garden estate, was approved by the SNT. As mentioned in paragraph 2.21, it was the CS who decided that there was no need to seek the ExCo's approval. Noting that the Secretary for Housing, Planning and Lands had mentioned the risk of abuse of power, the Committee asked whether the decisions as described in these two paragraphs were cases of abuse of power, given that the SNT and the CS were the same person, Sir David Akers-Jones.

29. The **Secretary for Housing, Planning and Lands** responded that when he mentioned the risk of abuse of power, he was referring to the possibility of such a loophole in the system. He did not mean that any officer had abused his power. Abuse of power was a very serious accusation and it had a high legal threshold. With the information he had in hand, he could not make a judgement that someone had abused his power.

30. As requested by the Committee, the **Acting Director of Lands**, in his letter of 8 January 2005 in ***Appendix 39***, provided the minutes/notes of the meetings held on 18 October 1977 and 19 October 1977 relating to the consideration of MLP 4.0 by the Administration. The **Secretary for Housing, Planning and Lands**, in his letter of 10 January 2005 in ***Appendix 40***, provided the minutes of the DPC meetings held on 10 October 1985 and 14 November 1985 concerning the Administration's decision at that time that there was no need to report to the ExCo regarding the change in the concept of the DB development.

31. To ascertain whether it was common in the past for the Government to accept changes in the development concept of a project, the Committee asked:

- whether, in the 1970s and 1980s, there was any project which, similar to the DB development, had undergone a change in development concept from a holiday resort with recreational and leisure facilities to a first-home community; and

- whether there was any project the development concept of which was not allowed to be changed.

32. The **Secretary for Housing, Planning and Lands**, in his letter of 10 January 2005, advised that there was no other project for recreational and leisure facilities similar to that of the DB granted in 1970s and 1980s. Therefore, the question of whether changes in development concept of such development had been approved or rejected did not arise.

33. The Committee noted from paragraph 2.14(a) of the Audit Report that one of the reasons for the SNT to approve MLP 4.0 was that "the basic concept of building a resort was continued". The Committee asked whether, in the Lands D's opinion, the changes proposed in MLP 4.0 were changes to the basic concept of the DB development.

34. In his letter of 8 January 2005 in ***Appendix 39***, the **Acting Director of Lands** stated that the resort concept was still a substantial element in MLP 4.0, but the introduction of "garden houses" appeared to have introduced the likelihood of permanent residence in a significant amount of the GFA. Although this did not conflict with the conditions of grant, there was a change.

35. According to paragraph 2.26 of the Audit Report, the Director of Lands agreed with Audit's recommendation that he should, for a land grant for a development involving a particular concept, incorporate effective provisions into the lease conditions or other contract documents so that the provisions would be enforceable for implementing the concept. The Committee asked how the Lands D would implement the recommendation.

36. **Mr Patrick LAU Lai-chiu, Director of Lands** explained that when there were special development projects, the Lands D issued project agreements which stated the development concepts and how they could be realised. The project agreements and the lease conditions were back to back.

Provision of facilities in the Discovery Bay development

37. According to the lease conditions of the DB site, the grantee should erect, maintain and keep in use on the site a leisure resort and certain "minimum associated facilities", which should include a public golf course and a cable car system. However, Developer A subsequently applied for the deletion of the public golf course and the cable car system. In February 1982, the then Secretary for City and New Territories Administration (SCNTA) approved MLP 5.0, by which the public golf course was deleted. In February 1985, the Director of Lands approved the deletion of the cable car system upon the approval of MLP 5.1.

38. Against this background, the Committee queried why:

- as the public golf course and the cable car system were approved by the ExCo and specified in the lease conditions, the SCNTA alone could decide that the facilities could be deleted; and

- the Lands D at that time had not acted in accordance with the lease conditions but approved the deletion of the facilities.

39. The Committee also referred to paragraph 3.6 of the Audit Report in which the then Principal Government Land Agent (PGLA) said that because of the importance attached to the golf course proposal, the public golf course requirement was more particularly referred to in a special lease condition. The Committee questioned why, as mentioned in paragraph 3.9, the City and New Territories Administration (CNTA) had not carried out a research on the demand for golf facilities before it approved the deletion of the public golf course which was a special facility in the entire development.

40. The **Secretary for Housing, Planning and Lands** responded that:

- as described in paragraph 3.8 of the Audit Report, there had actually been discussions within the Government regarding whether a modification of the lease conditions was required to reflect the deletion of the public golf course. The then Recreation and Culture Department (R&CD), which was responsible for the policy on recreational facilities, had been consulted and it welcomed the proposal that other recreational facilities would be provided in place of the public golf course. On the other hand, the Highways Department representative objected to the deletion. Paragraph 3.10 further mentioned the view of the Registrar General's Department that there was no need to modify the lease conditions; and

- all these reflected that discussions had been held among the relevant departments and the responsible officers had gone through certain procedures. The decisions were not made by one single person. However, he did not have any information to show why such decisions were made or the basis for the decisions.

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

- a lease usually contained many terms and provisions which were not laid down by the Lands D alone. Nowadays, when the Lands D received a request for lease modification, it would look at the terms that needed to be modified and consult the relevant policy bureau or department. If necessary, it would convene an inter-departmental meeting to consider the request. In other words, the decision would not be made by a single department. However, there had to be a department to formally approve the lease and the Director of Lands was responsible for formally signing the lease;

- the same mechanism should be applicable at that time. That was why the then Lands D did consult the R&CD. The R&CD welcomed the proposal. The Lands D had not overruled the recommendation of the R&CD because the latter was the expert department on whether a public golf course was required. He believed that the then Director of Lands had made the decision at the time, on behalf of the Government, upon the advice of the R&CD. It was not that the Lands D had made a decision unilaterally to delete those items; and

- as the R&CD had stated that it welcomed the proposal, a research on the demand for golf facilities were not necessary. As a matter of fact, the decision to delete the public golf course was made in February 1982. The suggestion of a research was put up after the decision had been made.

42. According to paragraphs 3.7 and 3.8 of the Audit Report, inter-departmental discussions were held in mid-1982 after the SCNTA had approved MLP 5.0 which removed the requirement for the provision of the public golf course. The Committee asked whether there were records showing that there had been inter-departmental discussions on the matter before MLP 5.0 was approved.

43. In his letter of 8 January 2005, in ***Appendix 39***, the **Acting Director of Lands** stated that there were no records of any inter-departmental discussions on the deletion of the public golf course prior to the approval of MLP 5.0 in February 1982. There were also no documents showing why the then Commissioner for Recreation and Culture welcomed the proposal that other recreational facilities would be provided in place of the public golf course.

44. Given that the public golf course was specified in a special lease condition, the Committee enquired whether the Administration agreed that the lease conditions should have been modified before deleting the requirement to provide the golf course.

45. The **Director of Lands** stated that:

- according to the memorandum issued by the then Registrar General (Land Officer) to the then Government Land Agent (Disposal) on 3 March 1983 (in ***Appendix 41***), it was the former's view that there was no need to modify the lease conditions; and

- the arrangement for control of land use at that time was very different from that of today. When the land at DB was granted, it was stated clearly in the lease conditions that the scale of development of DB and other restrictions were to be controlled by the MLPs in addition to the lease conditions. In other words, the MLPs and the lease conditions of the DB site had equal standing and effect. Hence, the MLPs could be amended without modifying the lease conditions. However, this might not be the arrangement nowadays.

46. As the public golf course was proposed by the developer and later removed upon the developer's application, the Committee questioned why the Government seemed to have allowed the developer to have his way every time.

47. The Committee further referred to paragraph 3.16 of the Audit Report which mentioned that the provision of the cable car system was mandatory under the lease. However, in September 1982, Developer A said that the popularity, safety factor and the financial viability for this system were open to question. The system was no longer necessary as all the major roads in DB had been built. In January 1983, the Government agreed to the deletion of the system. The Committee noted that cable car was not a new invention. The tram system had been in use in the urban area for a long time. Back in the 1980s, there was already a cable car system in the Ocean Park. The Committee asked why the Government had accepted the reasons put forward by the developer.

48. The Committee was also aware that there had been recent media reports which related the whole issue to political decisions. It was reported that the colonial government had accepted changes to the MLPs out of the fear that, if the DB project failed, it could be taken over by a bank tied to the former Soviet Union. The Committee asked whether the Administration had any information pointing to a political transaction.

49. The **Secretary for Housing, Planning and Lands** and the **Director of Lands** stated that:

- the project was massive and the development period was very long. Initially, the developer came up with a concept. However, during the implementation, a lot of changes took place in society and things kept evolving. Thus, the Government had to accept some changes. Actually, the SNT, and later the SCNTA, was empowered by Special Condition 6(b) of the lease conditions to approve amendments to the MLPs;

- the developer allowed non-members to play in the existing private golf course in DB on Mondays, Tuesdays and Fridays by prior arrangement. Perhaps the responsible officers decided to remove the requirement for the provision of the public golf course because of the lower demand for such facility at that time. While a lot of people were interested in playing golf nowadays, people might not be as enthusiastic back in the 1980s;

- regarding the cable car system, it seemed that the Government accepted the views of the developer at that time. But the reason behind the decision was not known; and

- the file records that they had gone through did not contain any information concerning political consideration.

50. The Committee noted that while the public golf course and the cable car system had been deleted in the MLPs, they were still provided in the lease conditions for the DB site. It asked whether the Administration might now amend the MLP again to include these facilities in the MLP.

51. The **Director of Lands** said that the MLPs and the lease conditions of the DB site had the same status and were equally binding. When a certain item was deleted in the MLP, the item could be regarded as having been deleted from the lease. In his letter of 8 January 2005, in ***Appendix 39***, the **Acting Director of Lands** added that the Administration could not unilaterally amend the MLP.

Changes in Master Layout Plans and premium implications

52. According to paragraphs 4.2 to 4.7 of the Audit Report, in 1979, Developer A agreed to replace the public golf course by some active public recreational facilities in the same area or elsewhere within the DB site. However, as far as could be ascertained from the Lands D's records, Audit could not find a list of the specific replacement public recreational facilities, showing the site area and locations, which Developer A should provide. There was also no verification of the specific as-built facilities with those agreed with Developer A to ensure that they had in fact been built. The Committee asked why the Administration had not been serious in dealing with the matter.

53. The **Secretary for Housing, Planning and Lands** responded that the incidents were not acceptable and should not have happened. No matter whether it was land matters or other government activities, there was always a need to record the things to be done clearly because the Administration had to make sure that the relevant objectives were met at the end of the day.

54. According to paragraphs 4.17 and 4.21 of the Audit Report, the Lands D had only charged premium for the changes made in MLPs 5.6, 5.7 and 6.0E1. It had not charged premium for the changes made in the MLPs after the land grant and prior to 7 June 1994 (i.e. MLPs 3.5, 4.0, 5.0, 5.1, 5.2, 5.3, 5.4 and 5.5). The Government might have suffered loss in revenue. In addition, the Lands D had not documented the reasons for not assessing and/or charging premium for those MLP changes. The Committee asked whether the Administration considered this acceptable.

55. The **Director of Lands** responded that, having constructed the situation at that time according to the file records, he had the following understanding:

- a Land Policy meeting was held on 25 May 1987 to consider, inter alia, the Land Policy Meeting Paper LPM 3/87 (the paper and minutes of the meeting are in ***Appendices 42 and 43*** respectively). The paper stated that MLP 3.5 permitted a total of 592,716 m^2 of GFA to be used for residential, commercial and hotel uses which, from land perspective, was called revenue-generating GFA. When MLP 3.5 was approved as MLP 4.0, the GFA had to be converted from the imperial system to the metric system. In the process, the total permitted revenue-generating GFA was wrongly converted to 607,000 m^2. The correct figure should have been 608,510 m^2. So, in MLP 4.0, there was a shortage of 1,510 m^2. The mistake was not discovered in the subsequent amendments to the MLPs, including MLPs 5.0, 5.1, 5.2, until the relevant government departments considered MLP 5.3;

- after lengthy discussion, the Lands Policy meeting decided that from then onwards, the figure 608,510 m^2 would be used as the basis for future negotiations over any premium to be charged for increases in GFA in future;

- he deduced that the position at the time was that if the revenue-generating GFA of DB exceeded 608,510 m^2, then a premium would be charged. However, if there was an increase in GFA but the total permitted GFA of 608,510 m^2 was not exceeded, premium would not be charged. His deduction was supported by a letter dated 25 November 1989 from the then Director of Buildings and Lands to Developer A (in Appendix IV to the Acting Director of Lands' letter of 8 January 2005 in ***Appendix 39***);

- no premium had been charged for the changes made in MLPs 5.3, 5.4 and 5.5 because the total revenue-generating GFA did not exceed 608,510 m^2. When it came to MLPs 5.6, 5.7 and 6.0E1, the Lands D had charged a premium because that figure was exceeded; and

- as regards why the Lands D had not charged any premium although there was a change in land use, thereby bringing about a change in value, the file records did not mention whether there were any guidelines at that time stating that an increase in land value due to a change in land use was a consideration for charging a premium.

56. The Committee noted from paragraph 4.15 of the Audit Report that in October 1985, when the proposal to delete the public golf course and the cable car system was discussed by the DPC, it was stated in the DPC discussion paper that modification of Special Condition 5(b) of the lease conditions would be required. The paper also mentioned that a formal modification of the lease conditions subject to consideration of a premium and administrative fee should be made for the changes. The Committee queried why, despite the DPC's view, the Lands D had not assessed the premium implications of the changes in the MLPs.

57. The **Director of Lands** responded that the matter considered by the DPC was whether a premium should be charged if there was a modification of lease conditions. In fact, the public golf course and the cable car system had been deleted from the MLP, not from the lease conditions. The lease conditions had not been changed on the advice of the Registrar General. As mentioned in the Audit Report, the DPC had not expressed any opinion on the modification of the lease conditions when it agreed with the changes made in MLP 5.1. Perhaps that was why premium was not discussed.

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58. According to Table 3 in paragraph 4.16 of the Audit Report, some of the changes in the MLPs involved change in land use and increase in the GFA of housing accommodation. The Committee wondered why the Administration had not charged premium for the change in land use and the resulting enhancement in land value. The Committee further asked whether the Administration had the determination to recover the premium from Developer A according to the existing policy.

59. The **Director of Lands** responded that according to legal advice, the Government had given approval for changing the MLPs and a premium was not charged at that time. There would be great difficulties if the Government was to ask the developer to pay a premium after more than 20 years. This would violate the estoppel principle.

60. The **Secretary for Housing, Planning and Lands** responded that he had strong determination in going through all relevant information to see if the Administration had omitted to charge any premium that should have been charged. However, the Administration would take the matter forward only after this first stage was completed and if there was evidence showing that there was such a problem. The Administration could not recover something that was not substantiated.

61. To understand the policy in the 1970s and 1980s on the charging of premium when approving change in land use, the Committee asked:

- whether the relevant land authorities at that time were empowered to charge premium when approving changes in MLPs;

- whether the policy at that time allowed the relevant authorities not to charge premium on change in land use when approving changes in MLPs;

- whether there were cases in the 1980s in which premium was not charged on similar change in land use; and

- whether it was normal practice in the 1970s and 1980s that premium would not be charged as long as the GFA of a site did not exceed a certain limit even though there was a change in land use.

62. In his letter of 8 January 2005, in ***Appendix 39***, the **Acting Director of Lands** informed the Committee that:

- the authority to charge premium was not lacking;

- the policy on changes of use requiring lease modifications had remained constant, in that where such a lease modification would bring about an increase in value, a premium was charged. In respect of changes in use involving only a change in MLP, however, it was apparent that in the 1970s and 1980s no charge was made (as long as there was no increase in total GFA). There was no specific policy statement on this issue at that time;

- the Lands D had no record of premium being charged for an MLP change not involving a lease modification in the 1980s; and

- in the 1970s and 1980s, it was the normal practice not to charge premium for changes to MLPs which did not require a modification of the lease as long as there was no increase in total GFA.

63. The Committee invited Audit's comments on the Acting Director of Lands' reply that it was the normal practice in the 1970s and 1980s not to charge premium for changes to MLPs which did not require a modification of the lease as long as there was no increase in total GFA. In his letter of 1 February 2005, in ***Appendix 44***, the **Director of Audit** advised that:

- *"Normal practice" not substantiated*: As far as could be ascertained from the Lands D's records, the Acting Director of Lands' statement was not substantiated in either the Lands Administration Office Instructions (LAOI) or the Revenue Assessment Manual (RAM). Audit was not aware of any approval from the ExCo for such "normal practice";

- *Increase in total GFA and change in user mix:* The increase in total GFA and changes in user mix (mentioned in Note 3 in paragraph 2.8, paragraph 2.10 and Table 3 in paragraph 4.16 of the Audit Report), were as follows:

User	MLP 3.5 GFA (m^2)	MLP 4.0 GFA (m^2)	MLP 4.0 increase/ (decrease) over MLP 3.5 GFA (m^2)	
(a) Housing accommodation	**–**	**524,000**	**524,000**	
(b) Resort accommodation	**401,342**	**–**	**(401,342)**	} (Note 1)
(c) Hotel accommodation	**140,284**	**32,000**	**(108,284)**	
(d) Commercial	51,097	45,000	(6,097)	
(e) Others	41,341	40,600	(741)	
Total GFA per MLP	634,064	641,600	7,536	
Discrepancy (Note 2)			1,510	
Increase in total GFA			9,046	

Note 1: In April 1977, the ExCo was informed of the GFA of the resort and hotel accommodation.

Note 2: According to the Lands D, the discrepancy was due to a conversion error (from square feet to square metres).

- as shown in the above table, the approval of MLP 4.0 in January 1978 had resulted in:

  (a) an increase in total GFA over that approved in MLP 3.5; and

  (b) a significant change in user mix, particularly the deletion of the resort accommodation and the addition of 524,000 m^2 housing accommodation GFA.

  The then New Territories District Planning Division of the Town Planning Office had also commented in mid-October 1977 that there was a corresponding increase of residential areas;

- while the then SNT was delegated the authority to approve changes to MLPs, Audit was not aware that he had been given any explicit authority to not charge premium if there was enhancement in value arising from changes in lease conditions;

- *Changes to MLP:* the Director of Lands had stated that the MLPs and the lease conditions of the DB site had equal standing and effect. Therefore, any modification of the MLP (such as the increase in the total GFA and the significant change in user mix in MLP 4.0 over MLP 3.5) would in substance tantamount to a modification of the lease conditions;

- *Deletion of public golf course and cable car system constituted lease modifications:* The provision of the public golf course and the cable car system was a mandatory requirement stipulated in Special Condition 5(b) of the lease of the DB development. Moreover, because of the importance attached to the public golf course proposal, the developer's responsibility to maintain the public golf course was more particularly referred to in Special Condition 54(c) of the lease. In the circumstances, the deletion of the public golf course in MLP 5.0 in February 1982 and the cable car system in MLP 5.1 in February 1985, constituted modifications of the lease conditions; and

- to conclude, Audit maintained its view that the Government might have suffered losses in revenue. The Lands D had not assessed the implications, financial or otherwise, of the deletion of the facilities, and the reasons for not assessing and/or charging premium for the changes in those MLPs were not documented.

64. In order to ascertain whether the Government had suffered losses in revenue, the Committee asked:

- about the total revenue generated by the entire DB development in the past 30 years; and

- for an estimation of the premium involved in each of the changes made in the MLPs prior to 7 June 1994 based on the market conditions at the time when the changes were made.

65. In his letter of 10 January 2005, the **Secretary for Housing, Planning and Lands** advised that as far as the Lands D was concerned, a total of some $2.09 billion had been collected in respect of the DB development. This figure comprised land premium, government rent up to 1996-97 (government rent was collected by the Rating and Valuation Department after 1997), premium charges for changes to the MLP, waiver fees and rental for short term tenancy (STT) and administrative fees.

66. On the question of premium, the **Director of Lands**, in his letter of 25 January 2005 in ***Appendix 45***, stated that:

- on the basis of file records, the original premium of $61.5 million charged for the DB development land exchange was based on an estimated sale price of $300/ft^2 which was applied to the total GFA for all the uses permitted (i.e. without distinguishing between commercial, residential and hotel);

- this valuation was supported by the analysis of the two public land auctions in Mui Wo conducted in 1973. These land auctions produced a ground floor shop value at about $300/ft^2 and upper floor residential flat value at about $200/ft^2 which the Lands D believed were adopted as the benchmark for valuing the DB at that time. Moreover, the unit land cost (commonly known as accommodation value) derived from the estimated sale price also compared favourably with that of two land exchanges in Mui Wo and Cheung Chau for hotel development in the early 1970s; and

- the application of $300/ft^2 to the total GFA permitted under the approved MLP meant that the enhancement, if any, in subsequent changes to the MLP had already been captured in the approval of the first MLP by adopting the highest use value among the mix in calculating the land premium to be paid by the developer upfront for the grant. This had obviated the need for further premium assessment when changes in the development mix were subsequently made to the MLP as long as the total permitted GFA was not exceeded. That being the case, the Lands D did not consider it appropriate to compute the premium for each of the changes made to the MLP prior to 7 June 1994.

67. In response to the Committee's request, the **Director of Audit**, in his letter of 1 February 2005, commented that:

- according to Section 7 of the Land Administration Policy on Modification and Administrative Fees (amended on 1 April 1984), as a general rule for lease modification, "Premium will normally be required representing the difference in value between the lot as formerly restricted and as modified …… . The general principle relating to the assessment of modification premia is that the lessee must pay for any enhancement in the value of the lot deriving from the modification". In other words, premium assessment should be done by comparing the current land values under the modified lease conditions (and/or MLP) and the original lease conditions;

- having regard to the above general rule, the unit land cost (accommodation value) and the valuation benchmark (i.e. ground floor shop value) adopted at the date of execution of the lease conditions were not relevant to the premium assessment of a lease modification at a later date; and

- in view of the above, Audit did not concur with the Director of Lands' views that "adopting the highest use value among the mix in calculating the land premium to be paid by the developer upfront for the grant ..... had obviated the need for further premium assessment when changes in the development mix were subsequently made to the MLP as long as the total permitted GFA was not exceeded.". Furthermore, there had been an increase in total GFA and changes in user mix since the change from MLP 3.5 to MLP 4.0. Audit therefore also did not concur with the Director of Lands' conclusion that he did "not consider it appropriate to compute the premium for each of the changes made to the MLP prior to 7 June 1994".

68. In his letter of 16 February 2005, in ***Appendix 46***, the **Director of Lands** responded to the Director of Audit's comments on the charging of premium in the present case contained in his letter of 1 February 2005, as follows:

- the basic considerations underlying the handling of the DB case in the 1970s and 1980s were:

  (a) since the subject land grant contained an MLP clause to enable the Administration to exercise detailed control over the implementation of the development within the approved parameters stipulated in the lease conditions, premium would not be charged on each and every occasion when amendments to the MLP were made, unless such changes would require lease modification and/or there was an increase in the total permitted GFA (for revenue generating purposes). This practice adopted for cases under similar situations in that period was also adopted in this case;

  (b) the premium for the land transaction concerned was calculated according to the highest land use value among any of the permissible mix as specified in the MLP. This meant that Government was able to capture the highest revenue income at the outset without any downside risk due to fluctuations in the property market. On the part of the developer, the certainty in its financial commitment under the land transaction plus the flexibility of being able to make more timely decisions in response to

changes in market conditions would arguably be essential for a project of this magnitude and nature; and

(c) on the above basis, the manner that the original premium was calculated had obviated the need for further premium assessment when changes in the development mix were subsequently made to the MLP as long as the total permitted (revenue-generating) GFA was not exceeded;

- regarding Audit's comments on the "normal practice" in the 1970s and 1980s, the Lands D's response, as provided in the letter of 8 January 2005, was factual to the best of its knowledge. Most land administrative practices evolved over time in the light of experience and changes in circumstances and the Lands D did not come into existence until 1982. The Lands D's understanding of the practice prevailing two to three decades ago should not be negated simply by the Director of Audit being unable to locate any written material to substantiate its statement;

- regarding Audit's comments on "increase in total GFA and change in user mix", it had to be stressed that, despite the changes to the GFA in various MLPs up to MLP 5.5, the revenue-generating GFA did not exceed the permitted maximum of 608,510 m^2 as determined by the Land Policy meeting held on 25 May 1987;

- Section 7 of the Land Administration Policy on Modification and Administrative Fees remained a valid rule for general application for assessing premium arising from lease modifications. The case in question was not inconsistent with this section; and

- in conclusion, the Lands D strongly disagreed with the views held by the Director of Audit in his letter of 1 February 2005, especially that "the Government might have suffered losses in revenue", having regard to the manner that the original premium was calculated. The Director of Audit's suggestion that a series of further premiums should have been collected for changes in the development mix up to 608,510 m^2 (revenue-generating GFA) would constitute double charging since the facts established indicated that the developer, at the time of the original grant, had already paid for the flexibility of varying the development mix subsequently reflected in successive MLPs.

69. The Committee asked whether the CS, who decided that there was no need to seek the ExCo's approval for the change in concept, was behind the decision of not charging premium for the changes in the MLPs.

70. The **Secretary for Housing, Planning and Lands** and the **Director of Lands** responded that:

- as mentioned in the Audit Report, the DPC had a meeting in October 1985. The chairman of the DPC was the then Secretary for Lands and Works, Mr Todd, and the meeting was attended by representatives of various government departments. The DPC agreed on a number of things collectively. But there was no decision on lease modification or premium payment; and

- there was no record of any person specifically approaching the CS for an instruction as to whether a premium should be charged. Therefore, it could not be concluded that the CS should be held responsible for the decision made at that time.

71. According to paragraph 4.18 of the Audit Report, the Lands D's RAM stated that "When giving approval to Master Layout Plan, which leads to giving consent/variations of restrictions under certain conditions, the Director may impose conditions (including payment of fee and appropriate admin. fee) as he considers appropriate …... ". However, Audit noted that the RAM did not provide a definition of "certain conditions", and the word "may" implies that the charging of fee was discretionary. It was not clear under what conditions, and how, such discretion would be exercised. The LAOI also did not stipulate clearly that the Lands D should charge MLP approval fee.

72. The Committee asked whether:

- some government official had exercised discretion over the charging of premium in the case of DB, resulting in losses in government revenue; and

- the word "may" in the RAM should be changed to "shall" so that the charging of fee was mandatory rather than discretionary.

73. The **Director of Lands** clarified that:

- according to legal advice, "certain conditions" referred to certain lease conditions, not certain circumstances. The whole sentence in the RAM meant giving approval to MLP under certain provisions of the lease, not in a certain situation for discretionary power to be exercised. Thus, there was no question of the Director of Lands being given too much discretionary power; and

- the Director of Lands did need some flexibility in discharging his duty as it was hard to foresee all factors relevant to land matters. While the Director of Lands was given some discretionary power, it was not exercised casually. The exercise of such flexibility was not subject to personal preference and was properly recorded. Moreover, there were monitoring mechanisms in place nowadays, such as the Independent Commission Against Corruption, Audit, the Ombudsman, etc.

74. The Committee asked how the Lands D would amend the RAM and LAOI in response to Audit's recommendations in paragraph 4.23 of the Audit Report. The **Acting Director of Lands** provided the wording of the amendments to the RAM and LAOI in his letter of 8 January 2005 in ***Appendix 39***.

Site boundaries of Discovery Bay and Yi Long Wan developments

Setting out of site boundaries

75. According to paragraph 5.5 of the Audit Report, in September 1976, the Government granted the DB site to Developer A. However, up to July 2004, i.e. after a lapse of 28 years after the land grant, the Lands D had not yet set out the site boundaries of the DB development. The Committee questioned the Lands D's reason for not setting out the site boundaries.

76. The **Director of Lands** and **Mr AU YEUNG Ping-kwong, Deputy Director of Lands/Survey and Mapping**, stated that:

- the then Public Works Department was responsible for setting out the site boundaries. After some boundaries had been set out, the work was suspended in 1977 for more than half a year due to an industrial action of the surveying staff; and

- it was not the case that there were no boundaries of the site. Actually, the boundaries were shown on the plan relating to the land grant. However, as the site was very big, the surveying staff had not yet put boundary marks on ground in order to avoid possible abortive work.

77. On the reason for the long delay in completing the work, the **Director of Lands** said that:

- in a letter of 16 March 1983 from the then Director of Lands, Mr Todd, to Developer A (in Annex F of Appendix II to the Acting Director of Lands' letter of 8 January 2005 in ***Appendix 47***), it was stated that " …… the present MLP No. 5 is not subject to Government survey and can only be a guide to your Company's present and future intentions. In other words neither plan at this stage is really satisfactory. It may therefore be more appropriate to await the issue of the Crown Lease at the end of the whole development whereupon Government will carry out a survey of the lot boundaries.". It appeared that it was the Government's position in 1983 that as the DB project was still going on, the Government should resolve all the discrepancies upon the completion of the whole project. At that time, the Government thought that the development would be completed in the not too distant future. When a Crown Lease was produced, the matter would also be dealt with;

- as it transpired, the development was still going on and the pegging had not yet been done. However, in 2002, there was a complaint about the occupation of government land by the DB golf course. Despite the fact that the development was still in progress, the Lands D considered that it should set out the boundaries. It would complete the dimension plan by mid-January 2005. Lands D staff would then place the boundary marks on the site accordingly, thus setting out the site boundaries; and

- there was no record to show why no one had raised the need to set out the site boundaries during 1983 and 2002. Perhaps the Lands D staff had relied on the 1983 letter and wanted to set out the boundaries upon the completion of the entire project.

78. In his letter of 24 January 2005, in ***Appendix 48***, the **Director of Lands** informed the Committee that the dimension plan survey for the DB development boundary had been completed by the District Survey Office/Islands, and the setting out work would be completed by the end of March 2005.

79. The Committee further asked:

- whether the Lands D considered that it was wrong not to set out the boundaries in the past three decades as this might have resulted in encroachment on government land; and

- when the Lands D would complete the setting out of boundaries for sites granted but the boundaries of which had not yet been set out.

80. The **Director of Lands** responded that:

- he did not know the actual thinking of the responsible officials at that time. As time had advanced and land was very precious in Hong Kong, he agreed that the practice today should be different. The Lands D considered that for a developing project with a long period of development, it should not wait until the development was completed before carrying out its work. If the project was divided into several stages, the Lands D could carry out certain work at each stage, thereby reducing the possibility of encroachment on government land; and

- the Lands D planned to complete the setting out of boundaries for sites granted in eight months.

81. Regarding the measures taken by the Lands D to set out the boundaries of a government site before disposal of the site, the **Director of Lands**, in his letter of 8 January 2005 in ***Appendix 47***, stated that:

- sites for public auction or tender were normally fenced and their boundaries would be set out before sale; and

- for sites granted by private treaty grant and extension, the plans in question included boundary dimensions and bearings, and the site area to facilitate the design of the development. The site boundaries would be set out on ground in advance or within three months after the completion of the land transaction so that the positions of the boundary marks could be shown to the landowner or his/her representative. Thereafter, it was the landowner's responsibility to protect the boundary marks placed on ground.

Encroachments on government land at Discovery Bay and Yi Long Wan

82. According to paragraphs 5.14 to 5.16 of the Audit Report, the Lands D had been aware of encroachments on government land at the DB golf course since early 1980s. The Committee questioned why the Lands D had not taken timely actions to rectify the encroachments.

83. The **Director of Lands** responded that:

- Developer A had applied to the Government in 1981 and 1996 for renting a piece of government land at Wong Chuk Long, on an STT basis, for accommodating the fourth and fifth holes of the golf course at DB. The application in 1981 was not processed as the Government thought at the time that it would be more appropriate to deal with the problem when the Government Lease was issued after the whole DB development was completed. This was reflected in the then Director of Lands' letter of 16 March 1983. The application in 1996 was rejected as the land fell within the proposed extension of the Lantau North Country Park; and

- in 1998, the Lands D required Developer A to reinstate the land concerned. In 2002, the developer applied for an STT for the third time. At that time, the Government had decided that the land concerned would not be included in the Lantau North Country Park area. Because of this factor and other practical considerations, in July 2002, the Lands D approved the STT for the land concerned to be used as part of the golf course.

84. The Committee enquired whether the exclusion of the encroached government land from the boundary of Lantau North (Extension) Country Park was partly due to the fact that Developer A had repeatedly applied for an STT for the land.

85. In his letter of 24 January 2005, the **Director of Lands** stated that:

- the boundary of Lantau North (Extension) Country Park originally proposed in 1996 on the one hand included part of the golf course area on the encroached government land but on the other hand excluded another part on the encroached government land. Following consultation among concerned government departments, the Director of Agriculture, Fisheries and Conservation excluded the entire encroached area from the proposed boundary of Lantau North (Extension) Country Park in 1999. This was reflected in the draft map for the Lantau North (Extension) Country Park gazetted in July 2001 and the DB OZP gazetted in September 2001; and

- there was no information on record that the STT applications by Developer A had influenced the determination of the proposed boundary of an extended Lantau North Country Park.

86. Given that the developer had applied for an STT in 1981, the Committee asked why the Administration had not processed the application promptly so that STT rent could be collected earlier.

87. The Committee also referred to paragraph 5.18 of the Audit Report which revealed that after rejecting Developer A's second application in 1998, the Lands D had asked the developer to reinstate the land. However, the Lands D had not taken follow-up action to ascertain whether the land had been reinstated. The Committee asked why this had happened.

88. The **Director of Lands** stated that:

- it appeared to be the then Government's intention to resolve the problem by rectifying the lot boundaries after the whole project had been completed rather than granting an STT to the developer. The Government had not suffered any loss in revenue because, after the STT was granted, the Government had collected rent from the developer with effect from the time of occupation, i.e. October 1982; and

- he could not find an explanation in the records with regard to why the Lands D had not taken follow-up action at that time to ascertain if the land had been reinstated. Perhaps the staff concerned had not followed through the procedure.

89. The Committee further asked whether it was a normal arrangement in the 1980s for the Government not to take timely rectification action on encroachment on government land for the reason that the development concerned was still on-going. The **Acting Director of Lands**, in his letter of 8 January 2005 in ***Appendix 47***, stated that this approach was not the normal arrangement in the 1980s to address encroachment on government land.

90. The Committee asked about the measures that the Administration would take to ensure that encroachment on government land was rectified in a timely manner. The **Director of Lands** stated that:

- the Lands D had an established procedure for dealing with encroachment on government land. Depending on the nature and extent of the encroachment, different actions would be taken; and

- if the encroachment was of a small scale, the Lands D would regularise it by granting an STT. For example, if a house owner encroached on a piece of government land in front of a small house in the New Territories and turned it into a garden, the Lands D might consider leasing the land to the house owner on an STT. This was because the land concerned was not big and even if it was not encroached on, it was not very useful. By doing so, the Lands D could also ensure that the land would not be used for other worse purposes and could bring in revenue. If the encroachment was very serious, the Lands D would ask the person concerned to reinstate the land or might even consider instituting prosecution.

91. The **Secretary for Housing, Planning and Lands** added that the Administration would ensure that the officers concerned would follow through the above established procedure.

92. According to paragraph 5.23 of the Audit Report, the Islands District Council member who complained about the deletion of the public golf course and the proposed STT in July 2002 was dissatisfied that the Government tried to resolve the encroachment problem by issuing the STT as this would undermine the Government's bargaining power. The Committee asked whether the Administration agreed to such a view.

93. The **Secretary for Housing, Planning and Lands** and the **Director of Lands** stated that:

- the purpose of regularising encroachments on government land by way of STTs was indeed to ensure that the Government would not suffer financial losses due to unauthorised use of the land. This was because the rent under an STT was assessed on full market rent basis; and

- if necessary, the Government could require the occupier of the land to reinstate the land and prosecute the occupier. However, under some circumstances, it would be more practicable to issue an STT so that the occupier could continue to use the land while the Government could collect rental at the market rate.

94. The Committee noted from Appendix B of the Audit Report that there was a provision concerning the rate of payment for any excess or deficiency in area of the site in General Condition 5(a) of the lease conditions of the Yi Long Wan development, but not in those of the DB development. The Committee asked about the reason for the discrepancy.

95. The Committee further noted that there was also encroachment on government land at the Yi Long Wan site. However, it seemed that the Administration had been more proactive in dealing with the problem at Yi Long Wan. As both the DB and Yi Long Wan developments were located on Lantau Island and developed in the same period, the Committee asked why different approaches had been adopted in addressing the land encroachment problems on the two places.

96. In his letter of 8 January 2005, in ***Appendix 47***, the **Acting Director of Lands** explained that:

- the records of Master Lease Conditions in the Lands D showed that between the grant of the lot at Yi Long Wan in 1975 and the DB in 1976, there was a change in approach and the rate of payment condition was dropped; and

- the golf course encroachment at DB was, and remained, an unbuilt open area operated by a single entity. The grant of an STT was the appropriate means to regularise it. The circumstances of the encroachment at Yi Long Wan, involving two privately owned residential blocks in multiple ownership constructed partially outside the lot, were quite different from those of DB and therefore warranted different treatment.

97. According to paragraph 5.15 of the Audit Report, Developer A had said that the extension of the area for the golf course had been agreed to at prior meetings with the SNT. The Committee enquired whether:

- there were records of those meetings;

- the Lands D had ascertained with the SNT at that time the truthfulness of Developer A's claim of agreement; and

- it was because of the SNT's agreement, as claimed, that the Lands D had been more lenient in dealing with Developer A.

98. In his letter of 8 January 2005, in ***Appendix 47***, the **Acting Director of Lands** said that the Lands D's files did not contain any record of discussions between the SNT and Developer A. Similarly, the Lands D did not have any file record showing whether or not it had ascertained with the SNT the truthfulness of Developer A's claim of agreement.

Grant of land at Discovery Bay and Yi Long Wan

99. Regarding the encroachment at Yi Long Wan, the Committee noted from paragraph 5.42(b) of the Audit Report that the Registrar General's Department had said in 1983 that despite the undertaking, it would be difficult to ask Developer B to pay a premium for the extra piece of land. The Committee asked whether it was possible for the Lands D to recover the premium nowadays.

100. The **Director of Lands** responded that:

- although Developer B had undertaken in December 1980 to pay a premium for the extra piece of land, in January 1983, it requested the Lands D to confirm that there would be no premium for revising the site boundary. This meant that it had withdrawn his undertaking. According to the file records, Developer B was in great financial difficulties at that time and could not pay the premium at all. That was why the matter had not been followed up by the Registrar General's Department; and

- legally, the Administration could ask the grantee for the Yi Long Wan site to pay the premium. However, the developer for the site almost did not exist nowadays and the flats had been sold. The Administration would have to discuss with more than 200 owners to recover the premium. Even if one owner disagreed to pay, there would be a lot of problems. It was doubtful whether the Administration could collect any premium.

101. The Committee noted that the Government could take prosecution action against encroachment of government land. The Committee enquired why the Administration had not prosecuted Developer A which had occupied government land illegally for more than 20 years.

102. The **Director of Lands** responded that:

- there were guidelines in the LAOI setting out the circumstances under which STTs should be granted. The Lands D's policy did allow it to regularise encroachments by granting STTs. In view of the fact that the land concerned had been occupied by Developer A for several decades, the Lands D considered it more pragmatic to grant it an STT rather than prosecuting it and asking it to reinstate the land;

- in fact, the Ombudsman had stated in her report that she agreed with the Lands D on the proposed course of action (i.e. granting an STT). She considered the case to be a fait accompli where events had left the Lands D with little alternative; and

- another reason for granting an STT to Developer A was that, as pointed out in paragraph 5.24(c) of the Audit Report, the occupation of the land had been acknowledged in writing in 1983 by the Director of Lands on the basis that formal documentation would be issued at a later date. It could be argued that a form of tenancy had been in place. If the Lands D took prosecution action in 2003, there might be a legal dispute.

103. To ascertain whether the rent for 21 years paid by Developer A for the occupation of the government land (paragraph 5.26 of the Audit Report referred) was reasonable, the Committee asked:

- about the amount and basis of the rent paid;

- the amount of rent originally proposed by the Lands D; and

- the estimated amount of revenue that could have been generated by the encroached pieces of land if they had not been used by Developer A.

104. **Mr LAU Chi-ming, District Lands Officer/Islands, Lands D**, said that the rental was calculated on the basis of the full market rate at 1982 when the occupation of the land took place and then reviewed every three years thereafter according to the prevailing market rates at the respective times.

105. The **Director of Lands** and the **Acting Director of Lands** stated, at the public hearing and in the letter of 8 January 2005 in ***Appendix 47*** respectively, that:

- an STT was a contract between the Government (as the landlord) and a private party (as tenant). Developer A had given verbal consent to disclosing the amount of STT rent paid. The total amount of rent paid for the 21-year period from October 1982 to October 2003 was $7.23 million. This was a negotiated amount;

- the negotiated rental was based on evidence of market transactions. The figure initially proposed in the negotiation by the Lands D was $11.2 million for the same period; and

- the three encroached areas were remote and hard to access. The areas adjoining the encroached land at Wong Chuk Long were either steep sloping government land or private land owned by Developer A. As regards the other two encroached areas, they were largely sloping areas. The Lands D did not consider that they were capable of separate alienation or use by any party other than Developer A and, as such, no revenue would have been generated if they had not been used by Developer A.

106. The Committee questioned why the Lands D allowed the STT rental to be cut by such a large extent after negotiation, notwithstanding that the developer had encroached on government land for a long time. It seemed that the Government had treated big developers much more leniently than small landlords.

107. The **Director of Lands** explained that:

- STT rental, like land premium, was very often determined by negotiations. The professional surveyors in the Lands D would make an analysis and valuation of the rental with the benefit of all relevant information and their expertise. However, valuation was not an exact science. Different surveyors would hold different views on the valuation of a site;

- regarding the encroachment by the golf course, the Lands D made a valuation and proposed that $11.2 million should be charged. During the negotiations with the developer, it also presented its data. Such negotiations were very common in land premium matters. Having considered the arguments and evidence of both sides, the Lands D was of the view that the developer's appeal was not unjustified. Therefore, the proposed rental was reduced to $7.23 million. In deciding to accept the amount, the Lands D took into account the Crown rent back in 1981, the remote location of the encroached areas and the fact that their commercial value was almost zero. The Lands D had also made reference to the rent for a government site used for gardens after 1982 as well as the rateable value; and

- the occupation of government land at DB for the operation of a golf course was a very special case. It did not mean that the Lands D would adopt the same approach in dealing with others who encroached on government land. The case was special in that the DB development had its own unique development history, the developer had indeed applied for an STT with the Government at different times but the applications were rejected for various reasons, and the Government had intended to resolve the matter after the

whole development had been completed. The case did not reflect the Government's overall policy.

108. It appeared to the Committee that the Director of Lands' reply, that there was a relationship of landlord and tenant between the Government and Developer A, suggested that the developer's encroachments on the government land was legal. Moreover, instead of penalising the developer, the Lands D had allowed the developer to bargain the STT rental with it. In the end, the Lands D accepted a smaller amount. The Committee asked the Secretary for Housing, Planning and Lands whether:

- he considered Developer A's encroachments on government land legal and the rent of $7.23 million reasonable; and

- he agreed that the Administration was not doing its best to protect public money.

109. The **Secretary for Housing, Planning and Lands** responded that:

- there was a division of duties within the Government. While a bureau secretary had to shoulder the responsibilities for all the departments under his purview, the secretary would not know everything about the daily operations of these departments; and

- it was most important to have proper systems in place. Being a bureau secretary, he was responsible for overseeing the systems. As for daily operations, since these were very trivial, he could not look at each and every one of them in detail and had to rely on the Director. In turn, the Director would also have to rely on his subordinates. Officers of different ranks in a department had different responsibilities.

110. The Committee queried why the Secretary for Housing, Planning and Lands considered issues relating to public money trivial. The **Secretary for Housing, Planning and Lands** responded that:

- he had mentioned that he would not look at trivial issues in general, but not that public money was trivial. As the Lands D was responsible for those issues, he would see if it had discharged its duties properly;

- as regards whether Developer A's occupation of government land was legal, he could not make a personal judgement as he was not a professional. Presumably, the Lands D had discussed with the Department of Justice before stating that a form of tenancy had been in place. He had not seen the relevant legal advice; and

- he did not know about the STT rent in 2003. The assessment of STT rent fell within the Lands D's daily operation. It did not have to report the assessment to him and he did not need to ask about that.

111. In response to the Committee's enquiry about the legal basis of the view that a form of tenancy had been in place, the **Director of Lands**, in his letter of 24 January 2005, stated that:

- in considering Developer A's application for an STT in July 2002, the Lands D had taken legal advice on the status of the encroached land. The advice was that the Government had acknowledged the occupation of the land by Developer A in a series of correspondence over a number of years since March 1983 and had indicated in writing that the encroachment would be regularised upon issue of the Crown Lease at the completion of the whole development when the Government would carry out a survey of the lot boundaries. In October 1996, Developer A applied for an STT of the encroached land. This was rejected at that time as the land was within the proposed extended limits of the Lantau North Country Park. Developer A reactivated his application for an STT in mid-2002, and this was approved in July 2002;

- based on the above sequence of events and course of conduct by the Government in its dealings with Developer A regarding the encroached land between the time when the Government became aware of the encroachment in 1982 and the issuance of a formal STT in 2002, the legal advice was that a form of tenancy would have been created; and

- since Developer A had been occupying the encroached land with the full knowledge and acquiescence of the Government in the period (with the intention of regularisation upon the completion of the development of DB), it could not be said to be a trespasser. It was a tenant at will from the Government, subject to agreement of boundaries and any other terms, including rent or mesne profits payable for the period of its occupation prior to issuance of the formal STT. It was on this basis that the Government was entitled to demanding the payment of the rent or mesne profits for the period from 1982 to mid-2002.

Evidence obtained at the public hearing on 12 January 2005

112. Upon the Committee's request, **Sir David Akers-Jones** provided written comments on the various issues mentioned in the Audit Report in which he was involved as the then SNT, SCNTA or CS. His written response dated 5 January 2005 is in ***Appendix 49***.

113. At the Committee's public hearing on 12 January 2005, **Sir David Akers-Jones** made an opening statement, the full text of which is in ***Appendix 50***. In summary, he said that:

- he was over 77 years old and had retired for more than 17 years. It was very difficult for a man of his age and who had been out of Government for so long to recall things that took place over 25 years ago. The time lapse and lack of access to information made it very difficult to recollect details;

- his involvement in the DB matter was very limited and took place over the short period of time between 1977 and 1982 when he was the SNT. By 1982, the functions of the SNT and its successor, CNTA, had been taken over by the Secretary for Lands and Works and the Lands D. Thus, many departments had reviewed his work;

- during the period when he was the SNT, he had a very capable team of estate surveyors and legal advisers and he relied on their expertise and assistance when making decisions. There were well defined and established procedures and officials within a clear chain of command with no-one acting alone. In his experience, there were proper contemporaneous records of transactions and he was very surprised to find that many documents had not been kept or were now missing. Before he made any decision, there would be input from various other departments;

- neither the Director of Audit nor the Public Accounts Committee had ever previously made any recommendations or comments on the DB development when he was the SNT or any time thereafter until recently, after 25 years;

- at the time when he was the SNT, there was no planning control legislation in place in the New Territories. Also, there were few proposed developments of the size of DB at that time. In the early 1970s, DB was a barren rocky area without any infrastructure or development;

- the original developer, Mr Edward WONG, had a good innovative idea but it later went into liquidation after heavily mortgaging the property to the bank. The whole DB project was at substantial risk of not proceeding at all and there were concerns that the mortgagee bank might take possession of the land. Accordingly, it was important that the development be permitted to proceed with a certain degree of flexibility. This more flexible approach was allowed by the ExCo granting to the developer the land at DB for a holiday resort/commercial development, as opposed to a previously restrictive approach adopted by the ExCo to restrict the use of land merely for the purposes of a holiday resort with limited residential and commercial use;

- it was the lease conditions that specified the planning intention of the land (there being no OZP). The MLP under the lease conditions was a mechanism for giving control with a degree of flexibility. The lease conditions were drafted by a senior official in the Registrar General's Department. The MLP provisions incorporated into the lease conditions were clear;

- given the barrenness, long distance, the lack of infrastructure and difficulty of access to urban areas of Hong Kong in the 1970s and there being no precedent for such an idea, it would have been difficult to assess its popularity in terms of how many people would buy holiday homes or use the recreation facilities or if it would have been different had a hotel been built. In addition, it would have been hard to assess the value of a hotel development as opposed to a holiday home development in respect of such a risky development. In any event, the estate surveyors in those days would have made their best valuation assessments at that time and he would have followed their advice and legal advice when making any decisions;

- he believed that DB was a resort and would remain one, with its fine recreational golf and yacht club facilities, the access by the public to the golf during the week, the beach fronts and restaurant cafes and landscaping in the area. If there were no flexibility allowed by the ExCo and the MacLehose and subsequent Administrations, the development would not have been commercially viable and would not have been anywhere near the success it was today; and

- while he was the SNT, he had no better or worse relations with developers and other tycoons than other senior officials then and now. He was not asked to be a director, albeit an independent non-executive director, of the DB developer until 2000, some 13 years after his retirement as the CS.

114. Regarding Sir David Akers-Jones' query as to why Audit had taken up this subject for review only recently but not earlier, the **Director of Audit** explained that the review arose from a complaint about the DB development and the Legislative Council had also dealt with the complaint in 2002.

115. The Committee noted that according to the ExCo paper of July 1976, DB should be developed into a holiday resort with limited residential and commercial purposes. Thus, the residential and commercial developments should be ancillary to the holiday resort development. However, it turned out later that the residential and commercial developments became primary while the resort development was only secondary. The Committee asked Sir David why, at that time, he considered that the actual development of DB was not out of step with the ExCo's decision.

116. The Committee also referred to paragraph 2.17 of the Audit Report which mentioned that, in July 1985, the PGLA of the Lands D had said that "the form this development has taken to date, i.e. that it is very much less of a tourist resort (both for overseas and local tourists) and more of a typical residential development". The Committee asked Sir David whether he was aware of such views within the Government at that time.

117. **Sir David Akers-Jones** responded that:

- a resort could take many forms. The fact that there were now 15,000 people living in DB did not preclude it from being considered a resort. Similarly, the hotels and high-rise buildings in Phuket, Miami, Blackpool, Brighton, Nice, Cannes or Monte Carlo did not prevent any of these places being considered a resort. In his opinion, the inclusion of residential and commercial development in DB was part of the growth of a resort as it developed;

- as reflected in the Explanatory Statement in the DB OZP of 2003, the DB development "is primarily a car-free environment evolved from the original concept of a holiday resort approved in 1973. This intention [of a resort] is still maintained by the existing and planned provision of a diversity of recreation facilities …… ". Hence, the development of DB had conformed with the description that it was a resort and it remained to be so. It was in line with the ExCo's decision of 1976; and

- in 1985, he had retreated from the scene into being the SCNTA. He was not present at those meetings when the PGLA's views were raised. However, he was aware of the general way the DB development was proceeding, including high-rise buildings taking the place of low-rise buildings. He would also have been aware of the comments like those raised by the PGLA.

118. The Committee pointed out that at present the public could only play at the DB golf course during non-holidays. There was no resort accommodation or hotel but only residential development at DB. The Committee asked why he still considered that the original resort concept had not been changed.

119. **Sir David Akers-Jones** stated that:

- he still considered the DB development a resort although it had changed somewhat from the early concept. The hotel GFA was allowed to be reduced because reasonable men would not insist upon a developer building a vast number of hotel rooms if nobody was going to occupy them. Having decided that the amount of hotel accommodation needed at that time was much less, it was reasonable to switch the spare GFA to housing accommodation. Although the balance of residential, commercial and hotel development had been switched flexibly, the total GFA had remained constant in many years; and

- members of the public could go to DB and use the recreational facilities there, including the beach. They could not use the club because it was a membership club. As for the other facilities, some were private for the residents of DB and some were open to the public. In fact, the developer, instead of providing a pubic golf course, had imported 300,000 cubic metres of sand from China to fill up the once muddy foreshore, turning it into a beach which was 700 metres long, backed by a promenade and trees.

120. Regarding the discussion by the DPC in 1985 about the need to report the change in the concept of the DB development to the ExCo, the Committee asked why Sir David, as the then CS, decided that there was no need to do so (paragraph 2.21 of the Audit Report referred). The Committee also asked whether the decision was made upon the developer's request and whether he had tried to circumvent the ExCo for some reasons.

121. **Sir David Akers-Jones** responded that:

- the background of the issue was that, in 1985, the Joint Declaration had just been approved by the British Parliament. The Governor and the ExCo were very occupied. The Governor was beginning a long period of shuttling between Beijing and London. As the CS, he had to shoulder additional administrative responsibilities. Hence, they were under great pressure;

- notwithstanding the above, the main reason for not going back to the ExCo was that the resort development had continued and the development up to that time did not represent a major change in principle; and

- he had not wanted to circumvent the ExCo and he had not received any request from the developer. It was a matter of whether the ExCo should be bothered with decisions that could be properly made by the SNT, who was authorised by the lease conditions to make those decisions. If the ExCo had wanted the decision to be referred back to it, it would have said so. The Secretary for Lands and Works had said that, in his view, it was not necessary to refer to the ExCo and he agreed with him.

122. The Committee asked about the details of the Secretary for Lands and Works' view and whether, with hindsight, Sir David considered that the matter should have been reported back to the ExCo.

123. **Sir David Akers-Jones** stated that:

- on the question of whether the matter should be reported back to the ExCo, Mr Todd, the Secretary for Lands and Works had minuted to him, then CS. It was stated in the file minute (in ***Appendix 51***) that "The question arises whether, in view of the initial ExCo approval in 1976 and the potentially controversial changes now contemplated, ExCo approval need be sought at this stage. I would think probably not but would be grateful for your advice."; and

- Mr Todd was a very reliable person. He acted upon Mr Todd's recommendation.

124. The Committee questioned why, as the CS, Sir David had simply acted upon his subordinate's advice. **Sir David Akers-Jones** stated that Mr Todd, the Secretary for Lands and Works, was an immediate subordinate, not a junior one. Mr Todd was virtually on the same level as he himself as far as seniority was concerned. Mr Todd was a man on whose judgement he could rely.

125. According to Sir David Akers-Jones' written response, in 1977, when Mr WONG's business went into liquidation and the development was in the hands of the mortgagee bank, another developer took over the development with the encouragement of the Hong Kong Government. It appeared to the Committee that if the DB project was taken over by the mortgagee bank, it would not leave the land idle and might look for another developer. The Committee asked why the Government intervened in commercial operation at that time and did not allow the mortgagee bank, which was a bank tied to the former Soviet Union, to take over the development, and why no tendering exercise was held. The Committee asked whether these were due to political considerations.

126. **Sir David Akers-Jones** responded that:

- there should be no other company which wanted to take over a development at the then remote Lantau Island. The new developer was a company owned by Mr CHA Chi Ming, who was well known to the Administration. He was a prominent person and had made a great contribution to Hong Kong. The trust that the Administration put in him then had been amply rewarded; and

- as the original developer had gone into liquidation, the development was in the hands of the Official Receiver. The then Governor-in-Council had to make the decision about what to do with the development. The Official Receiver advised that this was the best solution and the Governor-in-Council made a decision in the best interests of Hong Kong.

127. The Committee then turned to the SCNTA's approval of MLP 5.0 in February 1982 which removed the requirement for the provision of the public golf course. In his written response, Sir David Akers-Jones gave a detailed description of the administrative procedures for dealing with changes to MLPs. It was stated that the views of all departments were taken into account in approving MLPs for the New Territories, and "I [the SNT] would not have approved a MLP or changes to a MLP or any land transaction that had to be dealt with by me without a full discussion with the PGLA. If the PGLA/NT thought a premium or other conditions of approval were justified, he would have recorded it and action would have been taken."

128. According to the above description, there should be records of the discussions about the deletion of the public golf course and the approval of MLP 5.0 at that time. However, the Committee was informed by the Lands D that there were no records of any inter-departmental discussions on the deletion of the golf course prior to the approval of MLP 5.0 in February 1982. There were also no documents showing why the then Commissioner for Recreation and Culture welcomed the proposal that other recreational facilities would be provided in place of the public golf course. The Committee therefore asked:

- why there were no such records; and

- whether there had indeed been inter-departmental discussions relating to the public golf course and MLP 5.0 at that time.

129. **Sir David Akers-Jones** stated that:

- he was also surprised that many documents were now missing; and

- the question of whether there should be a public golf course was first raised in 1977 when the developer proposed a list of recreational activities to replace it. The decision to delete the golf course was certainly not a sudden one made by him alone. The discussion about the golf course had been going on for a number of years since the developer first raised it and both the pros and cons had been considered. Thus, there was the statement that the R&CD was in favour of the deletion and the substitution by other recreational facilities. There was also the objection raised by the Highways Department representative, but that was a lone voice. The others fell in with the R&CD and so did he.

130. The **Director of Lands** supplemented that:

- the Lands D informed the Committee in the letter of 8 January 2005 that there were no documents showing why the then R&CD welcomed the proposal. In fact, there was a document stating that the Commissioner for Recreation and Culture welcomed the proposal that other recreational facilities would be provided in place of the public golf course. But the document did not explain why he welcomed the proposal; and

- the Lands D had tried its best to look for the records of inter-departmental discussions relating to the deletion of the golf course prior to the approval of MLP 5.0 and no records were found. But the failure to find the records did not mean that there were no such discussions before the decision was made.

131. The Committee noted that Sir David Akers-Jones had stressed that he had all along relied on professional advice when making decisions. However, according to paragraphs 3.5 to 3.7 of the Audit Report, the PGLA had said that the public golf course was one of the main reasons for the Government to have approved the land grant and such a requirement was particularly referred to in a special lease condition. Despite the PGLA's comments, the SCNTA approved the deletion of the public golf course. The Committee asked Sir David why he went against the PGLA's advice and whether that was because of his personal preference.

132. **Sir David Akers-Jones** responded that:

- the PGLA had raised a valid point and it was his duty to raise it. But there had been a consensus in the Government that it would be better to have other recreational facilities than the public golf course; and

- the ExCo had not requested that changes to the lease conditions be reported back to it. Instead, he was authorised to make changes and there were systems and procedure in place as to how he would make changes, not autocratically, but in consultation with the officers of the department and those outside the department. That was what he did.

133. On the question of land premium on approval of changes made in MLP 4.0 in 1977, the Committee noted Sir David Akers-Jones' written response that whether or not premium was payable would have been given full consideration not by one official acting on his own but together with his colleagues and superiors. It seemed that no premium was charged after this proper consideration, no doubt taking into account the drastic slump in the property market.

134. The Committee asked whether there were records showing that it was a collective decision that no premium was necessary and that the main reason was the drastic slump in the property market.

135. **Sir David Akers-Jones** responded that:

- he would not have been involved in deciding about premium. Valuation for premium was the job of a professional team of estate surveyors headed by the PGLA. While there were few MLPs processed at that time, the question of premium on a change of MLP was always actively considered. The estate surveyors would have considered the question of premium very seriously before making the decision that this particular modification at that time did not attract a premium; and

- he did not think that there were records of the discussions among the estate surveyors. Both the Secretary and the Director had not been able to produce them.

136. In response to the Committee's enquiry as to whether there was a drastic slump in the property market in the period around 1977, the **Director of Audit**, in his letter of 10 January 2005, in ***Appendix 52***, advised that according to the "Estimates of Revenue and Expenditure for the year ending 31st March 1979", it was mentioned that there was an economic recession in 1975-76 and continuing recovery during 1976-77.

137. The Committee referred to paragraph 5.15 of the Audit Report which mentioned that Developer A had said that the extension of the area for the fourth and fifth holes of the DB golf course had been agreed to at prior meetings with the SNT. According to Sir David Akers-Jones' written response, the developer might have been referring to meetings with the headquarters staff of the New Territories Administration which might not have involved meetings with him. The Committee asked Sir David:

- whether, according to his recollection, the developer had really discussed the matter with him and, if so, why he had not instructed his subordinates to consider charging a premium for the government land occupied by the developer; and

- why the officials concerned had omitted the question of premium until recently.

138. **Sir David Akers-Jones** responded that:

- the developer might have talked to him. As the land concerned was a very rough hillside area, one did not know where the boundaries were and it was very easy to go outside the boundaries;

- the question of premium was entirely a matter for the PGLA and his staff. It seemed that the decision taken at the time was that the problem of encroachment could be sorted out when there were proper boundaries. The encroachment problem had been sorted out subsequently by the granting of an STT and the developer had paid a substantial penalty for having encroached on the land. Thus, the officials had discharged their duty; and

- he had a clear recollection of the officials concerned at that time. Their approach to work was not casual and their integrity was not in question. They would have certainly done a professional job on such a small question of encroachment on a rough area.

139. It was mentioned in Sir David Akers-Jones' written response that he was invited to become a non-executive director of The Mingly Corporation Limited (Mingly) in 2000, 13 years after his retirement as the CS. The Committee asked Sir David whether, given that the development of DB was still in progress today, his acceptance of the invitation from Mingly, an associate of Developer A, to be its director would give rise to concerns that he had made decisions alone in dealing with Developer A in order to pave the way for his post-retirement life.

140. **Sir David Akers-Jones** said that Mingly had nothing to do with Hong Kong Resort Company, i.e. Developer A. It was an entirely separate company engaging in financial investment.

141. The Committee asked the Secretary for Housing, Planning and Lands, after hearing Sir David Akers-Jones' reasons for deciding that the developments in DB needed not be reported back to the ExCo, whether he still maintained his earlier view that the case should have been brought back to the ExCo.

142. The **Secretary for Housing, Planning and Lands** responded that the critical consideration was whether there had been change to the original resort concept. Sir David had explained that the resort concept had been maintained. If this was agreed, it was not necessary to report to the ExCo. However, he held a different opinion. After hearing Sir David's explanation, he still maintained the view that the original concept of the DB development had changed and such change should have been brought back to the ExCo.

Grant of land at Discovery Bay and Yi Long Wan

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

Change in concept of the Discovery Bay development

- acknowledges that the development of the Discovery Bay (DB) began in the 1970s and 1980s and took place against the particular background that existed at those times;

- expresses alarm and strong resentment that:

  (a) the lease conditions of the DB site failed to specify the requirements for achieving the development concept; and

  (b) the original resort concept of the DB development, as reflected in the Governor-in-Council's decision of 6 July 1976, had changed from a holiday resort and residential/commercial development to that of a first-home community, and the Administration had failed to obtain the Executive Council (ExCo)'s endorsement of that change;

- acknowledges that the Secretary for Housing, Planning and Lands:

  (a) considers that there had been change to the original resort concept of the DB development and such change should have been brought back to the ExCo for endorsement; and

  (b) has undertaken to seek the ExCo's endorsement of the development concept of DB;

- urges the Secretary for Housing, Planning and Lands to expeditiously seek the ExCo's endorsement of the change of concept;

- notes that the Director of Lands will implement the audit recommendations mentioned in paragraph 2.25 of the Director of Audit's Report (the Audit Report);

Provision of facilities in the Discovery Bay development

- expresses astonishment and serious dismay that:

  (a) the approval of Master Layout Plan (MLP) 5.0 had in effect deleted the requirement to provide a public golf course, notwithstanding its specification in the lease conditions; and

(b) the Lands Department (Lands D) had failed to assess the implications, financial or otherwise, of the deletion of the facilities in the DB development;

- notes that the Director of Lands will implement the audit recommendation mentioned in paragraph 3.21 of the Audit Report;

Changes in Master Layout Plans and premium implications

- expresses astonishment and finds it inexcusable that the Lands D failed to:

(a) maintain a record of the public recreational facilities actually provided in the DB development;

(b) verify the specific as-built facilities in the DB development with those agreed with the developer to ensure that they had in fact been built; and

(c) document the reasons for not assessing and/or charging premium for the changes in those MLPs;

- condemns the then land authorities for having failed to assess whether premium should be charged for the changes made in the MLPs after the land grant and prior to 7 June 1994 (including the deletion of the public golf course in MLP 5.0 and the cable car system in MLP 5.1);

- notes that the Director of Lands has implemented the audit recommendations mentioned in paragraph 4.23 of the Audit Report;

Site boundaries of Discovery Bay and Yi Long Wan developments

- expresses grave dismay that:

(a) despite a lapse of 28 years after the land grant of the DB site, the Lands D had not yet set out the boundaries of the site;

(b) some 41,200 square metres of government land adjoining the DB site had been occupied without authorisation for over 20 years, but the Lands D did not take timely actions to rectify the encroachments;

(c) although certain buildings of the Yi Long Wan development were found outside the boundaries of the land grant, the Lands D had not taken any follow-up action to resolve the encroachment problem;

(d) there was a lack of co-ordination between the then District Office/Islands and the then Registrar General's Department, before the latter gave its pre-sale consent of the Yi Long Wan development; and

(e) without seeking legal advice, the Certificate of Compliance for the Yi Long Wan site had been issued before rectification of the site boundary problem;

- notes that the Director of Lands will implement the audit recommendations mentioned in paragraphs 5.12, 5.34 and 5.49 of the Audit Report; and

Follow-up actions

- wishes to be kept informed of the progress in:

(a) seeking the ExCo's endorsement of the development concept of DB; and

(b) implementing the various recommendations made by the Audit Commission and other improvement measures.

Chapter 5

Grant of land at Discovery Bay and Yi Long Wan

The Audit Commission (Audit) carried out a review of the holiday resort and residential developments at Discovery Bay (DB) and Yi Long Wan of Lantau Island. The review focused on the following aspects:

- change in concept of the DB development;
- provision of facilities in the DB development;
- changes in Master Layout Plans (MLPs) and premium implications of the DB development; and
- site boundaries of the DB and Yi Long Wan developments.

2. The Committee held four public hearings on 8, 13 and 16 December 2004 and 12 January 2005 to receive evidence on the findings and observations of the Director of Audit's Report (the Audit Report). Representatives of the Administration attended all the four hearings. At the invitation of the Committee, Sir David Akers-Jones, former Chief Secretary (CS), attended the hearing on 12 January 2005.

Evidence obtained at the public hearings on 8, 13 and 16 December 2004

Change in concept of the Discovery Bay development

3. According to paragraphs 2.5 to 2.7 of the Audit Report, in December 1973, the Executive Council (ExCo) was informed that the basic concept of the DB development was to create a self-contained recreation and leisure community with a wide variety of recreational facilities. On 6 July 1976, the ExCo was informed that the user condition restricted the use of the land to the purposes of a holiday resort with limited residential and commercial purposes. Having considered the lease conditions, the ExCo advised and the then Governor ordered that the land at DB should be granted to a developer (Developer A) for a holiday resort and residential/commercial development at a premium of $61.5 million.

4. The Committee also noted from paragraph 2.3 of the Audit Report that the original concept of the DB development envisaged local families coming on day trips or purchasing holiday homes, and international tourists staying at budget or luxury class hotels, making use of the non-membership (i.e. public) and membership golf courses, tennis courts, swimming pools and other facilities. However, as it transpired, no public golf course or hotel was built in the DB.

5. It appeared to the Committee that there had been a fundamental change in the concept of the DB development. The Committee questioned whether the change was against the ExCo's decision of 6 July 1976 and went against public interest as some facilities that were supposed to be made available to the public were eventually not provided.

6. **Mr Michael SUEN Ming-yeung, Secretary for Housing, Planning and Lands**, responded that:

- the overall concept of the DB development came into place in 1973. At that time, Lantau Island was a barren piece of land and going there was a difficult trip. The development concept of the DB site was more like a dream which the developer would like to realise. As the development was a huge investment project, the developer should be given some flexibility in the implementation process to take account of commercial considerations and other relevant factors, like the demands of the public, and be allowed to amend the development concept accordingly;

- as he was not responsible for the project, he could only rely on the documents available to understand the situation at that time. He understood that the developer considered that the original facilities were no longer timely and proposed other replacement facilities, such as a promenade and a beach. The change was approved by the then Secretary for the New Territories (SNT); and

- according to the lease conditions of the DB site, the whole site should be developed in conformity and in accordance with the MLP to be approved by the SNT. Hence, the SNT was empowered to approve changes to the facilities.

7. In response to the Committee's request, the **Secretary for Housing, Planning and Lands** provided, in his letter of 11 December 2004 in ***Appendix 38***, the relevant extracts from the lease conditions of the DB site which authorised the SNT to approve subsequent changes to the development. He also said that under General Conditions Nos. 1 and 2, and Special Conditions Nos. 6, 7 and 19, the authority to approve the construction and demolition of buildings on the lot and to approve the MLP rested with the SNT.

8. The Committee asked the Secretary for Housing, Planning and Lands whether he would report back to the ExCo, if he were the SNT at that time authorised by the ExCo to implement its decisions and if he were to make decisions that did not comply with the ExCo's authorisation.

9. The **Secretary for Housing, Planning and Lands** replied in the affirmative. He said that, regarding the public golf course, as replacement recreational facilities had been proposed by the developer, the SNT was empowered to approve its deletion. However, he had doubts about not reporting to the ExCo on the deletion of the hotels, as this was a fundamental change.

10. In view of the Secretary for Housing, Planning and Lands' reply, the Committee asked whether, in his opinion, the SNT had hidden facts from the ExCo and, if so, the kind of rules that the SNT had violated.

11. The **Secretary for Housing, Planning and Lands** said that:

- his understanding of the situation was based on the available documents and minutes of meetings. While he considered that it was inappropriate that the changes in the DB development had not been brought back to the ExCo, he might come to another conclusion if he knew the actual situation and all the relevant information at that time. Thus, it would not be fair for him to criticise the SNT; and

- as mentioned in the Audit Report, the officers concerned had held meetings and discussed the matter thoroughly before deciding not to report to the ExCo. They considered that the changes were still within the scope of the original ExCo approval.

12. The Committee understood from paragraph 2.6 of the Audit Report that the ExCo's permission in December 1973 for the DB development to proceed was given subject to satisfactory safeguards being included in the lease to ensure that the development would take place in accordance with Developer A's undertakings. Paragraph 2.8 further stated that on 10 September 1976, the SNT executed the lease for the DB development. However, the lease conditions did not specify the maximum and minimum gross floor area (GFA), and the gross site area of the facilities (such as the resort accommodation) to be provided by Developer A. In addition, the lease conditions did not restrict the owners to using their flats as holiday homes only.

Grant of land at Discovery Bay and Yi Long Wan

13. As the ExCo decided in July 1976 that the land at DB should be granted for the purpose of a holiday resort, but the lease conditions drawn up in September 1976 did not include such a restriction, the Committee asked:

- whether the Administration agreed that the lease conditions went against the ExCo's decision and, if so, why this had happened; and

- who drew up the lease conditions.

14. The **Secretary for Housing, Planning and Lands** said that, as described in paragraph 2.8 of the Audit Report, the ExCo was aware that the lease conditions did not restrict the owners to using their flats as holiday homes only. He did not know why it had happened.

15. In his letter of 8 January 2005 in ***Appendix 39***, the **Acting Director of Lands** stated that the Lands Department (Lands D) had no record of how the lease conditions were drawn up or by whom.

16. As the development concept of the DB in 1976, as reflected in the lease conditions, already deviated from the concept plan approved by the ExCo in 1973, the Committee wondered whether the land grant executed by the SNT on 10 September 1976 was legal.

17. In his letter of 11 December 2004, the **Secretary for Housing, Planning and Lands** clarified that:

- the ExCo Memorandum in December 1973 intended to seek approval-in-principle for the DB development project to proceed. In crystallising the concept into a concrete proposal, the whole package was submitted to the ExCo in July 1976, with a copy of the "Particulars and Conditions of Exchange" attached as an annex to the ExCo Memorandum. This annex, except for some very minor details on the lots to be surrendered and the dates in the original blanks to be subsequently inserted, was basically the same as the eventual "Particulars and Conditions of Exchange" signed between the SNT and the developer on 10 September 1976; and

- the ExCo noted the deviation from the 1973 concept, the safeguards in response to the requirement of the ExCo in 1973, and most importantly the terms and conditions of the Conditions of Exchange. In brief, the ExCo took the decision in July 1976 on an informed basis. Therefore, the land grant was made by the SNT in September 1976 with full authority conferred by the ExCo.

18. According to paragraph 2.24 of the Audit Report, the Secretary for Housing, Planning and Lands had said that when the ExCo approved the DB Outline Zoning Plan (OZP) on 11 March 2003, it was aware of the planning intention for DB and he did not consider it necessary to seek the ExCo's endorsement of the development concept of DB.

19. As there had been significant changes to the development concept of DB in the past 30 years and such changes were effected by amendments to a number of MLPs rather than through a proper procedure, the Committee queried why the Secretary for Housing, Planning and Lands considered that it was not necessary to seek the ExCo's specific endorsement of the change in the concept of the DB development.

20. The **Secretary for Housing, Planning and Lands** explained that:

- during the 30 years from 1973 to 2003, a lot of developments had taken place at DB and such developments were witnessed by the public. Everyone knew what its community was like nowadays. There was no question of the development concept not being clear. On the other hand, there had not been any OZP for the DB area in the past 30 years. Therefore, in 2003, the Administration sought the ExCo's approval for an OZP for the DB area which specified the zones that should be used for residential, open space or other purposes;

- he shared the concern that there was a risk of abuse of power when land use control was achieved by the MLPs and one or two officers could make decisions without being monitored. But the situation had changed significantly since then. There was now an OZP for DB. The level of control imposed by an OZP was much more stringent than that by an MLP. The OZP contained all the details as to what was allowed or not allowed. If necessary, notes could be added to an OZP to the effect that certain extra procedures would have to be gone through if changes were to be made;

- if the land use specified in an OZP was to be changed, an application had to be made to the Town Planning Board (TPB) according to the Town Planning Ordinance. The TPB had to gazette the application and the public could lodge an objection in accordance with the Ordinance. If objections were received, the TPB had to hold hearings and go through other statutory procedures. Ultimately, approval had to be sought from the Chief Executive-in-Council. In other words, the whole process was open and statutory and the public were allowed to play a part in it; and

- the current procedure ensured that government officers could not circumvent the proper procedure or make decisions without seeking prior approval from the relevant authorities. As the purpose of going back to the ExCo had been served, there was no need to report to the ExCo again.

21. The Committee referred to paragraph 2.19 of the Audit Report in which the then Deputy Secretary for Lands and Works had said that "as flat owners were free to use their flats either as first or holiday homes, the original resort concept could not be enforced". The then Principal Assistant Financial Secretary (PAFS) had said that as the change had been taking place, there was no point in formally approving the change in concept. The Committee asked the Secretary for Housing, Planning and Lands whether, in his opinion, the PAFS was wrong in concluding that there was no need to seek approval from the ExCo regarding the change in concept because the change had been taking place.

22. The **Secretary for Housing, Planning and Lands** responded that:

- he personally was not clear about the original resort concept. If the original concept envisaged local people buying condominium units and staying there only during the weekend but not on the weekdays, he could not understand. When people bought a condominium unit, they would just move in and it became a residential unit. This was in fact what had happened. The households in DB all lived there. From this angle, he accepted and considered it not unreasonable to say that the original resort concept could not be enforced;

- while he accepted the rationale behind that statement, he did not accept the conclusion reached by the officers. As described in paragraph 2.20(b) and (c) of the Audit Report, the then Development Progress Committee (DPC) agreed that the requirement to build one or more hotels could be made optional rather than obligatory, and the proposal to change the overall concept of the development would not require formal approval. He did not accept that

hotels could be changed to residential units. The officers should have brought the case back to the ExCo; and

- he also considered that there were problems with the then CS's view that "there was no need to go to ExCo or the Land Development Policy Committee as the …… development followed on from the development so far approved and did not represent a major change in principle" (as mentioned in paragraph 2.21 of the Audit Report). There had indeed been a major change in the development concept.

23. As the Secretary for Housing, Planning and Lands also considered that there were problems with the decision of not reporting to the ExCo, the Committee questioned why he did not rectify the mistakes but allowed their perpetuation. It appeared to the Committee that by seeking the ExCo's endorsement of the OZP for DB, the Administration had tried to impose control on something wrong instead of putting it right.

24. The **Secretary for Housing, Planning and Lands** responded that:

- the Administration had already rectified the situation. The MLP, which was a loose form of control, had been upgraded to statutory control under the Town Planning Ordinance; and

- DB was already a community. It had existed for a long time and people were living there. It was impossible to start from scratch again. It was most important to understand what the problem actually was and solve it. The Administration had reported the development concept of DB to the ExCo. The ExCo knew the situation and approved the OZP.

25. The Committee further asked whether the Administration, in seeking the ExCo's approval of the OZP, had informed the ExCo of the history of the DB development and all the changes and omissions that had occurred since 1973, or whether it had only informed the ExCo of the latest situation of DB.

26. The **Secretary for Housing, Planning and Lands** replied that the subject of the paper to the ExCo was the OZP, not the DB development. It did not contain the same amount of details as the Audit Report. The Administration's intention was to inform the ExCo of DB's latest development. Given the Committee's view, he would consider making a separate report to the ExCo on the matter if necessary.

27. Subsequently, the **Secretary for Housing Planning and Lands** informed the Committee that after consideration, in order to put the matter beyond doubt, he decided that he would go back to the ExCo to seek its endorsement of the development concept of DB.

28. According to paragraphs 2.11 and 2.14 of the Audit Report, MLP 4.0, which changed the character of the development from a holiday resort to a garden estate, was approved by the SNT. As mentioned in paragraph 2.21, it was the CS who decided that there was no need to seek the ExCo's approval. Noting that the Secretary for Housing, Planning and Lands had mentioned the risk of abuse of power, the Committee asked whether the decisions as described in these two paragraphs were cases of abuse of power, given that the SNT and the CS were the same person, Sir David Akers-Jones.

29. The **Secretary for Housing, Planning and Lands** responded that when he mentioned the risk of abuse of power, he was referring to the possibility of such a loophole in the system. He did not mean that any officer had abused his power. Abuse of power was a very serious accusation and it had a high legal threshold. With the information he had in hand, he could not make a judgement that someone had abused his power.

30. As requested by the Committee, the **Acting Director of Lands**, in his letter of 8 January 2005 in ***Appendix 39***, provided the minutes/notes of the meetings held on 18 October 1977 and 19 October 1977 relating to the consideration of MLP 4.0 by the Administration. The **Secretary for Housing, Planning and Lands**, in his letter of 10 January 2005 in ***Appendix 40***, provided the minutes of the DPC meetings held on 10 October 1985 and 14 November 1985 concerning the Administration's decision at that time that there was no need to report to the ExCo regarding the change in the concept of the DB development.

31. To ascertain whether it was common in the past for the Government to accept changes in the development concept of a project, the Committee asked:

- whether, in the 1970s and 1980s, there was any project which, similar to the DB development, had undergone a change in development concept from a holiday resort with recreational and leisure facilities to a first-home community; and

- whether there was any project the development concept of which was not allowed to be changed.

32. The **Secretary for Housing, Planning and Lands**, in his letter of 10 January 2005, advised that there was no other project for recreational and leisure facilities similar to that of the DB granted in 1970s and 1980s. Therefore, the question of whether changes in development concept of such development had been approved or rejected did not arise.

33. The Committee noted from paragraph 2.14(a) of the Audit Report that one of the reasons for the SNT to approve MLP 4.0 was that "the basic concept of building a resort was continued". The Committee asked whether, in the Lands D's opinion, the changes proposed in MLP 4.0 were changes to the basic concept of the DB development.

34. In his letter of 8 January 2005 in ***Appendix 39***, the **Acting Director of Lands** stated that the resort concept was still a substantial element in MLP 4.0, but the introduction of "garden houses" appeared to have introduced the likelihood of permanent residence in a significant amount of the GFA. Although this did not conflict with the conditions of grant, there was a change.

35. According to paragraph 2.26 of the Audit Report, the Director of Lands agreed with Audit's recommendation that he should, for a land grant for a development involving a particular concept, incorporate effective provisions into the lease conditions or other contract documents so that the provisions would be enforceable for implementing the concept. The Committee asked how the Lands D would implement the recommendation.

36. **Mr Patrick LAU Lai-chiu, Director of Lands** explained that when there were special development projects, the Lands D issued project agreements which stated the development concepts and how they could be realised. The project agreements and the lease conditions were back to back.

Provision of facilities in the Discovery Bay development

37. According to the lease conditions of the DB site, the grantee should erect, maintain and keep in use on the site a leisure resort and certain "minimum associated facilities", which should include a public golf course and a cable car system. However, Developer A subsequently applied for the deletion of the public golf course and the cable car system. In February 1982, the then Secretary for City and New Territories Administration (SCNTA) approved MLP 5.0, by which the public golf course was deleted. In February 1985, the Director of Lands approved the deletion of the cable car system upon the approval of MLP 5.1.

38. Against this background, the Committee queried why:

- as the public golf course and the cable car system were approved by the ExCo and specified in the lease conditions, the SCNTA alone could decide that the facilities could be deleted; and

- the Lands D at that time had not acted in accordance with the lease conditions but approved the deletion of the facilities.

39. The Committee also referred to paragraph 3.6 of the Audit Report in which the then Principal Government Land Agent (PGLA) said that because of the importance attached to the golf course proposal, the public golf course requirement was more particularly referred to in a special lease condition. The Committee questioned why, as mentioned in paragraph 3.9, the City and New Territories Administration (CNTA) had not carried out a research on the demand for golf facilities before it approved the deletion of the public golf course which was a special facility in the entire development.

40. The **Secretary for Housing, Planning and Lands** responded that:

- as described in paragraph 3.8 of the Audit Report, there had actually been discussions within the Government regarding whether a modification of the lease conditions was required to reflect the deletion of the public golf course. The then Recreation and Culture Department (R&CD), which was responsible for the policy on recreational facilities, had been consulted and it welcomed the proposal that other recreational facilities would be provided in place of the public golf course. On the other hand, the Highways Department representative objected to the deletion. Paragraph 3.10 further mentioned the view of the Registrar General's Department that there was no need to modify the lease conditions; and

- all these reflected that discussions had been held among the relevant departments and the responsible officers had gone through certain procedures. The decisions were not made by one single person. However, he did not have any information to show why such decisions were made or the basis for the decisions.

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

- a lease usually contained many terms and provisions which were not laid down by the Lands D alone. Nowadays, when the Lands D received a request for lease modification, it would look at the terms that needed to be modified and consult the relevant policy bureau or department. If necessary, it would convene an inter-departmental meeting to consider the request. In other words, the decision would not be made by a single department. However, there had to be a department to formally approve the lease and the Director of Lands was responsible for formally signing the lease;

- the same mechanism should be applicable at that time. That was why the then Lands D did consult the R&CD. The R&CD welcomed the proposal. The Lands D had not overruled the recommendation of the R&CD because the latter was the expert department on whether a public golf course was required. He believed that the then Director of Lands had made the decision at the time, on behalf of the Government, upon the advice of the R&CD. It was not that the Lands D had made a decision unilaterally to delete those items; and

- as the R&CD had stated that it welcomed the proposal, a research on the demand for golf facilities were not necessary. As a matter of fact, the decision to delete the public golf course was made in February 1982. The suggestion of a research was put up after the decision had been made.

42. According to paragraphs 3.7 and 3.8 of the Audit Report, inter-departmental discussions were held in mid-1982 after the SCNTA had approved MLP 5.0 which removed the requirement for the provision of the public golf course. The Committee asked whether there were records showing that there had been inter-departmental discussions on the matter before MLP 5.0 was approved.

43. In his letter of 8 January 2005, in ***Appendix 39***, the **Acting Director of Lands** stated that there were no records of any inter-departmental discussions on the deletion of the public golf course prior to the approval of MLP 5.0 in February 1982. There were also no documents showing why the then Commissioner for Recreation and Culture welcomed the proposal that other recreational facilities would be provided in place of the public golf course.

44. Given that the public golf course was specified in a special lease condition, the Committee enquired whether the Administration agreed that the lease conditions should have been modified before deleting the requirement to provide the golf course.

45. The **Director of Lands** stated that:

- according to the memorandum issued by the then Registrar General (Land Officer) to the then Government Land Agent (Disposal) on 3 March 1983 (in ***Appendix 41***), it was the former's view that there was no need to modify the lease conditions; and

- the arrangement for control of land use at that time was very different from that of today. When the land at DB was granted, it was stated clearly in the lease conditions that the scale of development of DB and other restrictions were to be controlled by the MLPs in addition to the lease conditions. In other words, the MLPs and the lease conditions of the DB site had equal standing and effect. Hence, the MLPs could be amended without modifying the lease conditions. However, this might not be the arrangement nowadays.

46. As the public golf course was proposed by the developer and later removed upon the developer's application, the Committee questioned why the Government seemed to have allowed the developer to have his way every time.

47. The Committee further referred to paragraph 3.16 of the Audit Report which mentioned that the provision of the cable car system was mandatory under the lease. However, in September 1982, Developer A said that the popularity, safety factor and the financial viability for this system were open to question. The system was no longer necessary as all the major roads in DB had been built. In January 1983, the Government agreed to the deletion of the system. The Committee noted that cable car was not a new invention. The tram system had been in use in the urban area for a long time. Back in the 1980s, there was already a cable car system in the Ocean Park. The Committee asked why the Government had accepted the reasons put forward by the developer.

48. The Committee was also aware that there had been recent media reports which related the whole issue to political decisions. It was reported that the colonial government had accepted changes to the MLPs out of the fear that, if the DB project failed, it could be taken over by a bank tied to the former Soviet Union. The Committee asked whether the Administration had any information pointing to a political transaction.

49. The **Secretary for Housing, Planning and Lands** and the **Director of Lands** stated that:

- the project was massive and the development period was very long. Initially, the developer came up with a concept. However, during the implementation, a lot of changes took place in society and things kept evolving. Thus, the Government had to accept some changes. Actually, the SNT, and later the SCNTA, was empowered by Special Condition 6(b) of the lease conditions to approve amendments to the MLPs;

- the developer allowed non-members to play in the existing private golf course in DB on Mondays, Tuesdays and Fridays by prior arrangement. Perhaps the responsible officers decided to remove the requirement for the provision of the public golf course because of the lower demand for such facility at that time. While a lot of people were interested in playing golf nowadays, people might not be as enthusiastic back in the 1980s;

- regarding the cable car system, it seemed that the Government accepted the views of the developer at that time. But the reason behind the decision was not known; and

- the file records that they had gone through did not contain any information concerning political consideration.

50. The Committee noted that while the public golf course and the cable car system had been deleted in the MLPs, they were still provided in the lease conditions for the DB site. It asked whether the Administration might now amend the MLP again to include these facilities in the MLP.

51. The **Director of Lands** said that the MLPs and the lease conditions of the DB site had the same status and were equally binding. When a certain item was deleted in the MLP, the item could be regarded as having been deleted from the lease. In his letter of 8 January 2005, in ***Appendix 39***, the **Acting Director of Lands** added that the Administration could not unilaterally amend the MLP.

Changes in Master Layout Plans and premium implications

52. According to paragraphs 4.2 to 4.7 of the Audit Report, in 1979, Developer A agreed to replace the public golf course by some active public recreational facilities in the same area or elsewhere within the DB site. However, as far as could be ascertained from the Lands D's records, Audit could not find a list of the specific replacement public recreational facilities, showing the site area and locations, which Developer A should provide. There was also no verification of the specific as-built facilities with those agreed with Developer A to ensure that they had in fact been built. The Committee asked why the Administration had not been serious in dealing with the matter.

53. The **Secretary for Housing, Planning and Lands** responded that the incidents were not acceptable and should not have happened. No matter whether it was land matters or other government activities, there was always a need to record the things to be done clearly because the Administration had to make sure that the relevant objectives were met at the end of the day.

54. According to paragraphs 4.17 and 4.21 of the Audit Report, the Lands D had only charged premium for the changes made in MLPs 5.6, 5.7 and 6.0E1. It had not charged premium for the changes made in the MLPs after the land grant and prior to 7 June 1994 (i.e. MLPs 3.5, 4.0, 5.0, 5.1, 5.2, 5.3, 5.4 and 5.5). The Government might have suffered loss in revenue. In addition, the Lands D had not documented the reasons for not assessing and/or charging premium for those MLP changes. The Committee asked whether the Administration considered this acceptable.

55. The **Director of Lands** responded that, having constructed the situation at that time according to the file records, he had the following understanding:

- a Land Policy meeting was held on 25 May 1987 to consider, inter alia, the Land Policy Meeting Paper LPM 3/87 (the paper and minutes of the meeting are in ***Appendices 42 and 43*** respectively). The paper stated that MLP 3.5 permitted a total of 592,716 m^2 of GFA to be used for residential, commercial and hotel uses which, from land perspective, was called revenue-generating GFA. When MLP 3.5 was approved as MLP 4.0, the GFA had to be converted from the imperial system to the metric system. In the process, the total permitted revenue-generating GFA was wrongly converted to 607,000 m^2. The correct figure should have been 608,510 m^2. So, in MLP 4.0, there was a shortage of 1,510 m^2. The mistake was not discovered in the subsequent amendments to the MLPs, including MLPs 5.0, 5.1, 5.2, until the relevant government departments considered MLP 5.3;

- after lengthy discussion, the Lands Policy meeting decided that from then onwards, the figure 608,510 m^2 would be used as the basis for future negotiations over any premium to be charged for increases in GFA in future;

- he deduced that the position at the time was that if the revenue-generating GFA of DB exceeded 608,510 m^2, then a premium would be charged. However, if there was an increase in GFA but the total permitted GFA of 608,510 m^2 was not exceeded, premium would not be charged. His deduction was supported by a letter dated 25 November 1989 from the then Director of Buildings and Lands to Developer A (in Appendix IV to the Acting Director of Lands' letter of 8 January 2005 in ***Appendix 39***);

- no premium had been charged for the changes made in MLPs 5.3, 5.4 and 5.5 because the total revenue-generating GFA did not exceed 608,510 m^2. When it came to MLPs 5.6, 5.7 and 6.0E1, the Lands D had charged a premium because that figure was exceeded; and

- as regards why the Lands D had not charged any premium although there was a change in land use, thereby bringing about a change in value, the file records did not mention whether there were any guidelines at that time stating that an increase in land value due to a change in land use was a consideration for charging a premium.

56. The Committee noted from paragraph 4.15 of the Audit Report that in October 1985, when the proposal to delete the public golf course and the cable car system was discussed by the DPC, it was stated in the DPC discussion paper that modification of Special Condition 5(b) of the lease conditions would be required. The paper also mentioned that a formal modification of the lease conditions subject to consideration of a premium and administrative fee should be made for the changes. The Committee queried why, despite the DPC's view, the Lands D had not assessed the premium implications of the changes in the MLPs.

57. The **Director of Lands** responded that the matter considered by the DPC was whether a premium should be charged if there was a modification of lease conditions. In fact, the public golf course and the cable car system had been deleted from the MLP, not from the lease conditions. The lease conditions had not been changed on the advice of the Registrar General. As mentioned in the Audit Report, the DPC had not expressed any opinion on the modification of the lease conditions when it agreed with the changes made in MLP 5.1. Perhaps that was why premium was not discussed.

Grant of land at Discovery Bay and Yi Long Wan

58. According to Table 3 in paragraph 4.16 of the Audit Report, some of the changes in the MLPs involved change in land use and increase in the GFA of housing accommodation. The Committee wondered why the Administration had not charged premium for the change in land use and the resulting enhancement in land value. The Committee further asked whether the Administration had the determination to recover the premium from Developer A according to the existing policy.

59. The **Director of Lands** responded that according to legal advice, the Government had given approval for changing the MLPs and a premium was not charged at that time. There would be great difficulties if the Government was to ask the developer to pay a premium after more than 20 years. This would violate the estoppel principle.

60. The **Secretary for Housing, Planning and Lands** responded that he had strong determination in going through all relevant information to see if the Administration had omitted to charge any premium that should have been charged. However, the Administration would take the matter forward only after this first stage was completed and if there was evidence showing that there was such a problem. The Administration could not recover something that was not substantiated.

61. To understand the policy in the 1970s and 1980s on the charging of premium when approving change in land use, the Committee asked:

- whether the relevant land authorities at that time were empowered to charge premium when approving changes in MLPs;

- whether the policy at that time allowed the relevant authorities not to charge premium on change in land use when approving changes in MLPs;

- whether there were cases in the 1980s in which premium was not charged on similar change in land use; and

- whether it was normal practice in the 1970s and 1980s that premium would not be charged as long as the GFA of a site did not exceed a certain limit even though there was a change in land use.

62. In his letter of 8 January 2005, in ***Appendix 39***, the **Acting Director of Lands** informed the Committee that:

- the authority to charge premium was not lacking;

- the policy on changes of use requiring lease modifications had remained constant, in that where such a lease modification would bring about an increase in value, a premium was charged. In respect of changes in use involving only a change in MLP, however, it was apparent that in the 1970s and 1980s no charge was made (as long as there was no increase in total GFA). There was no specific policy statement on this issue at that time;

- the Lands D had no record of premium being charged for an MLP change not involving a lease modification in the 1980s; and

- in the 1970s and 1980s, it was the normal practice not to charge premium for changes to MLPs which did not require a modification of the lease as long as there was no increase in total GFA.

63. The Committee invited Audit's comments on the Acting Director of Lands' reply that it was the normal practice in the 1970s and 1980s not to charge premium for changes to MLPs which did not require a modification of the lease as long as there was no increase in total GFA. In his letter of 1 February 2005, in ***Appendix 44***, the **Director of Audit** advised that:

- *"Normal practice" not substantiated*: As far as could be ascertained from the Lands D's records, the Acting Director of Lands' statement was not substantiated in either the Lands Administration Office Instructions (LAOI) or the Revenue Assessment Manual (RAM). Audit was not aware of any approval from the ExCo for such "normal practice";

- *Increase in total GFA and change in user mix:* The increase in total GFA and changes in user mix (mentioned in Note 3 in paragraph 2.8, paragraph 2.10 and Table 3 in paragraph 4.16 of the Audit Report), were as follows:

User	MLP 3.5 GFA (m^2)	MLP 4.0 GFA (m^2)	MLP 4.0 increase/ (decrease) over MLP 3.5 GFA (m^2)	
(a) Housing accommodation	**–**	**524,000**	**524,000**	
(b) Resort accommodation	**401,342**	**–**	**(401,342)**	} (Note 1)
(c) Hotel accommodation	**140,284**	**32,000**	**(108,284)**	
(d) Commercial	51,097	45,000	(6,097)	
(e) Others	41,341	40,600	(741)	
Total GFA per MLP	634,064	641,600	7,536	
Discrepancy (Note 2)			1,510	
Increase in total GFA			9,046	

Note 1: In April 1977, the ExCo was informed of the GFA of the resort and hotel accommodation.

Note 2: According to the Lands D, the discrepancy was due to a conversion error (from square feet to square metres).

- as shown in the above table, the approval of MLP 4.0 in January 1978 had resulted in:

  (a) an increase in total GFA over that approved in MLP 3.5; and

  (b) a significant change in user mix, particularly the deletion of the resort accommodation and the addition of 524,000 m^2 housing accommodation GFA.

  The then New Territories District Planning Division of the Town Planning Office had also commented in mid-October 1977 that there was a corresponding increase of residential areas;

- while the then SNT was delegated the authority to approve changes to MLPs, Audit was not aware that he had been given any explicit authority to not charge premium if there was enhancement in value arising from changes in lease conditions;

- *Changes to MLP:* the Director of Lands had stated that the MLPs and the lease conditions of the DB site had equal standing and effect. Therefore, any modification of the MLP (such as the increase in the total GFA and the significant change in user mix in MLP 4.0 over MLP 3.5) would in substance tantamount to a modification of the lease conditions;

- *Deletion of public golf course and cable car system constituted lease modifications:* The provision of the public golf course and the cable car system was a mandatory requirement stipulated in Special Condition 5(b) of the lease of the DB development. Moreover, because of the importance attached to the public golf course proposal, the developer's responsibility to maintain the public golf course was more particularly referred to in Special Condition 54(c) of the lease. In the circumstances, the deletion of the public golf course in MLP 5.0 in February 1982 and the cable car system in MLP 5.1 in February 1985, constituted modifications of the lease conditions; and

- to conclude, Audit maintained its view that the Government might have suffered losses in revenue. The Lands D had not assessed the implications, financial or otherwise, of the deletion of the facilities, and the reasons for not assessing and/or charging premium for the changes in those MLPs were not documented.

64. In order to ascertain whether the Government had suffered losses in revenue, the Committee asked:

- about the total revenue generated by the entire DB development in the past 30 years; and

- for an estimation of the premium involved in each of the changes made in the MLPs prior to 7 June 1994 based on the market conditions at the time when the changes were made.

65. In his letter of 10 January 2005, the **Secretary for Housing, Planning and Lands** advised that as far as the Lands D was concerned, a total of some $2.09 billion had been collected in respect of the DB development. This figure comprised land premium, government rent up to 1996-97 (government rent was collected by the Rating and Valuation Department after 1997), premium charges for changes to the MLP, waiver fees and rental for short term tenancy (STT) and administrative fees.

66. On the question of premium, the **Director of Lands**, in his letter of 25 January 2005 in ***Appendix 45***, stated that:

- on the basis of file records, the original premium of $61.5 million charged for the DB development land exchange was based on an estimated sale price of $300/ft^2 which was applied to the total GFA for all the uses permitted (i.e. without distinguishing between commercial, residential and hotel);

- this valuation was supported by the analysis of the two public land auctions in Mui Wo conducted in 1973. These land auctions produced a ground floor shop value at about $300/ft^2 and upper floor residential flat value at about $200/ft^2 which the Lands D believed were adopted as the benchmark for valuing the DB at that time. Moreover, the unit land cost (commonly known as accommodation value) derived from the estimated sale price also compared favourably with that of two land exchanges in Mui Wo and Cheung Chau for hotel development in the early 1970s; and

- the application of $300/ft^2 to the total GFA permitted under the approved MLP meant that the enhancement, if any, in subsequent changes to the MLP had already been captured in the approval of the first MLP by adopting the highest use value among the mix in calculating the land premium to be paid by the developer upfront for the grant. This had obviated the need for further premium assessment when changes in the development mix were subsequently made to the MLP as long as the total permitted GFA was not exceeded. That being the case, the Lands D did not consider it appropriate to compute the premium for each of the changes made to the MLP prior to 7 June 1994.

67. In response to the Committee's request, the **Director of Audit**, in his letter of 1 February 2005, commented that:

- according to Section 7 of the Land Administration Policy on Modification and Administrative Fees (amended on 1 April 1984), as a general rule for lease modification, "Premium will normally be required representing the difference in value between the lot as formerly restricted and as modified …… . The general principle relating to the assessment of modification premia is that the lessee must pay for any enhancement in the value of the lot deriving from the modification". In other words, premium assessment should be done by comparing the current land values under the modified lease conditions (and/or MLP) and the original lease conditions;

- having regard to the above general rule, the unit land cost (accommodation value) and the valuation benchmark (i.e. ground floor shop value) adopted at the date of execution of the lease conditions were not relevant to the premium assessment of a lease modification at a later date; and

- in view of the above, Audit did not concur with the Director of Lands' views that "adopting the highest use value among the mix in calculating the land premium to be paid by the developer upfront for the grant ..... had obviated the need for further premium assessment when changes in the development mix were subsequently made to the MLP as long as the total permitted GFA was not exceeded.". Furthermore, there had been an increase in total GFA and changes in user mix since the change from MLP 3.5 to MLP 4.0. Audit therefore also did not concur with the Director of Lands' conclusion that he did "not consider it appropriate to compute the premium for each of the changes made to the MLP prior to 7 June 1994".

68. In his letter of 16 February 2005, in ***Appendix 46***, the **Director of Lands** responded to the Director of Audit's comments on the charging of premium in the present case contained in his letter of 1 February 2005, as follows:

- the basic considerations underlying the handling of the DB case in the 1970s and 1980s were:

  (a) since the subject land grant contained an MLP clause to enable the Administration to exercise detailed control over the implementation of the development within the approved parameters stipulated in the lease conditions, premium would not be charged on each and every occasion when amendments to the MLP were made, unless such changes would require lease modification and/or there was an increase in the total permitted GFA (for revenue generating purposes). This practice adopted for cases under similar situations in that period was also adopted in this case;

  (b) the premium for the land transaction concerned was calculated according to the highest land use value among any of the permissible mix as specified in the MLP. This meant that Government was able to capture the highest revenue income at the outset without any downside risk due to fluctuations in the property market. On the part of the developer, the certainty in its financial commitment under the land transaction plus the flexibility of being able to make more timely decisions in response to

changes in market conditions would arguably be essential for a project of this magnitude and nature; and

(c) on the above basis, the manner that the original premium was calculated had obviated the need for further premium assessment when changes in the development mix were subsequently made to the MLP as long as the total permitted (revenue-generating) GFA was not exceeded;

- regarding Audit's comments on the "normal practice" in the 1970s and 1980s, the Lands D's response, as provided in the letter of 8 January 2005, was factual to the best of its knowledge. Most land administrative practices evolved over time in the light of experience and changes in circumstances and the Lands D did not come into existence until 1982. The Lands D's understanding of the practice prevailing two to three decades ago should not be negated simply by the Director of Audit being unable to locate any written material to substantiate its statement;

- regarding Audit's comments on "increase in total GFA and change in user mix", it had to be stressed that, despite the changes to the GFA in various MLPs up to MLP 5.5, the revenue-generating GFA did not exceed the permitted maximum of 608,510 m^2 as determined by the Land Policy meeting held on 25 May 1987;

- Section 7 of the Land Administration Policy on Modification and Administrative Fees remained a valid rule for general application for assessing premium arising from lease modifications. The case in question was not inconsistent with this section; and

- in conclusion, the Lands D strongly disagreed with the views held by the Director of Audit in his letter of 1 February 2005, especially that "the Government might have suffered losses in revenue", having regard to the manner that the original premium was calculated. The Director of Audit's suggestion that a series of further premiums should have been collected for changes in the development mix up to 608,510 m^2 (revenue-generating GFA) would constitute double charging since the facts established indicated that the developer, at the time of the original grant, had already paid for the flexibility of varying the development mix subsequently reflected in successive MLPs.

69. The Committee asked whether the CS, who decided that there was no need to seek the ExCo's approval for the change in concept, was behind the decision of not charging premium for the changes in the MLPs.

70. The **Secretary for Housing, Planning and Lands** and the **Director of Lands** responded that:

- as mentioned in the Audit Report, the DPC had a meeting in October 1985. The chairman of the DPC was the then Secretary for Lands and Works, Mr Todd, and the meeting was attended by representatives of various government departments. The DPC agreed on a number of things collectively. But there was no decision on lease modification or premium payment; and

- there was no record of any person specifically approaching the CS for an instruction as to whether a premium should be charged. Therefore, it could not be concluded that the CS should be held responsible for the decision made at that time.

71. According to paragraph 4.18 of the Audit Report, the Lands D's RAM stated that "When giving approval to Master Layout Plan, which leads to giving consent/variations of restrictions under certain conditions, the Director may impose conditions (including payment of fee and appropriate admin. fee) as he considers appropriate …... ". However, Audit noted that the RAM did not provide a definition of "certain conditions", and the word "may" implies that the charging of fee was discretionary. It was not clear under what conditions, and how, such discretion would be exercised. The LAOI also did not stipulate clearly that the Lands D should charge MLP approval fee.

72. The Committee asked whether:

- some government official had exercised discretion over the charging of premium in the case of DB, resulting in losses in government revenue; and

- the word "may" in the RAM should be changed to "shall" so that the charging of fee was mandatory rather than discretionary.

73. The **Director of Lands** clarified that:

- according to legal advice, "certain conditions" referred to certain lease conditions, not certain circumstances. The whole sentence in the RAM meant giving approval to MLP under certain provisions of the lease, not in a certain situation for discretionary power to be exercised. Thus, there was no question of the Director of Lands being given too much discretionary power; and

- the Director of Lands did need some flexibility in discharging his duty as it was hard to foresee all factors relevant to land matters. While the Director of Lands was given some discretionary power, it was not exercised casually. The exercise of such flexibility was not subject to personal preference and was properly recorded. Moreover, there were monitoring mechanisms in place nowadays, such as the Independent Commission Against Corruption, Audit, the Ombudsman, etc.

74. The Committee asked how the Lands D would amend the RAM and LAOI in response to Audit's recommendations in paragraph 4.23 of the Audit Report. The **Acting Director of Lands** provided the wording of the amendments to the RAM and LAOI in his letter of 8 January 2005 in ***Appendix 39***.

Site boundaries of Discovery Bay and Yi Long Wan developments

Setting out of site boundaries

75. According to paragraph 5.5 of the Audit Report, in September 1976, the Government granted the DB site to Developer A. However, up to July 2004, i.e. after a lapse of 28 years after the land grant, the Lands D had not yet set out the site boundaries of the DB development. The Committee questioned the Lands D's reason for not setting out the site boundaries.

76. The **Director of Lands** and **Mr AU YEUNG Ping-kwong, Deputy Director of Lands/Survey and Mapping**, stated that:

- the then Public Works Department was responsible for setting out the site boundaries. After some boundaries had been set out, the work was suspended in 1977 for more than half a year due to an industrial action of the surveying staff; and

- it was not the case that there were no boundaries of the site. Actually, the boundaries were shown on the plan relating to the land grant. However, as the site was very big, the surveying staff had not yet put boundary marks on ground in order to avoid possible abortive work.

77. On the reason for the long delay in completing the work, the **Director of Lands** said that:

- in a letter of 16 March 1983 from the then Director of Lands, Mr Todd, to Developer A (in Annex F of Appendix II to the Acting Director of Lands' letter of 8 January 2005 in ***Appendix 47***), it was stated that " …… the present MLP No. 5 is not subject to Government survey and can only be a guide to your Company's present and future intentions. In other words neither plan at this stage is really satisfactory. It may therefore be more appropriate to await the issue of the Crown Lease at the end of the whole development whereupon Government will carry out a survey of the lot boundaries.". It appeared that it was the Government's position in 1983 that as the DB project was still going on, the Government should resolve all the discrepancies upon the completion of the whole project. At that time, the Government thought that the development would be completed in the not too distant future. When a Crown Lease was produced, the matter would also be dealt with;

- as it transpired, the development was still going on and the pegging had not yet been done. However, in 2002, there was a complaint about the occupation of government land by the DB golf course. Despite the fact that the development was still in progress, the Lands D considered that it should set out the boundaries. It would complete the dimension plan by mid-January 2005. Lands D staff would then place the boundary marks on the site accordingly, thus setting out the site boundaries; and

- there was no record to show why no one had raised the need to set out the site boundaries during 1983 and 2002. Perhaps the Lands D staff had relied on the 1983 letter and wanted to set out the boundaries upon the completion of the entire project.

78. In his letter of 24 January 2005, in ***Appendix 48***, the **Director of Lands** informed the Committee that the dimension plan survey for the DB development boundary had been completed by the District Survey Office/Islands, and the setting out work would be completed by the end of March 2005.

79. The Committee further asked:

- whether the Lands D considered that it was wrong not to set out the boundaries in the past three decades as this might have resulted in encroachment on government land; and

- when the Lands D would complete the setting out of boundaries for sites granted but the boundaries of which had not yet been set out.

80. The **Director of Lands** responded that:

- he did not know the actual thinking of the responsible officials at that time. As time had advanced and land was very precious in Hong Kong, he agreed that the practice today should be different. The Lands D considered that for a developing project with a long period of development, it should not wait until the development was completed before carrying out its work. If the project was divided into several stages, the Lands D could carry out certain work at each stage, thereby reducing the possibility of encroachment on government land; and

- the Lands D planned to complete the setting out of boundaries for sites granted in eight months.

81. Regarding the measures taken by the Lands D to set out the boundaries of a government site before disposal of the site, the **Director of Lands**, in his letter of 8 January 2005 in ***Appendix 47***, stated that:

- sites for public auction or tender were normally fenced and their boundaries would be set out before sale; and

- for sites granted by private treaty grant and extension, the plans in question included boundary dimensions and bearings, and the site area to facilitate the design of the development. The site boundaries would be set out on ground in advance or within three months after the completion of the land transaction so that the positions of the boundary marks could be shown to the landowner or his/her representative. Thereafter, it was the landowner's responsibility to protect the boundary marks placed on ground.

Encroachments on government land at Discovery Bay and Yi Long Wan

82. According to paragraphs 5.14 to 5.16 of the Audit Report, the Lands D had been aware of encroachments on government land at the DB golf course since early 1980s. The Committee questioned why the Lands D had not taken timely actions to rectify the encroachments.

83. The **Director of Lands** responded that:

- Developer A had applied to the Government in 1981 and 1996 for renting a piece of government land at Wong Chuk Long, on an STT basis, for accommodating the fourth and fifth holes of the golf course at DB. The application in 1981 was not processed as the Government thought at the time that it would be more appropriate to deal with the problem when the Government Lease was issued after the whole DB development was completed. This was reflected in the then Director of Lands' letter of 16 March 1983. The application in 1996 was rejected as the land fell within the proposed extension of the Lantau North Country Park; and

- in 1998, the Lands D required Developer A to reinstate the land concerned. In 2002, the developer applied for an STT for the third time. At that time, the Government had decided that the land concerned would not be included in the Lantau North Country Park area. Because of this factor and other practical considerations, in July 2002, the Lands D approved the STT for the land concerned to be used as part of the golf course.

84. The Committee enquired whether the exclusion of the encroached government land from the boundary of Lantau North (Extension) Country Park was partly due to the fact that Developer A had repeatedly applied for an STT for the land.

85. In his letter of 24 January 2005, the **Director of Lands** stated that:

- the boundary of Lantau North (Extension) Country Park originally proposed in 1996 on the one hand included part of the golf course area on the encroached government land but on the other hand excluded another part on the encroached government land. Following consultation among concerned government departments, the Director of Agriculture, Fisheries and Conservation excluded the entire encroached area from the proposed boundary of Lantau North (Extension) Country Park in 1999. This was reflected in the draft map for the Lantau North (Extension) Country Park gazetted in July 2001 and the DB OZP gazetted in September 2001; and

- there was no information on record that the STT applications by Developer A had influenced the determination of the proposed boundary of an extended Lantau North Country Park.

86. Given that the developer had applied for an STT in 1981, the Committee asked why the Administration had not processed the application promptly so that STT rent could be collected earlier.

87. The Committee also referred to paragraph 5.18 of the Audit Report which revealed that after rejecting Developer A's second application in 1998, the Lands D had asked the developer to reinstate the land. However, the Lands D had not taken follow-up action to ascertain whether the land had been reinstated. The Committee asked why this had happened.

88. The **Director of Lands** stated that:

- it appeared to be the then Government's intention to resolve the problem by rectifying the lot boundaries after the whole project had been completed rather than granting an STT to the developer. The Government had not suffered any loss in revenue because, after the STT was granted, the Government had collected rent from the developer with effect from the time of occupation, i.e. October 1982; and

- he could not find an explanation in the records with regard to why the Lands D had not taken follow-up action at that time to ascertain if the land had been reinstated. Perhaps the staff concerned had not followed through the procedure.

89. The Committee further asked whether it was a normal arrangement in the 1980s for the Government not to take timely rectification action on encroachment on government land for the reason that the development concerned was still on-going. The **Acting Director of Lands**, in his letter of 8 January 2005 in ***Appendix 47***, stated that this approach was not the normal arrangement in the 1980s to address encroachment on government land.

90. The Committee asked about the measures that the Administration would take to ensure that encroachment on government land was rectified in a timely manner. The **Director of Lands** stated that:

- the Lands D had an established procedure for dealing with encroachment on government land. Depending on the nature and extent of the encroachment, different actions would be taken; and

- if the encroachment was of a small scale, the Lands D would regularise it by granting an STT. For example, if a house owner encroached on a piece of government land in front of a small house in the New Territories and turned it into a garden, the Lands D might consider leasing the land to the house owner on an STT. This was because the land concerned was not big and even if it was not encroached on, it was not very useful. By doing so, the Lands D could also ensure that the land would not be used for other worse purposes and could bring in revenue. If the encroachment was very serious, the Lands D would ask the person concerned to reinstate the land or might even consider instituting prosecution.

91. The **Secretary for Housing, Planning and Lands** added that the Administration would ensure that the officers concerned would follow through the above established procedure.

92. According to paragraph 5.23 of the Audit Report, the Islands District Council member who complained about the deletion of the public golf course and the proposed STT in July 2002 was dissatisfied that the Government tried to resolve the encroachment problem by issuing the STT as this would undermine the Government's bargaining power. The Committee asked whether the Administration agreed to such a view.

93. The **Secretary for Housing, Planning and Lands** and the **Director of Lands** stated that:

- the purpose of regularising encroachments on government land by way of STTs was indeed to ensure that the Government would not suffer financial losses due to unauthorised use of the land. This was because the rent under an STT was assessed on full market rent basis; and

- if necessary, the Government could require the occupier of the land to reinstate the land and prosecute the occupier. However, under some circumstances, it would be more practicable to issue an STT so that the occupier could continue to use the land while the Government could collect rental at the market rate.

94. The Committee noted from Appendix B of the Audit Report that there was a provision concerning the rate of payment for any excess or deficiency in area of the site in General Condition 5(a) of the lease conditions of the Yi Long Wan development, but not in those of the DB development. The Committee asked about the reason for the discrepancy.

95. The Committee further noted that there was also encroachment on government land at the Yi Long Wan site. However, it seemed that the Administration had been more proactive in dealing with the problem at Yi Long Wan. As both the DB and Yi Long Wan developments were located on Lantau Island and developed in the same period, the Committee asked why different approaches had been adopted in addressing the land encroachment problems on the two places.

96. In his letter of 8 January 2005, in ***Appendix 47***, the **Acting Director of Lands** explained that:

- the records of Master Lease Conditions in the Lands D showed that between the grant of the lot at Yi Long Wan in 1975 and the DB in 1976, there was a change in approach and the rate of payment condition was dropped; and

- the golf course encroachment at DB was, and remained, an unbuilt open area operated by a single entity. The grant of an STT was the appropriate means to regularise it. The circumstances of the encroachment at Yi Long Wan, involving two privately owned residential blocks in multiple ownership constructed partially outside the lot, were quite different from those of DB and therefore warranted different treatment.

97. According to paragraph 5.15 of the Audit Report, Developer A had said that the extension of the area for the golf course had been agreed to at prior meetings with the SNT. The Committee enquired whether:

- there were records of those meetings;

- the Lands D had ascertained with the SNT at that time the truthfulness of Developer A's claim of agreement; and

- it was because of the SNT's agreement, as claimed, that the Lands D had been more lenient in dealing with Developer A.

98. In his letter of 8 January 2005, in ***Appendix 47***, the **Acting Director of Lands** said that the Lands D's files did not contain any record of discussions between the SNT and Developer A. Similarly, the Lands D did not have any file record showing whether or not it had ascertained with the SNT the truthfulness of Developer A's claim of agreement.

Grant of land at Discovery Bay and Yi Long Wan

99. Regarding the encroachment at Yi Long Wan, the Committee noted from paragraph 5.42(b) of the Audit Report that the Registrar General's Department had said in 1983 that despite the undertaking, it would be difficult to ask Developer B to pay a premium for the extra piece of land. The Committee asked whether it was possible for the Lands D to recover the premium nowadays.

100. The **Director of Lands** responded that:

- although Developer B had undertaken in December 1980 to pay a premium for the extra piece of land, in January 1983, it requested the Lands D to confirm that there would be no premium for revising the site boundary. This meant that it had withdrawn his undertaking. According to the file records, Developer B was in great financial difficulties at that time and could not pay the premium at all. That was why the matter had not been followed up by the Registrar General's Department; and

- legally, the Administration could ask the grantee for the Yi Long Wan site to pay the premium. However, the developer for the site almost did not exist nowadays and the flats had been sold. The Administration would have to discuss with more than 200 owners to recover the premium. Even if one owner disagreed to pay, there would be a lot of problems. It was doubtful whether the Administration could collect any premium.

101. The Committee noted that the Government could take prosecution action against encroachment of government land. The Committee enquired why the Administration had not prosecuted Developer A which had occupied government land illegally for more than 20 years.

102. The **Director of Lands** responded that:

- there were guidelines in the LAOI setting out the circumstances under which STTs should be granted. The Lands D's policy did allow it to regularise encroachments by granting STTs. In view of the fact that the land concerned had been occupied by Developer A for several decades, the Lands D considered it more pragmatic to grant it an STT rather than prosecuting it and asking it to reinstate the land;

- in fact, the Ombudsman had stated in her report that she agreed with the Lands D on the proposed course of action (i.e. granting an STT). She considered the case to be a fait accompli where events had left the Lands D with little alternative; and

- another reason for granting an STT to Developer A was that, as pointed out in paragraph 5.24(c) of the Audit Report, the occupation of the land had been acknowledged in writing in 1983 by the Director of Lands on the basis that formal documentation would be issued at a later date. It could be argued that a form of tenancy had been in place. If the Lands D took prosecution action in 2003, there might be a legal dispute.

103. To ascertain whether the rent for 21 years paid by Developer A for the occupation of the government land (paragraph 5.26 of the Audit Report referred) was reasonable, the Committee asked:

- about the amount and basis of the rent paid;

- the amount of rent originally proposed by the Lands D; and

- the estimated amount of revenue that could have been generated by the encroached pieces of land if they had not been used by Developer A.

104. **Mr LAU Chi-ming, District Lands Officer/Islands, Lands D**, said that the rental was calculated on the basis of the full market rate at 1982 when the occupation of the land took place and then reviewed every three years thereafter according to the prevailing market rates at the respective times.

105. The **Director of Lands** and the **Acting Director of Lands** stated, at the public hearing and in the letter of 8 January 2005 in ***Appendix 47*** respectively, that:

- an STT was a contract between the Government (as the landlord) and a private party (as tenant). Developer A had given verbal consent to disclosing the amount of STT rent paid. The total amount of rent paid for the 21-year period from October 1982 to October 2003 was $7.23 million. This was a negotiated amount;

- the negotiated rental was based on evidence of market transactions. The figure initially proposed in the negotiation by the Lands D was $11.2 million for the same period; and

- the three encroached areas were remote and hard to access. The areas adjoining the encroached land at Wong Chuk Long were either steep sloping government land or private land owned by Developer A. As regards the other two encroached areas, they were largely sloping areas. The Lands D did not consider that they were capable of separate alienation or use by any party other than Developer A and, as such, no revenue would have been generated if they had not been used by Developer A.

106. The Committee questioned why the Lands D allowed the STT rental to be cut by such a large extent after negotiation, notwithstanding that the developer had encroached on government land for a long time. It seemed that the Government had treated big developers much more leniently than small landlords.

107. The **Director of Lands** explained that:

- STT rental, like land premium, was very often determined by negotiations. The professional surveyors in the Lands D would make an analysis and valuation of the rental with the benefit of all relevant information and their expertise. However, valuation was not an exact science. Different surveyors would hold different views on the valuation of a site;

- regarding the encroachment by the golf course, the Lands D made a valuation and proposed that $11.2 million should be charged. During the negotiations with the developer, it also presented its data. Such negotiations were very common in land premium matters. Having considered the arguments and evidence of both sides, the Lands D was of the view that the developer's appeal was not unjustified. Therefore, the proposed rental was reduced to $7.23 million. In deciding to accept the amount, the Lands D took into account the Crown rent back in 1981, the remote location of the encroached areas and the fact that their commercial value was almost zero. The Lands D had also made reference to the rent for a government site used for gardens after 1982 as well as the rateable value; and

- the occupation of government land at DB for the operation of a golf course was a very special case. It did not mean that the Lands D would adopt the same approach in dealing with others who encroached on government land. The case was special in that the DB development had its own unique development history, the developer had indeed applied for an STT with the Government at different times but the applications were rejected for various reasons, and the Government had intended to resolve the matter after the

whole development had been completed. The case did not reflect the Government's overall policy.

108. It appeared to the Committee that the Director of Lands' reply, that there was a relationship of landlord and tenant between the Government and Developer A, suggested that the developer's encroachments on the government land was legal. Moreover, instead of penalising the developer, the Lands D had allowed the developer to bargain the STT rental with it. In the end, the Lands D accepted a smaller amount. The Committee asked the Secretary for Housing, Planning and Lands whether:

- he considered Developer A's encroachments on government land legal and the rent of $7.23 million reasonable; and

- he agreed that the Administration was not doing its best to protect public money.

109. The **Secretary for Housing, Planning and Lands** responded that:

- there was a division of duties within the Government. While a bureau secretary had to shoulder the responsibilities for all the departments under his purview, the secretary would not know everything about the daily operations of these departments; and

- it was most important to have proper systems in place. Being a bureau secretary, he was responsible for overseeing the systems. As for daily operations, since these were very trivial, he could not look at each and every one of them in detail and had to rely on the Director. In turn, the Director would also have to rely on his subordinates. Officers of different ranks in a department had different responsibilities.

110. The Committee queried why the Secretary for Housing, Planning and Lands considered issues relating to public money trivial. The **Secretary for Housing, Planning and Lands** responded that:

- he had mentioned that he would not look at trivial issues in general, but not that public money was trivial. As the Lands D was responsible for those issues, he would see if it had discharged its duties properly;

- as regards whether Developer A's occupation of government land was legal, he could not make a personal judgement as he was not a professional. Presumably, the Lands D had discussed with the Department of Justice before stating that a form of tenancy had been in place. He had not seen the relevant legal advice; and

- he did not know about the STT rent in 2003. The assessment of STT rent fell within the Lands D's daily operation. It did not have to report the assessment to him and he did not need to ask about that.

111. In response to the Committee's enquiry about the legal basis of the view that a form of tenancy had been in place, the **Director of Lands**, in his letter of 24 January 2005, stated that:

- in considering Developer A's application for an STT in July 2002, the Lands D had taken legal advice on the status of the encroached land. The advice was that the Government had acknowledged the occupation of the land by Developer A in a series of correspondence over a number of years since March 1983 and had indicated in writing that the encroachment would be regularised upon issue of the Crown Lease at the completion of the whole development when the Government would carry out a survey of the lot boundaries. In October 1996, Developer A applied for an STT of the encroached land. This was rejected at that time as the land was within the proposed extended limits of the Lantau North Country Park. Developer A reactivated his application for an STT in mid-2002, and this was approved in July 2002;

- based on the above sequence of events and course of conduct by the Government in its dealings with Developer A regarding the encroached land between the time when the Government became aware of the encroachment in 1982 and the issuance of a formal STT in 2002, the legal advice was that a form of tenancy would have been created; and

- since Developer A had been occupying the encroached land with the full knowledge and acquiescence of the Government in the period (with the intention of regularisation upon the completion of the development of DB), it could not be said to be a trespasser. It was a tenant at will from the Government, subject to agreement of boundaries and any other terms, including rent or mesne profits payable for the period of its occupation prior to issuance of the formal STT. It was on this basis that the Government was entitled to demanding the payment of the rent or mesne profits for the period from 1982 to mid-2002.

Evidence obtained at the public hearing on 12 January 2005

112. Upon the Committee's request, **Sir David Akers-Jones** provided written comments on the various issues mentioned in the Audit Report in which he was involved as the then SNT, SCNTA or CS. His written response dated 5 January 2005 is in ***Appendix 49***.

113. At the Committee's public hearing on 12 January 2005, **Sir David Akers-Jones** made an opening statement, the full text of which is in ***Appendix 50***. In summary, he said that:

- he was over 77 years old and had retired for more than 17 years. It was very difficult for a man of his age and who had been out of Government for so long to recall things that took place over 25 years ago. The time lapse and lack of access to information made it very difficult to recollect details;

- his involvement in the DB matter was very limited and took place over the short period of time between 1977 and 1982 when he was the SNT. By 1982, the functions of the SNT and its successor, CNTA, had been taken over by the Secretary for Lands and Works and the Lands D. Thus, many departments had reviewed his work;

- during the period when he was the SNT, he had a very capable team of estate surveyors and legal advisers and he relied on their expertise and assistance when making decisions. There were well defined and established procedures and officials within a clear chain of command with no-one acting alone. In his experience, there were proper contemporaneous records of transactions and he was very surprised to find that many documents had not been kept or were now missing. Before he made any decision, there would be input from various other departments;

- neither the Director of Audit nor the Public Accounts Committee had ever previously made any recommendations or comments on the DB development when he was the SNT or any time thereafter until recently, after 25 years;

- at the time when he was the SNT, there was no planning control legislation in place in the New Territories. Also, there were few proposed developments of the size of DB at that time. In the early 1970s, DB was a barren rocky area without any infrastructure or development;

- the original developer, Mr Edward WONG, had a good innovative idea but it later went into liquidation after heavily mortgaging the property to the bank. The whole DB project was at substantial risk of not proceeding at all and there were concerns that the mortgagee bank might take possession of the land. Accordingly, it was important that the development be permitted to proceed with a certain degree of flexibility. This more flexible approach was allowed by the ExCo granting to the developer the land at DB for a holiday resort/commercial development, as opposed to a previously restrictive approach adopted by the ExCo to restrict the use of land merely for the purposes of a holiday resort with limited residential and commercial use;

- it was the lease conditions that specified the planning intention of the land (there being no OZP). The MLP under the lease conditions was a mechanism for giving control with a degree of flexibility. The lease conditions were drafted by a senior official in the Registrar General's Department. The MLP provisions incorporated into the lease conditions were clear;

- given the barrenness, long distance, the lack of infrastructure and difficulty of access to urban areas of Hong Kong in the 1970s and there being no precedent for such an idea, it would have been difficult to assess its popularity in terms of how many people would buy holiday homes or use the recreation facilities or if it would have been different had a hotel been built. In addition, it would have been hard to assess the value of a hotel development as opposed to a holiday home development in respect of such a risky development. In any event, the estate surveyors in those days would have made their best valuation assessments at that time and he would have followed their advice and legal advice when making any decisions;

- he believed that DB was a resort and would remain one, with its fine recreational golf and yacht club facilities, the access by the public to the golf during the week, the beach fronts and restaurant cafes and landscaping in the area. If there were no flexibility allowed by the ExCo and the MacLehose and subsequent Administrations, the development would not have been commercially viable and would not have been anywhere near the success it was today; and

- while he was the SNT, he had no better or worse relations with developers and other tycoons than other senior officials then and now. He was not asked to be a director, albeit an independent non-executive director, of the DB developer until 2000, some 13 years after his retirement as the CS.

114. Regarding Sir David Akers-Jones' query as to why Audit had taken up this subject for review only recently but not earlier, the **Director of Audit** explained that the review arose from a complaint about the DB development and the Legislative Council had also dealt with the complaint in 2002.

115. The Committee noted that according to the ExCo paper of July 1976, DB should be developed into a holiday resort with limited residential and commercial purposes. Thus, the residential and commercial developments should be ancillary to the holiday resort development. However, it turned out later that the residential and commercial developments became primary while the resort development was only secondary. The Committee asked Sir David why, at that time, he considered that the actual development of DB was not out of step with the ExCo's decision.

116. The Committee also referred to paragraph 2.17 of the Audit Report which mentioned that, in July 1985, the PGLA of the Lands D had said that "the form this development has taken to date, i.e. that it is very much less of a tourist resort (both for overseas and local tourists) and more of a typical residential development". The Committee asked Sir David whether he was aware of such views within the Government at that time.

117. **Sir David Akers-Jones** responded that:

- a resort could take many forms. The fact that there were now 15,000 people living in DB did not preclude it from being considered a resort. Similarly, the hotels and high-rise buildings in Phuket, Miami, Blackpool, Brighton, Nice, Cannes or Monte Carlo did not prevent any of these places being considered a resort. In his opinion, the inclusion of residential and commercial development in DB was part of the growth of a resort as it developed;

- as reflected in the Explanatory Statement in the DB OZP of 2003, the DB development "is primarily a car-free environment evolved from the original concept of a holiday resort approved in 1973. This intention [of a resort] is still maintained by the existing and planned provision of a diversity of recreation facilities …… ". Hence, the development of DB had conformed with the description that it was a resort and it remained to be so. It was in line with the ExCo's decision of 1976; and

- in 1985, he had retreated from the scene into being the SCNTA. He was not present at those meetings when the PGLA's views were raised. However, he was aware of the general way the DB development was proceeding, including high-rise buildings taking the place of low-rise buildings. He would also have been aware of the comments like those raised by the PGLA.

118. The Committee pointed out that at present the public could only play at the DB golf course during non-holidays. There was no resort accommodation or hotel but only residential development at DB. The Committee asked why he still considered that the original resort concept had not been changed.

119. **Sir David Akers-Jones** stated that:

- he still considered the DB development a resort although it had changed somewhat from the early concept. The hotel GFA was allowed to be reduced because reasonable men would not insist upon a developer building a vast number of hotel rooms if nobody was going to occupy them. Having decided that the amount of hotel accommodation needed at that time was much less, it was reasonable to switch the spare GFA to housing accommodation. Although the balance of residential, commercial and hotel development had been switched flexibly, the total GFA had remained constant in many years; and

- members of the public could go to DB and use the recreational facilities there, including the beach. They could not use the club because it was a membership club. As for the other facilities, some were private for the residents of DB and some were open to the public. In fact, the developer, instead of providing a pubic golf course, had imported 300,000 cubic metres of sand from China to fill up the once muddy foreshore, turning it into a beach which was 700 metres long, backed by a promenade and trees.

120. Regarding the discussion by the DPC in 1985 about the need to report the change in the concept of the DB development to the ExCo, the Committee asked why Sir David, as the then CS, decided that there was no need to do so (paragraph 2.21 of the Audit Report referred). The Committee also asked whether the decision was made upon the developer's request and whether he had tried to circumvent the ExCo for some reasons.

121. **Sir David Akers-Jones** responded that:

- the background of the issue was that, in 1985, the Joint Declaration had just been approved by the British Parliament. The Governor and the ExCo were very occupied. The Governor was beginning a long period of shuttling between Beijing and London. As the CS, he had to shoulder additional administrative responsibilities. Hence, they were under great pressure;

- notwithstanding the above, the main reason for not going back to the ExCo was that the resort development had continued and the development up to that time did not represent a major change in principle; and

- he had not wanted to circumvent the ExCo and he had not received any request from the developer. It was a matter of whether the ExCo should be bothered with decisions that could be properly made by the SNT, who was authorised by the lease conditions to make those decisions. If the ExCo had wanted the decision to be referred back to it, it would have said so. The Secretary for Lands and Works had said that, in his view, it was not necessary to refer to the ExCo and he agreed with him.

122. The Committee asked about the details of the Secretary for Lands and Works' view and whether, with hindsight, Sir David considered that the matter should have been reported back to the ExCo.

123. **Sir David Akers-Jones** stated that:

- on the question of whether the matter should be reported back to the ExCo, Mr Todd, the Secretary for Lands and Works had minuted to him, then CS. It was stated in the file minute (in ***Appendix 51***) that "The question arises whether, in view of the initial ExCo approval in 1976 and the potentially controversial changes now contemplated, ExCo approval need be sought at this stage. I would think probably not but would be grateful for your advice."; and

- Mr Todd was a very reliable person. He acted upon Mr Todd's recommendation.

124. The Committee questioned why, as the CS, Sir David had simply acted upon his subordinate's advice. **Sir David Akers-Jones** stated that Mr Todd, the Secretary for Lands and Works, was an immediate subordinate, not a junior one. Mr Todd was virtually on the same level as he himself as far as seniority was concerned. Mr Todd was a man on whose judgement he could rely.

125. According to Sir David Akers-Jones' written response, in 1977, when Mr WONG's business went into liquidation and the development was in the hands of the mortgagee bank, another developer took over the development with the encouragement of the Hong Kong Government. It appeared to the Committee that if the DB project was taken over by the mortgagee bank, it would not leave the land idle and might look for another developer. The Committee asked why the Government intervened in commercial operation at that time and did not allow the mortgagee bank, which was a bank tied to the former Soviet Union, to take over the development, and why no tendering exercise was held. The Committee asked whether these were due to political considerations.

126. **Sir David Akers-Jones** responded that:

- there should be no other company which wanted to take over a development at the then remote Lantau Island. The new developer was a company owned by Mr CHA Chi Ming, who was well known to the Administration. He was a prominent person and had made a great contribution to Hong Kong. The trust that the Administration put in him then had been amply rewarded; and

- as the original developer had gone into liquidation, the development was in the hands of the Official Receiver. The then Governor-in-Council had to make the decision about what to do with the development. The Official Receiver advised that this was the best solution and the Governor-in-Council made a decision in the best interests of Hong Kong.

127. The Committee then turned to the SCNTA's approval of MLP 5.0 in February 1982 which removed the requirement for the provision of the public golf course. In his written response, Sir David Akers-Jones gave a detailed description of the administrative procedures for dealing with changes to MLPs. It was stated that the views of all departments were taken into account in approving MLPs for the New Territories, and "I [the SNT] would not have approved a MLP or changes to a MLP or any land transaction that had to be dealt with by me without a full discussion with the PGLA. If the PGLA/NT thought a premium or other conditions of approval were justified, he would have recorded it and action would have been taken."

128. According to the above description, there should be records of the discussions about the deletion of the public golf course and the approval of MLP 5.0 at that time. However, the Committee was informed by the Lands D that there were no records of any inter-departmental discussions on the deletion of the golf course prior to the approval of MLP 5.0 in February 1982. There were also no documents showing why the then Commissioner for Recreation and Culture welcomed the proposal that other recreational facilities would be provided in place of the public golf course. The Committee therefore asked:

- why there were no such records; and

- whether there had indeed been inter-departmental discussions relating to the public golf course and MLP 5.0 at that time.

129. **Sir David Akers-Jones** stated that:

- he was also surprised that many documents were now missing; and

- the question of whether there should be a public golf course was first raised in 1977 when the developer proposed a list of recreational activities to replace it. The decision to delete the golf course was certainly not a sudden one made by him alone. The discussion about the golf course had been going on for a number of years since the developer first raised it and both the pros and cons had been considered. Thus, there was the statement that the R&CD was in favour of the deletion and the substitution by other recreational facilities. There was also the objection raised by the Highways Department representative, but that was a lone voice. The others fell in with the R&CD and so did he.

130. The **Director of Lands** supplemented that:

- the Lands D informed the Committee in the letter of 8 January 2005 that there were no documents showing why the then R&CD welcomed the proposal. In fact, there was a document stating that the Commissioner for Recreation and Culture welcomed the proposal that other recreational facilities would be provided in place of the public golf course. But the document did not explain why he welcomed the proposal; and

- the Lands D had tried its best to look for the records of inter-departmental discussions relating to the deletion of the golf course prior to the approval of MLP 5.0 and no records were found. But the failure to find the records did not mean that there were no such discussions before the decision was made.

131. The Committee noted that Sir David Akers-Jones had stressed that he had all along relied on professional advice when making decisions. However, according to paragraphs 3.5 to 3.7 of the Audit Report, the PGLA had said that the public golf course was one of the main reasons for the Government to have approved the land grant and such a requirement was particularly referred to in a special lease condition. Despite the PGLA's comments, the SCNTA approved the deletion of the public golf course. The Committee asked Sir David why he went against the PGLA's advice and whether that was because of his personal preference.

132. **Sir David Akers-Jones** responded that:

- the PGLA had raised a valid point and it was his duty to raise it. But there had been a consensus in the Government that it would be better to have other recreational facilities than the public golf course; and

- the ExCo had not requested that changes to the lease conditions be reported back to it. Instead, he was authorised to make changes and there were systems and procedure in place as to how he would make changes, not autocratically, but in consultation with the officers of the department and those outside the department. That was what he did.

133. On the question of land premium on approval of changes made in MLP 4.0 in 1977, the Committee noted Sir David Akers-Jones' written response that whether or not premium was payable would have been given full consideration not by one official acting on his own but together with his colleagues and superiors. It seemed that no premium was charged after this proper consideration, no doubt taking into account the drastic slump in the property market.

134. The Committee asked whether there were records showing that it was a collective decision that no premium was necessary and that the main reason was the drastic slump in the property market.

135. **Sir David Akers-Jones** responded that:

- he would not have been involved in deciding about premium. Valuation for premium was the job of a professional team of estate surveyors headed by the PGLA. While there were few MLPs processed at that time, the question of premium on a change of MLP was always actively considered. The estate surveyors would have considered the question of premium very seriously before making the decision that this particular modification at that time did not attract a premium; and

- he did not think that there were records of the discussions among the estate surveyors. Both the Secretary and the Director had not been able to produce them.

136. In response to the Committee's enquiry as to whether there was a drastic slump in the property market in the period around 1977, the **Director of Audit**, in his letter of 10 January 2005, in ***Appendix 52***, advised that according to the "Estimates of Revenue and Expenditure for the year ending 31st March 1979", it was mentioned that there was an economic recession in 1975-76 and continuing recovery during 1976-77.

137. The Committee referred to paragraph 5.15 of the Audit Report which mentioned that Developer A had said that the extension of the area for the fourth and fifth holes of the DB golf course had been agreed to at prior meetings with the SNT. According to Sir David Akers-Jones' written response, the developer might have been referring to meetings with the headquarters staff of the New Territories Administration which might not have involved meetings with him. The Committee asked Sir David:

- whether, according to his recollection, the developer had really discussed the matter with him and, if so, why he had not instructed his subordinates to consider charging a premium for the government land occupied by the developer; and

- why the officials concerned had omitted the question of premium until recently.

138. **Sir David Akers-Jones** responded that:

- the developer might have talked to him. As the land concerned was a very rough hillside area, one did not know where the boundaries were and it was very easy to go outside the boundaries;

- the question of premium was entirely a matter for the PGLA and his staff. It seemed that the decision taken at the time was that the problem of encroachment could be sorted out when there were proper boundaries. The encroachment problem had been sorted out subsequently by the granting of an STT and the developer had paid a substantial penalty for having encroached on the land. Thus, the officials had discharged their duty; and

- he had a clear recollection of the officials concerned at that time. Their approach to work was not casual and their integrity was not in question. They would have certainly done a professional job on such a small question of encroachment on a rough area.

139. It was mentioned in Sir David Akers-Jones' written response that he was invited to become a non-executive director of The Mingly Corporation Limited (Mingly) in 2000, 13 years after his retirement as the CS. The Committee asked Sir David whether, given that the development of DB was still in progress today, his acceptance of the invitation from Mingly, an associate of Developer A, to be its director would give rise to concerns that he had made decisions alone in dealing with Developer A in order to pave the way for his post-retirement life.

140. **Sir David Akers-Jones** said that Mingly had nothing to do with Hong Kong Resort Company, i.e. Developer A. It was an entirely separate company engaging in financial investment.

141. The Committee asked the Secretary for Housing, Planning and Lands, after hearing Sir David Akers-Jones' reasons for deciding that the developments in DB needed not be reported back to the ExCo, whether he still maintained his earlier view that the case should have been brought back to the ExCo.

142. The **Secretary for Housing, Planning and Lands** responded that the critical consideration was whether there had been change to the original resort concept. Sir David had explained that the resort concept had been maintained. If this was agreed, it was not necessary to report to the ExCo. However, he held a different opinion. After hearing Sir David's explanation, he still maintained the view that the original concept of the DB development had changed and such change should have been brought back to the ExCo.

Grant of land at Discovery Bay and Yi Long Wan

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

Change in concept of the Discovery Bay development

- acknowledges that the development of the Discovery Bay (DB) began in the 1970s and 1980s and took place against the particular background that existed at those times;

- expresses alarm and strong resentment that:

  (a) the lease conditions of the DB site failed to specify the requirements for achieving the development concept; and

  (b) the original resort concept of the DB development, as reflected in the Governor-in-Council's decision of 6 July 1976, had changed from a holiday resort and residential/commercial development to that of a first-home community, and the Administration had failed to obtain the Executive Council (ExCo)'s endorsement of that change;

- acknowledges that the Secretary for Housing, Planning and Lands:

  (a) considers that there had been change to the original resort concept of the DB development and such change should have been brought back to the ExCo for endorsement; and

  (b) has undertaken to seek the ExCo's endorsement of the development concept of DB;

- urges the Secretary for Housing, Planning and Lands to expeditiously seek the ExCo's endorsement of the change of concept;

- notes that the Director of Lands will implement the audit recommendations mentioned in paragraph 2.25 of the Director of Audit's Report (the Audit Report);

Provision of facilities in the Discovery Bay development

- expresses astonishment and serious dismay that:

  (a) the approval of Master Layout Plan (MLP) 5.0 had in effect deleted the requirement to provide a public golf course, notwithstanding its specification in the lease conditions; and

(b) the Lands Department (Lands D) had failed to assess the implications, financial or otherwise, of the deletion of the facilities in the DB development;

- notes that the Director of Lands will implement the audit recommendation mentioned in paragraph 3.21 of the Audit Report;

Changes in Master Layout Plans and premium implications

- expresses astonishment and finds it inexcusable that the Lands D failed to:

(a) maintain a record of the public recreational facilities actually provided in the DB development;

(b) verify the specific as-built facilities in the DB development with those agreed with the developer to ensure that they had in fact been built; and

(c) document the reasons for not assessing and/or charging premium for the changes in those MLPs;

- condemns the then land authorities for having failed to assess whether premium should be charged for the changes made in the MLPs after the land grant and prior to 7 June 1994 (including the deletion of the public golf course in MLP 5.0 and the cable car system in MLP 5.1);

- notes that the Director of Lands has implemented the audit recommendations mentioned in paragraph 4.23 of the Audit Report;

Site boundaries of Discovery Bay and Yi Long Wan developments

- expresses grave dismay that:

(a) despite a lapse of 28 years after the land grant of the DB site, the Lands D had not yet set out the boundaries of the site;

(b) some 41,200 square metres of government land adjoining the DB site had been occupied without authorisation for over 20 years, but the Lands D did not take timely actions to rectify the encroachments;

(c) although certain buildings of the Yi Long Wan development were found outside the boundaries of the land grant, the Lands D had not taken any follow-up action to resolve the encroachment problem;

(d) there was a lack of co-ordination between the then District Office/Islands and the then Registrar General's Department, before the latter gave its pre-sale consent of the Yi Long Wan development; and

(e) without seeking legal advice, the Certificate of Compliance for the Yi Long Wan site had been issued before rectification of the site boundary problem;

- notes that the Director of Lands will implement the audit recommendations mentioned in paragraphs 5.12, 5.34 and 5.49 of the Audit Report; and

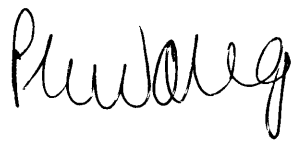
Follow-up actions

- wishes to be kept informed of the progress in:

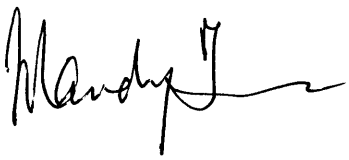
(a) seeking the ExCo's endorsement of the development concept of DB; and

(b) implementing the various recommendations made by the Audit Commission and other improvement measures.

SIGNATURES OF THE CHAIRMAN,
DEPUTY CHAIRMAN AND MEMBERS OF THE COMMITTEE



Philip WONG Yu-hong
(Chairman)

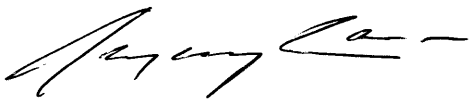


TAM Heung-man
(Deputy Chairman)

LAU Kong-wah

Andrew CHENG Kar-foo

Abraham SHEK Lai-him



Jeffrey LAM Kin-fung

Albert Jinghan CHENG

3 February 2005

香港特別行政區政府

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11 December 2004
(6 pages)
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Ms Miranda HON
Clerk to Public Accounts Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Ms Hon,

The Director of Audit's Report on the results of value for money audits (Report No. 43)

Chapter 6: Grant of land at Discovery Bay and Yi Long Wan

At the Public Account Committee (PAC)'s public hearing held on 8 December 2004, Members made some comments on Part 2 of the captioned Audit Report. We would like to provide the following information to clarify the relevant matters -

The authority of the then Secretary for the New Territories (SNT) to execute the land grant in 1976

2. A Member cast doubt on the basis and authority of the land grant executed on 10 September 1976, on the ground that the development concept of Discovery Bay (DB) in 1976 already deviated from the concept plan approved by the Executive Council (ExCo) in 1973.

3. We wish to clarify that the ExCo Memorandum in December 1973 intended to seek approval-in-principle for the development project to proceed. In crystallizing the concept into the concrete proposal, the whole package was submitted to ExCo in July 1976, with a copy of the "Particulars and Conditions of Exchange" attached as an annex to the ExCo Memorandum. This annex, except for some very minor details on the lots to be surrendered and the dates in the original blanks to be subsequently inserted, was basically the same as the eventual "Particulars and Conditions of Exchange" signed between the then SNT and the developer on 10 September 1976 (see paragraph 2 above). ExCo noted the deviation from the 1973 concept, the safeguards in response to the request from ExCo in 1973, and most importantly the terms and conditions of the Conditions of Exchange. In brief, ExCo took the decisions in July 1976 on an informed basis. Therefore, the land grant was made by the then SNT in September 1976 with the full authority conferred by ExCo.

The authority of the then SNT to approve subsequent changes to the development

4. Under General Conditions Nos. 1 and 2, and Special Conditions Nos. 6, 7 and 19, the authority to approve the construction and demolition of buildings on the lot and to approve the Master Layout Plan rested with the then SNT. Extracts from the original copy of the Particulars and Conditions of Exchange are attached.

Yours sincerely,

(Miss Diane Wong)
for Secretary for Housing, Planning and Lands

c.c. D of L (Attn: Mr Patrick Lau 2868 4707
Mr Graham Ross
Mr C M Lau) 2850 5104

Internal – AA/SHPL

GENERAL CONDITIONS

1. The Grantee shall apply to the Secretary for the New Territories (in these Conditions hereinafter referred to as "the Secretary") for the lot to be set out on the ground. If the Grantee erects any building otherwise than in due accord with such setting out, he shall, when called upon by the Secretary so to do, demolish such building and shall rebuild as directed by the Secretary. If the Grantee fails to demolish any building as aforesaid, it shall be lawful for the Secretary to have such building demolished, and the Grantee shall pay on demand the amount certified by the Secretary to be the cost of such demolition.

2. In the event of the demolition at any time during the tenancy of any building or structure erected on the lot or any part thereof after the date hereof the Grantee shall replace the same either by a sound and substantial building or structure of the same type and of no less volume or by a building of such type and value as shall be acceptable to and within such period as shall be specified by the Secretary.

3. (a) The boundaries of the lot shall be determined by the Secretary (whose decision shall be final) before the issue of the Crown Lease.

(b) The Grantee shall permit boundary stones properly cut and marked with the number of the lot to be fixed at each angle thereof and either in or on the land itself or in or on any building erected thereon as may be required by the Secretary, and shall pay the fees prescribed by him therefor as well as the prescribed fee for the refixing of such boundary stones which, through being lost, damaged or removed, need replacing.

4. Should it at any time be mutually agreed between the parties hereto that any portions of the roads within the lot are to be handed over to the Government, they shall be handed over free of cost.

5. The Grantee shall not permit sewage or refuse water to flow from the lot to any adjoining land or allow any decaying, noisome, noxious, excrementitious or other refuse matter to be deposited on any portion of the lot and shall see that all such matter is removed from the premises in a proper manner or treated and disposed of in such manner as the Director of Urban Services shall approve or require.

/6. The .....

(b) The Grantee shall in accordance with (a) of this Special Condition erect, maintain and keep in use on the lot membership club houses and a leisure resort and associated facilities which shall include an hotel or hotels, a dam, a reservoir, salt and fresh water storage and treatment areas, a sewage treatment plant, a refuse disposal plant, a cable-car system, a ferry pier and a non-membership golf course (in these Conditions called "the minimum associated facilities"). In addition to the minimum associated facilities but not in substitution therefor the Grantee may erect and operate such other facilities and structures as are or may be shown on the Master Layout Plan approved under Special Condition No. 6 hereof.

6. (a) Prior to the commencement of any work on the lot the Grantee shall submit for the prior approval of the Secretary within six months of the date of this Agreement a Master Layout Plan and Development Schedules (hereinafter together called "the Master Layout Plan") showing delineated and coloured thereon:

(i) the positions of the roads proposed to be made;

(ii) the general location and nature of the buildings proposed to be erected on the lot;

(iii) all breakwaters, piers or other marine structures which it is proposed to erect; and

(iv) the stages or phases by which it is proposed to develop the lot.

(b) In complying with Special Condition No.5 hereof the whole of the Lot shall be developed or redeveloped to the satisfaction of the Secretary in conformity and in accordance with the Master Layout Plan approved and signed by the Secretary who shall retain a copy thereof, and no alterations whatsoever shall be made by the Grantee to the Master Layout Plan or to the development or any redevelopment without the prior consent in writing of the Secretary, it being agreed that in the case of minor alterations such consent shall not be normally withheld.

(c) The Master Layout Plan and any plan amending the same signed by or on behalf of the Grantee and the Government shall be deposited and kept at District Land Office, Islands.

7. Subject to the obligations and restrictions regarding development mentioned in Special Conditions Nos. 5 and 6 and subject also to Special Conditions Nos. 59, 54(a) and 56, the lot or any part thereof or any building or buildings erected or to be erected thereon shall not be used and the Grantee shall not permit or suffer the use thereof for any purpose other than for the purposes of the club houses, courses, leisure resort facilities and

/the minimum...

the minimum associated facilities indicated on the Master Layout Plan, And such recreational, residential and commercial purposes and uses ancillary thereto as may be approved in writing by the Secretary, and in particular no building or part thereof erected or to be erected on the lot shall be used for any purpose other than the purpose for which it is designed and intended to be used as indicated on the Master Layout Plan and in the Occupation Permit issued in respect of such building by the Building Authority under the Buildings Ordinance.

8. (a) Subject to (b), (c) and (d) hereof the Grantee shall not except with the prior consent of the Secretary and in conformity with any conditions imposed by him (including the payment of such fee as may be required by him) -

(i) assign, underlet, part with the possession of or otherwise dispose of the lot or any part thereof or any interest therein or any building or any part of any building thereon or enter into any agreement so to do, or

(ii) mortgage or charge the lot or any part or parts thereof of any interest therein or any building or any part or parts of any building thereon except for the purpose of the development thereof and then only by way of a building mortgage or mortgages in such form and containing such provisions as the Secretary shall approve or require,

unless and until he shall have in all respects observed and complied with those Conditions to the satisfaction of the Secretary and then only subject to the provisions of Special Conditions Nos. 9 and 10 hereof.

(b) Notwithstanding anything to the contrary herein contained the Grantee (which expression shall, for the purpose of these Special Condition No.8(b) only, exclude its successor and assigns) may, after the date hereof but before the Grantee has in all respects observed and complied with these Conditions to the satisfaction of the Secretary and for the purpose of development of the lot but not otherwise, subject to the prior written consent of the Secretary and in conformity with any conditions imposed by him (including the payment of any fee as may be required by him), assign the whole of the lot or, subject also to Special Condition No.10 hereof, any part or parts thereof to the Grantee's subsidiary company or subsidiary companies. For the purpose of these Conditions "subsidiary company or subsidiary companies" shall mean only a company or companies of which the Grantee has effective control and not less than 51% of the issued shares in which at the time of such assignment or assignments are owned by the Grantee. The Grantee shall not at any time before he has in all respects observed and complied with these Conditions to the satisfaction of

/the Secretary ...

or their support in good and substantial repair and condition. In the event that as a result or arising out of any such formation, levelling or development any landslip, subsidence or falling away occurs at any time, whether in or from the adjacent hillside or banks and whether the same be Crown or leased land, or in or from the lot itself, the Grantee shall at his own expense reinstate and make good the same and shall indemnify the Government from and against all costs, charges, damages, demands and claims whatsoever which shall or may be made, suffered or incurred through or by reason of such landslip, subsidence or falling away. In addition to any other rights or remedies herein provided for breach of any of the conditions hereof the Secretary shall be entitled by a notice in writing to call upon the Grantee to carry out such construction and/or maintenance or to reinstate and make good any falling away, landslip or subsidence, and if the Grantee shall neglect or fail to comply with such notice within the period specified therein the Secretary may forthwith execute and carry out the work and the Grantee shall on demand repay to the Government the cost thereof.

17. (a) In the event of spoil or debris from the site or from other areas affected by any development of the lot being eroded and washed down on to public lanes or roads or into road-culverts, sewers, storm-water drains or nullahs or other Government properties, the Grantee shall be held responsible and shall pay to the Government on demand the cost of removal of the spoil and debris from or of damage to the public lanes or road-culverts, sewers, storm-water drains or nullahs or other Government properties. The Grantee shall indemnify the Government against all actions, claims and demands arising out of any damage or nuisance to private property caused by such erosion and washing down.

(b) No earth, debris, spoil of whatsoever nature, or building materials shall be dumped on any adjoining Crown land.

18. The Grantee shall pay to the Government on demand the cost of removing, diverting and reinstating elsewhere as may be required any footpaths, drains, sewers, nullahs, water courses, pipes, cables, wires, utility services or any other works or installations on the lot or on areas adjacent thereto which the Secretary may consider it necessary to remove, divert or reinstate upon any development thereof.

19. The design and disposition of any buildings to be erected on the lot shall be subject to the approval in writing of the Secretary, and the plot ratios of any building or buildings erected or to be erected on the lot shall be as specified in the approved Master Layout Plan.

/20. .....

地政總署
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8 January 2005

Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

(Attn : Ms Miranda HON)

Dear Ms Hon,

The Director of Audit's Report on the results of value for money audits (Report No. 43)

Chapter 6 : Grant of land at Discovery Bay and Yi Long Wan

I refer to your letter of 15th December 2004 and provide the requested additional information as follows :-

Public hearing on 8 December 2004

(a) The government official(s) who drew up the lease conditions that were submitted to the Executive Council in July 1976 (paragraphs 2.7 and 2.8 of the Audit Report refer).

We have no record as to how the lease conditions were drawn up or by whom.

(b) In your opinion, whether or not the changes proposed in Master Layout Plan (MLP) 4.0 were changes to the basic concept of the Discovery Bay (DB) development (paragraphs 2.10 and 2.11 of the Audit Report refer).

The resort concept was still a substantial element in MLP 4.0, but the introduction of "garden houses" appears to have introduced the likelihood

of permanent residence in a significant amount of the gross floor area (gfa). Although this did not conflict with the conditions of grant, there was a change.

(c) ***Minutes/records of the meeting(s) relating to the consideration of MLP 4.0 submitted by Developer A.***

The records of the meetings relating to the consideration of MLP 4.0 are :

(i) Minutes of meetings held on 18.10.1977 (App. I)
(ii) Notes of meeting held on 19.10.1977 (App. II)

Public hearing on 13 December 2004

(d) ***A copy of the letter dated 1 February 1983 from the Hong Kong Resort Company Limited referred to in the memo of the Registrar General (L.O.) dated 3 March 1983.***

Letter dated 1.2.1983 is at App. III

(e) ***A copy of the letter dated 25 November 1989 from the Director of Buildings and Lands to Developer A.***

Letter dated 25.11.1989 is at App. IV

(f) ***Whether, before the Secretary for City and New Territories Administration (SCNTA) approved MLP 5.0 which removed the requirement for the provision of the public golf course in February 1982, there had been inter-departmental discussions on the deletion of the golf course and, if so, records/minutes of the relevant discussions (paragraphs 3.5 to 3.11 of the Audit Report refer).***

There are no records of any inter-departmental discussions on the deletion of the non-membership golf course prior to the approval of MLP 5.0 in February 1982.

(g) ***Documents showing why the then Recreation and Culture Department welcomed the proposal that other recreational facilities would be provided in place of the public golf course (paragraph 3.8 of the Audit Report refers).***

There are no documents showing why the then Commissioner for Recreation & Culture (C for RC) welcomed the proposal that other

recreational facilities would be provided in place of the public golf course.

(h) ***According to Table 3 in paragraph 4.16 of the Audit Report, the Lands Department (Lands D) had not charged premium for the changes made in the MLPs prior to 7 June 1994 (i.e. MLPs 3.5, 4.0, 5.0, 5.1, 5.2, 5.3, 5.4 and 5.5) although change in land use was involved and the area of housing accommodation was increased. (a) What the policy in the 1970s and 1980s on the charging of premium when approving change in land use was; (b) whether policy allowed the Lands D or the authority for land administration not to charge premium on change in land use when approving the MLPs; and (c) whether there had been cases in the 1980s in which premium was not charged on similar change in land use.***

The policy on changes of use requiring lease modifications has remained constant, in that where such a lease modification would bring about an increase in value, a premium is charged. In respect of changes in use involving only a change in MLP, however, it is apparent that in the 1970s and 80s no charge was made (as long as these was no increase in total gfa). There was no specific policy statement on this issue at that time. We have no record of premium being charged for an MLP change not involving a lease modification in the 1980s.

(i) ***Whether the Lands D and the bureaux/department responsible for land administration in the 1970s and 1980s had the authority to charge premium when approving changes in MLPs 3.5, 4.0, 5.0 5.1, 5.2, 5.3, 5.4 and 5.5 (paragraph 4.21 of the Audit Report refers).***

Authority was not lacking.

(j) ***Whether or not it was normal practice in the 1970s and 1980s that premium would not be charged as long as the gross floor area of a site did not exceed a certain limit even though there was a change in land use.***

It was the normal practice not to charge premium for changes to MLPs which did not require a modification of the lease in 1970s and 80s as long as there was no increase in total gfa.

(k) ***Whether, according to legal advice, the Administration may now amend the MLP in respect of the DISCOVERY BAY development to include in it the public golf course and the cable car system, given that these facilities are still provided in the lease conditions.***

The Administration cannot unilaterally amend the MLP.

(l) ***With reference to paragraph 4.24 of the Audit Report, how the Revenue Assessment Manual and the Lands Administration Office Instructions (LAOI) will be amended (please provide the English and Chinese wording of the amendments).***

Para 4.24 makes reference to the five recommendations in para 4.23 which have been dealt with by the following amendments to the LAOI, RAM and lease conditions as indicated.

(a) *Specify the GFA, gross site area and other necessary requirements of the replacement public facilities of a development, before approving the deletion of facilities, especially public facilities, from an MLP.*

Add to LAOI as follows :-

"An MLP will normally show the layout of the site, the orientation of the buildings to be erected and a schedule showing the GFA and gross site area for each type of facilities to be provided. Where a revision is proposed, the revised MLP will show all of the new facilities to be provided. Any facilities to be deleted from a previous MLP must be shown by a separate schedule to be attached to the new MLP. This will enable tracking of changes in MLPs."

(b) *Keep a proper record of the approved replacement public facilities and use it to verify subsequently that the facilities have been built.*

Add to LAOI as follows :-

"All public facilities required under a lease or MLP should be provided within a time period to be prescribed. Proper records should be maintained of any approved replacement facilities and appropriate action must be taken to verify that the facilities are built within the specified time frame."

(c) *On approval of MLP changes, assess the premium implications of such changes and collect premium, if any and,*

(e) *Clearly stipulate in the LAOI and RAM that the LandsD should charge premium and administrative fee, if any for approval of MLP changes.*

Revise LAOI and RAM as follows :-

"Approval

When giving approval to a Master Layout Plan, which leads to giving consent or variations of restrictions under certain ***lease*** conditions, the Director ***will*** impose ***such*** conditions (including payment of ***an additional premium or consent*** fee and appropriate admin. fee) as he considers appropriate. ***As to whether a modification premium or consent fee is charged, this will depend on whether there is any enhancement of value.*** When considering such approval, comments from relevant departments, e.g. Transport Department in respect of parking spaces, may be taken into account. Fee for such approval should normally be assessed on the same basis as lease modification and should be approved by Valuation Committee/Valuation Conference. (M 29 in LD TI 11/87/17(II))"

(d) In drawing up lease conditions, state explicitly in the conditions that premium will be charged on making changes to an approved MLP.

Master Layout Plan Clause (c) to be amended as follows :

"The approved Master Layout Plans shall not be amended, varied, altered, modified or substituted without the prior written consent of the Director who may in granting such consent impose such conditions including payment of additional premium and no amendment, variation, alteration, modification or substitution of the approved Master Layout Plans shall be valid or binding on the Government or the Purchaser/Grantee unless a record thereof shall have been signed by the Director and the Purchaser/Grantee and deposited by the Purchaser/Grantee with the Director."

Yours sincerely,

(J. S. Corrigall)
Director of Lands (Ag)

Encl.

c c - w/o encl
Secretary for Housing, Planning and Lands
Secretary for Financial Services and the Treasury
(Attn : Mr Manfred Wong)
Director of Audit
AA/SHPL

[D:\DiscoveryBay_Quest_060105]

Appendix I

Minutes of Discovery Bay Meeting
held at District Office, Islands
on 18.10.1977 at 10:00 a.m.

Present :	Mr. P.A. Ward	(Chairman)	P.G.L.A., N.T.A.H.Q.
	Mr. M. McGraw		C.E.S./D., N.T.A.H.Q.
	Mr. D.G. Dear		S.E.S./S.D.(2), D.O. Islands
	Mr. H.J. Walton-Masters	(Secretary)	E.S./Islands
	Mr. LAM Ding-kwok		A.D.O.L. (Lantau)
	Mr. R.J. Clibborn-Dyer		Planning & Research Division, R.H.K.P.F.
	Mr. J.F. Wilson		Police Traffic H.Q., R.H.K.P.F.
	Mr. Phillip Lau		Senior Building Surveyor, Building Ordinance Office
	Mr. R.A. Wheatley		Planning Group (P.G.) Fire Services Dept.
	Mr. HAU Hung-chi		Planning Group (P.G.), Fire Services Dept.
	Mr. A.F.T. Chan		C.P.O./N.T., T.P.O.
	Mr. S.F. Lau		Agricultural & Fisheries Dept.
	Mr. F.L. Laung		Port Works Division, P.W.D.
	Mr. Y.L. Chung		Port Works Division, P.W.D.
	Mr. J.H. Gould		Marine Department

- - - - - - - - - - - - - - -

1. The meeting opened at 10:10 a.m. with an explanation of the layout area and the changes proposed. The proposed height of the buildings was mentioned in that there would appear to be no height restrictions. The principal change involves a large increase of residential units.

2. The question of height was again raised and it would seem that most of the high rise buildings will be in the Tai Pak area.

3. The whole concept seems to have been changed from a resort to a garden town. The changes do not, however, seem to be against the Lease Conditions.

Ferry Pier

4. Can the new location take fire boats? This is essential. Minimum depth 12 feet.

Cable Car

5. More information will be needed later about the cable car.

Fire Station

6. No problems at present.

Fire Requirements

7. Detailed talks required later. High rise could cause problems.

8. In general terms, the fire facilities would seem to be adequately provided subject to detailed plans.

Port Works

9. There will be a need to regazette Areas 8 and 18. No objection to change in emphasis.

Marine Department

10. Will be reply later.

Drainage Works

11. Purely technical points-gazetting required if sewer outfall changed. More details required later.

Agricultural & Fisheries

12. See reply. Seems to be a loss of open space. Area of most concern 2a, b & c (garden houses). Buildings should be kept low.

Police

13. No communication by land in and out of the area. Speed of access by emergency services could be a problem. Road system on site not too clear. Plans of road system required. Individual transport for garden houses? Types of vehicles. People - there all the time? Influx at weekends? Emergency plans? Police do not like it as the concept has changed. Vehicles will have to be licenced if the vehicles go where the public can go. All Police Points are subject to detailed plans.

14. Police presence will have to be increased. Premises to be owned by Government? Do not wish to be a private police force. Both Police and two stations need to be surrendered to Government. Proposed lease terms would seem to cover this point. More accommodation needed particularly at ferry pier. Berthing of police launch? Better helicopter site.

15. For Police Force and Fire Services Department, more details required at an early date.

Planning

16. Increase in number of units has far reaching planning implications. Recreation to housing. Planning against change of concept. No longer a leisure resort. Garden Houses - exact layout required. Is this good enough? Generally more details required before any approval even in principle required.

Water Supplies

17. No Government water supply.

18. No question of extending catchwater area.

19. Is there enough water for all these people?

Building Ordinance

20. No comment at this stage.

General Summary

21. Approval in principle cannot be given until more details are sent.

22. If detailed requirements can be met, then approval in principle will have to be given apart from Planning Reservations subject to Secretary for the New Territories' approval.

23. Planning Division and Police Force are against the revised concept due to the increase in population.

24. Developer to be asked to show how these extra houses and 35,000 people can be given water.

Distribution to :

S. for N.T. (2)
C. of Police (2)
C.B.S./N.T.(E)
D. of Fire Services (2)
C.P.O./N.T.
D. A. P.
C.E.P.W. (2)
D. of Marine
P.G.W.E./W.S.D.
C.E.D.W.
D.O.
S.E.S./S.D.(2)
A.D.O.L.(L.)

DISTRICT OFFICE, ISLANDS

19th October, 1977

Notes of Meeting concerning the
Discovery Bay Project held at
District Office, Islands on
Wednesday, 19th October 1977 at 2:30 p.m.

Present :

Government Officials

Mr. Victor C.H. Yung	(Chairman)	D.O. Islands
Mr. P.A. Ward		P.G.L.A., N.T.A.
Mr. M. McGraw		C.E.S./D.
Mr. D.G. Dear		S.E.S./S.D. (2)
Mr. H.J. Walton-Masters	(Secretary)	E.S./Islands
Mr. J. LAM Ding-kwok		A.D.O.L. (Lantau)

Hong Kong Resort Co. Ltd.

Mr. Payson M. Cha	Director of H.K. Resort Co. Ltd.
Mr. W.J. Reynolds	Estate Manager Central Enterprises
Mr. J. Marriott	Consultant
Mr. W. O'Neill	Project Director
Mr. R. Way	Chief Planner Lyon Associates (H.K.)

- - - - - - - - -

P.G.L.A. reported on S.N.T.'s initial comments which fall into 4 main headings :-

(a) Serious reservations on the number of units.

(b) Does not like the fact the emphasis has changed from lettings of rooms etc. to sales of residential units.

(c) The staging would seem to indicate that the 'Resort project' are being constructed later.

..../(d)

(d) There is a much larger population than the original scheme and there could well be a residential population of 25,000 - 35,000 people. He feels that the recreational facilities have not been increased in proportion to this increase in population.

3. S.E.S./S.D.(2) then outlined the Government Departments' comments, a copy of which was circulated. C.E.S./D. made an additional point that B.O.O. would prefer to see plans showing individual house plots and some detailed plans of house types. This could help with speedier passing of plans later. This would be similar to the procedure adopted at Tai Sang Wai.

4. The following general points were made by the Government representatives :-

(a) There was concern over the general management concept of the scheme. If the scheme turned into a town, Government would be left with management problems.

(b) In the original scheme there was to be an internal managed vehicle scheme. It is understood that it will now be a mini bus and taxi service.

(c) In the holiday flat part of the scheme would the developer retain and let any of the units.

(d) The coastal area on which garden houses were shown was not considered a good point and Government would prefer to see these areas left unspoilt.

(e) Minor layout plans would be useful although it was agreed this would be subject to change.

5. The Developers made the following points:-

(a) The main Government points as outlined on the notes in paragraph 3 were mainly points of detail.

(b) The security, police and emergency problems were ones that of which the developers were fully aware and would want to solve in a 'public' way in order to satisfy potential buyers.

(c) There would always be an administrative presence in the area as the communal projects would be retained by the Company. The presence would tend to diminish, however, as time went on. There was some interest from Hotel Groups to manage some of the flats.

(d) The population estimate of 35,000 would seem to be excessive.

..../(e)

(e) There is a need to define what type of population. Day visitors, week-end stayers and permanent visitors. It was noted that the Government would consider the scheme a 'resort' success if there was a large inflow of people over the week-end. There was a switch in emphasis from an international resort to a Hong Kong resort.

(f) When the details of the scheme were published more swimming pools and minor recreational facilities would become more apparent.

(g) The approval of the Master Plan was an essential first stage before details could be considered.

(h) The need to get on with the scheme was emphasised and time was a costly commodity for the developers. The new scheme designed to be more financially viable than the old scheme.

6. The Developers noted that the meeting with S.N.T. the following week was an important one and that S.N.T. would wish to be satisfied over the points made in paragraph 2 together with the water problem, heights of buildings, road-widths, protection of the coastal area and emergency services.

Non Master Plan Points

7. All the Tai Pak Lots have been acquired.

8. All houses have now had their roofs removed.

9. Lot 365 in D.D. 352 - Nothing on Crown Land around the houses.

10. Graves - This matter was now in hand.

11. An extension to include the village area and other lots is now required and the developer is to apply in writing.

12. The next progress meeting was arranged for 2:30 p.m. on Tuesday, 1st November 1977.

13. Mr. Merriot asked if he could keep a copy of the notes on the meeting on 18th October 1977 and was informed he could on a 'confidential - without prejudice basis'.

14. The meeting closed at about 4.00 p.m.

DISTRICT OFFICE, ISLANDS

20th October 1977

Hong Kong Resort Co. Limited

(Incorporated in Hong Kong)

Office: Realty Building, 26th Floor 71 Des Voeux Road, Central Hong Kong Tel: 5-260161-8 Cable: RESORTCO Telex: 65179 HKRCOHX

February 1, 1983

Lands Department Headquarters
Murray Building
Garden Road
Hong Kong

Attn. Mr. J.R. Todd
Director of Lands

Dear Sir,

Discovery Bay - Conditions of Exchange

Further to our letter of 22 Nov. 1982 and following Mr. Marriott's meeting with Mr. Todd and Mr. Mills on 26 Jan. 1982, we write to confirm that we will shortly submit to you a schedule of the total we have expended on Phase I of the project. Each item of expenditure will be backed by an appropriate completion certificate and will be related to Master Plan 5.0. We will also submit a table comparing the number of completed housing units, GBA etc. with the Master Plan 5.0 table.

Simultaneously we will request the District Land Officer to grant us a partial certificate of compliance in respect of Phase I as now completed by us. Previously you wished us to supply an as-built" Phase I Supplementary Master Plan but we now understand that this will not be necessary as the Phase I Supplementary Master Plan is regarded as having been superseded by Master Plan 5.0.

We would appreciate your confirmation that, once you are satisfied that we have spent not less than $600 million and once a partial certificate of compliance has been granted, we will then be free under Special Condition 8(d) to assign other parts of the lot for development in accordance with the Conditions of Exchange.

Hong Kong Resort Co. Limited

(Incorporated in Hong Kong)

Head Office: Realty Building, 26th Floor 71 Des Voeux Road, Central Hong Kong Tel: 5-260361-8 Cable: RESORTCO Telex: 65179 HKRCL HX

Lands Department Headquarters
Attn. Mr. J.R. Todd

We would also like to place on record our understanding that:-

(a) the Building Covenant (SC5(a)) will be deemed to have been completed, as regards both amounts and dates, once you are satisfied that we have spent not less than $600 million. Thereafter we will still of course have to complete the full development within a reasonable period. The planned dates for the remaining stages will be indicated in our Phasing Plan which we will need to modify from time to time as circumstances change;

(b) you see no need for the Conditions of Exchange to be formally amended to reflect the deletion of the non-membership golf course and the cable car system (already agreed), the refuse disposal plant (under consideration by government) and the hotel (apparently not yet agreed) from the minimum associated facilities in SC 5(b). Also you regard the lease plan as having been effectively superseded by Master Plan 5.0. We understand that, although our Conditions of Exchange were originally approved by the Executive Council, power to amend the Conditions has since been delegated to you.

With regard to (b) above, we would welcome from you in due course a formal letter confirming the amendments that have so far been agreed. We think this should be registered at the Land Office so that it can be inspected by any potential assignee who wishes to check on the position.

Reverting to the opening 3 paragraphs of this letter, it will inevitably take us a little time to assemble the necessary documents to submit to you before we can be free to assign under Special Condition 8(d). Since we are anxious to press ahead with all possible speed, we have asked Mr. William Kwan to submit to the Registrar General on our behalf an application under the Land Officer's Consent Scheme for the sale of Area 6B and a joint venture in respect of Area 6C.

Yours faithfully,
HONG KONG RESORT CO. LIMITED

Elaine Li

c.c. District Land Officer
Registrar General

EL/JCHM/mc

屋宇地政署總辦事處
香港花園道美利大廈

BUILDINGS AND LANDS DEPARTMENT
HEADQUARTERS
MURRAY BUILDING, GARDEN ROAD,
HONG KONG

Appendix IV

電話 Tel. : 5-8482864

25 November 1989

本署檔號 Our Ref. (20) in BLD 2/1/IS/PL/82(MLP) III

來函檔號 Your Ref. HKR/PR-7/L1631/89

Mr. Jeremy Marriott
Executive Director
Hong Kong Resort Company Limited
1st floor
Commercial Centre
Discovery Bay
Lantau
Hong Kong

Dear Mr. Marriott,

Lot 385 in D.D. 352
Discovery Bay, Lantau

Thank you for your letter dated 21 November 1989. I have noted your arguments which were the same points you raised at our last meeting. As a matter of fact, I have been taking up your points since the meeting and am now in a position to give you a definitive reply.

While you have been persistent in alleging that your revenue-earning gross floor area (GFA) should have been 613,155m² (6.6 million square feet), I have to hold to a different view.

There has been no conclusive evidence to show that your revenue-earning GFA ought to be 613,155m². In Tim Mills' letter of 14 April 1988 in reply to Roger Thompson's letter of 29 March 1988, the point about what should have been the agreed revenue-earning GFA at the outset has been made categorically clear. The Grantee agreed to pay a premium of $61.5 million in return for an approved Master Plan 3.5 in which the GFA of 6.6 million square feet was shown to have included the GFA for Public Works, Fire and Police Station and the School. The net GFA permissible for housing, hotel and commercial (i.e. revenue-earning) was 6.38 million square feet. This was the deal which must have been struck after taken on board all pertinent considerations by both parties at the time. It would be inappropriate for me, nor for you, now to open up discussion and speculate how the deal had been agreed and why it should have been so agreed.

/2.....

Although Master Plan 4.0 has showed an increase in revenue-earning GFA by the same amount originally set aside for the Public Works' GFA, the reason behind is still unclear. Whatever reasons one might attribute to the increase can only be conjectures. However, one thing is clearer on my records : this matter has been given a very detailed consideration and the Government stance is that 608,510m^2 should now be the permissible revenue-earning GFA for your Discovery Bay development and no more. Any attempt to increasing it, if justified and approved by Government, will attract additional premium.

You mentioned deduction of the estimated cost of building the police and fire stations from the original premium calculation. I confirm that this was the case. It proves, however, nothing but the fact that the land occupied by the buildings was intended to be non-revenue-earning. If it had been a revenue-earning site, the value of it should have been deducted from the premium as well, not just the cost of the building alone. The deduction therefore speaks for itself; that is, the intention was to reimburse you of the cost of the building which could have been considered more of the Government's obligation to provide such accommodation.

I have to dispute your statement that Government has set a precedent for adjusting the figures administratively in the case of MP 4.0, thereby giving you a stronger case to argue in favour of your recent application for inclusion of the school GFA into the revenue-earning GFA. As I said, the rationale behind such an adjustment is unknown and Government should not be bound by it for no convincing reasons. On the other hand, MP 4.0 has formed the basis by which you and Government have abided. MP 4.0 has now evolved to MP 5.4 and yet the revenue-earning GFA remains at 608,510m^2.

In short, your request for adjusting the present revenue-earning GFA to include the school GFA has to be rejected. I regret that I am unable to be of further assistance to you in this matter.

Yours faithfully,

(H.K. Ho)
for Director of Buildings & Lands

bcc DLO/Islands

香港特別行政區政府

The Government of the Hong Kong Special Administrative Region

房屋及規劃地政局

香港花園道美利大廈
電話 Tel： 2848 2266
傳真 Fax： 2845 3489

Housing, Planning and Lands Bureau
Murray Building,
Garden Road, Hong Kong

本局檔號 Our Ref. HPLB(CR)(PL) 1-160/08 Pt. 3

來函檔號 Your Ref. CB(3)/PAC/R43

10 January 2005

Ms Miranda HON
Clerk to Public Accounts Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Ms Hon,

The Director of Audit's Report on the results of value for money audits (Report No. 43)

Chapter 6: Grant of land at Discovery Bay (DB) and Yi Long Wan

Thank you for your letter of 15 December 2004 to the Secretary for Housing, Planning and Lands and I have been authorized to reply on his behalf.

The additional information requested by the Public Accounts Committee at the hearings is as follows :-

Public hearing on 8 December 2004

(a) minutes of the meetings relating to the decision that there was no need to report to the Executive Council regarding the change in the concept of the Discovery Bay (DB) development, including the minutes of the Development Progress Committee meetings held on 10 October 1985 and 14 November 1985 (paragraphs 2.17 to 2.21 of the Audit Report refer).

The minutes of the Development Progress Committee meetings held on 10 October 1985 and 14 November 1985 are at Annexes A and B respectively. As far as we could ascertain, no other record of meeting is relevant to the point referred to in your question.

(b) a copy of the Executive Council paper of 11 March 2003 concerning the DB Outline Zoning Plan (paragraph 2.24 of the Audit Report refers).

As a matter of principle, Executive Council (ExCo) papers are confidential documents and cannot be released. However, following the ExCo's approval on 11 March 2003, a Legislative Council (LegCo) Brief on "Approved Discovery Bay Outline Zoning Plan No. S/I-DB/2 was issued subsequently. A copy of the LegCo Brief is at Annex C.

Public hearing on 13 December 2004

(c) regarding the deletion of the public golf course, documents during the period July 1977 (when Developer A proposed to change the public golf course to some other form of public recreational use) and February 1982 (when the Secretary for City and New Territories Administration (SCNTA) approved MLP 5.0 which removed the requirement for the provision of the golf course) which were relevant to the SCNTA's decision to approve MLP 5.0 despite the objection to deleting the golf course (paragraphs 3.5 to 3.10 of the Audit Report refer).

The Lands Department (Lands D) locates from its file records one document which might be relevant, namely an unsigned letter dated 20 March 1979 from Developer A to the then Secretary for the New Territories. The letter together with its enclosure is at Annex D. In the letter, Developer A explained why he/she considered a non-membership golf course not viable and sought approval to abandon the concept and to provide other active public recreation as replacement.

(d) whether, in the 1970s and 1980s, there was any project which, similar to the DB development, had undergone a change in development concept from that of an area with recreational and

leisure facilities to a residential development, and whether there was any project in respect of which the application for change in development concept was not approved.

There was no other project for recreational and leisure facilities similar to that of the DB granted in 1970s and 1980s. Therefore, the question of whether change in development concept of such development had been approved or rejected does not arise.

(e) ***the total revenue generated by the entire DB development in the past 30 years.***

As far as Lands D is concerned, a total of some $2.09 billion has been collected in respect of the DB development. This figure comprises land premium, Government rent up to 1996/97 (Government rent is collected by the Rating and Valuation Department after 1997), premium charges for changes to the Master Layout Plan, waiver fees and rental for short term tenancy and administrative fees.

Yours sincerely,

(Miss Diane Wong)
for Secretary for Housing, Planning and Lands

c.c. D of L (Attn: Mr John Corrigall 2868 4707
Mr Graham Ross
Mr C M Lau) 2850 5104

Internal – AA/SHPL

Annex A

CONFIRMED (14.11.85)

DEVELOPMENT PROGRESS COMMITTEE

Minutes of the 43rd Meeting held on 10 October 1985
in the L&W Branch Conference Room, Murray Building, 21/F

Present

Mr. J. Todd, SLW (Ag.) (Chairman)
Mr. F.D. Roome, DL (Ag.)
Mr. G.B.O'Rorke, DNTD
Dr. J.W. Hayes, RS(NT)
Mr. A.N. Savage, PAFS(1) for DFS
Mr. R.G. Scurfield, PAS(T)4 for S for T
Miss M. Seddon, AD(P)(Ag.) for D of H - Item 4
Mr. E.K.Y. Lee, Sr. Econ. for SES
Mr. R.J.S. Law, PEPO/N for CEP
Mr. K.T. Kuo, UADA

In Attendance

Mr. A.G. Eason, DS(LW)1
Mrs E. Wong, DS(LW)2
Mr. J.M. Wigglesworth, PGTP - Item 9
Mrs E.M. Bosher, PAS(LW)1
Mr. L.K.C. Wong, GTP/U
Mr. B.C.K. Fung, STP/NTDB
Mr. S. Lau, STP/SR3
Mr. Parrish Ng, AS(LD)
Mr. J. Figueiras, Consultant (MHA))
Mr. K. White, Consultant (MHA)) Item 1
Mr. J. Whitefield, Consultant (MHA))
Mr. R.B. Hanna, PM/TPF) Items 1, 5, 6 & 7
Mr. H.K. Chan, CTP/TPF)
Mr. K. Austin, PM/ST - Item 8
Mr. T.J. Mills, GLA/DH - Item 10
Mr. K.K. Tse, AS/LG (Secretary)

Item 10 : Discovery Bay Revised Master Plan
(DPC Paper No. 83/85)

10.1 Before introducing the Discovery Bay Revised Master Layout Plan, GLA/DH proposed two amendments to the paper : -

Para 7 : replace "Completion" by "Compliance".

Para 14 : delete the first sentence.

10.2 GLA/DH described the Discovery Bay Revised Master Layout Plan (No. 6.0) with which he said the developer, the Hong Kong Resort Co. Ltd, wanted to replace the current Master Layout Plan (No. 5.1) to improve the viability of the project. He pointed out that, in submitting the revised plan, the developer proposed to depart significantly from the original concept of a leisure and recreational facility to that of a 'first home' residential community. Under the new proposals some of the development originally proposed for the upland areas would be redistributed to the lowland areas, bringing it close to the commercial centre and the pier, in the form of 25 high rise blocks ranging from 14 to 22 storeys. Moreover, the Company wanted the original plan to have a public golf course and two hotels to be dropped, to regard the hotel requirement as optional and to convert the "surplus" commercial and hotel GFA to residential GFA on a metre for metre basis. GLA/DH also asked DPC to consider whether the revised proposals should be submitted to ExCo for endorsement as the latter had approved the Discovery Bay exchange grant in July 1976.

10.3 In discussion, the following main points were noted :

(a) development concept : DS(LW)1 stated that as flat owners were free to use their flats either as first or holiday homes, the original resort concept could not be enforced. PAFS(1) suggested that there was no point in formally approving the change in concept since the change was already taking place;

(b) location of the high rise buildings : Members were generally concerned about the compatibility of the proposed high rise residential development with the surrounding environment, especially on the headland, i.e. Area 4 (Phase IV development). The proposed buildings in Phase III, i.e. Areas 6E, 6B4, 6B2, were less objectionable because they would be situated against a backdrop of hills. The Chairman asked if the developer would want to commence work on Phase III without receiving the go-ahead for Phase IV. GLA/DH said that he probably would ;

(c) community facilities : PGTP asked if there would be enough community facilities for the residents if the development concept changed. GLA/DH thought that there would be little requirement to provide additional community facilities as only a marginal increase in the planned population was involved. However, in view of the current emphasis on first homes, GLA/DH agreed that the developer should be asked to provide more public recreational facilities;

(d) ferry service : it was noted that the inadequacy of the ferry service had long been a matter of complaint among the residents and was compounded by the fact that, while Government had insisted on the provision of full pier facilities at Discovery Bay, no corresponding provision in the harbour area had been made. PAS(T)4 said he would look into the problem;

(e) consultation : RS(NT) suggested, and DPC accepted, that consultation should be carried out on a wider basis, especially with the residents. STP/NTDB said that although there was no town planning objection, in principle, to the transfer of residential GFA from the upland to the lowland areas, reservations had nonetheless been expressed over the location of the high-rise blocks from the town planning point of view;

(f) implementation timing : GLA/DH said that the Company would like to implement the revised plan as soon as possible, and was therefore seeking approval urgently; and

(g) approval : the Chairman said that CS's advice would be sought as to whether ExCo approval was required

10.4 DPC

agreed that

(a) the requirement for building the public golf course and the cable car could be deleted and the developer asked to provide other compensatory public recreational facilities (e.g. tennis courts) ;

(b) the requirement to build one or more hotels could be made optional rather than obligatory ;

(c) the requirement to show the timing of the remaining stages on phases of development on the Master Layout Plan could be omitted ;

(d) the proposal to change the overall concept of the development did not require formal approval as it was unenforceable in any case ;

(e) the proposals in respect of Phase III of the development were acceptable in principle ; and

(f) the proposals beyond Phase III, particularly as regards high rise development on the headland, were unacceptable.

Date of Next Meeting

14 November 1985.

Lands and Works Branch
October 1985

Annex B

CONFIRMED (L.C.L.K.)

DEVELOPMENT PROGRESS COMMITTEE

Minutes of the 44th Meeting held on 14 November 1985
in the L&W Branch Conference Room, Murray Building, 21/F.

Present

Mr. N.K. Chan, SLW	(Chairman)
Mr. J.R. Todd, DL	
Mr. K.W.K. Kwok, DNTD(Ag)	
Mr. G. Leung, PAS(HK&K) for RS(HK&K)	
Dr. J.W. Hayes, RS(NT)	
Mr. C.K. Taylor, AFS(W) for DFS	
Mr. J.A. Kessler, CE(T) for S for T	
Mr. A.R. Crosby, AD(P) for D of H	
Mr. E.K.Y. Lee, Sr. Econ. for SDS	
Mr. R.J.S. Law, PEPO/N for CEP	
Mr. K.T. Kuo, UADA	

In Attendance

Mr. A.G. Eason, DS(LW)1	
Mrs E. Wong, DS(LW)2	
Mr. J.M. Wigglesworth, PGTP - Item 5	
Dr. Y.L. Choi, GE/OS	
Mr. P. Ng, AS(LD)	
Mr. R. Garrett, Consultant (Maunsell)) Item 1	
Mr. C. Goodwin, Consultant (Maunsell))	
Mr. R.D. Hanna, PM/TPF) Items 1-2	
Mr. H.K. Chan, CTP/TPF)	
Mr. I.T. Brownlee, STP/SA - Item 5	
Mr. Y.Y. Ng, GE/NT) Item 6	
Mr. B.C.K. Fung, STP/NTDB)	
Mr. K.K. Tse, AS/LC	(Secretary)

(Extract)

Item 4 Matters Arising

4.1 Clarification of meaning
(Item 10 of minutes)

RS/NT explained that when he suggested consultation should be carried out on a wider basis in sub-para 10.3(e), he meant it should be carried out by the Company.

4.2 CS's advice on the Discovery Bay case
(Item 10 of minutes)

The Chairman reported that CS considered there was no need to go to ExCo or LDPC as the Phase III development followed on from the development so far approved and did not represent a major change in principle.

* * * * *

LEGISLATIVE COUNCIL BRIEF

Town Planning Ordinance
(Chapter 131)

APPROVED DISCOVERY BAY
OUTLINE ZONING PLAN NO. S/I-DB/2

INTRODUCTION

At the meeting of the Executive Council on 11 March 2003, the Council ADVISED and the Chief Executive ORDERED that the draft Discovery Bay Outline Zoning Plan (OZP) No. S/I-DB/1A should be approved under section 9(1)(a) of the Town Planning Ordinance (the Ordinance) and renumbered as No. S/I-DB/2.

BACKGROUND

2. On 16 May 2001, pursuant to section 3(1)(a) of the Ordinance, the Chief Executive directed the Board to prepare an OZP for the Discovery Bay area. On 14 September 2001, the draft Discovery Bay OZP No. S/I-DB/1 was exhibited for public inspection under section 5 of the Ordinance.

A 3. The approved Discovery Bay OZP No. S/I-DB/2 is at Annex A for Members' reference. A set of Notes, at Enclosure I to Annex A, lists out the uses which are always permitted and those which may be permitted on application to the Board. The Notes form a part of the approved OZP. An Explanatory Statement in respect of the approved OZP is at Enclosure II to Annex A.

The Planning Scheme Area

4. The Planning Scheme Area (the Area), covering about 810 hectares of land, is located in the eastern part of Lantau Island. It comprises the area mainly bounded by the proposed Lantau North (Extension) Country Park to its north, west and south, and Tai Pak Wan to its east. To the further east is Peng Chau and to the northeast about 4 kilometres away is the Hongkong Disneyland (under construction) in Penny's Bay. The boundary of the Area is shown in a heavy broken line on the approved OZP.

5. The population of the Area was about 15,600 in 2001. Having regard to the character of the Area, environmental considerations and the existing and planned infrastructure provision,

the approved OZP provides for a planned total population of about 25,000 persons for the Discovery Bay development and 200 persons in the rural settlements upon full development.

Land Use Zonings

6. The planning intention relating to the Area is primarily to conserve the natural setting of the Area and to allow for compatible low-density development which provides for a mix of residential and recreational uses. It adopts the urban design concept of maintaining a car-free and low-density environment while concentrating commercial and major community and open space facilities at more accessible locations. One activity node each around the ferry piers in Tai Pak Wan and Yi Pak Wan have been earmarked on the approved OZP. A stepped building height approach with low-rise on the headland and coastal lowland and high-rise development for the inland is adopted.

7. About 101 hectares of land are zoned "Residential (Group C)" ("R(C)") for low-density housing development compatible with the sub-urban character. This zoning covers the existing and proposed residential areas in the Discovery Bay development in Tai Pak and Yi Pak. This zone is sub-divided into 11 sub-areas with further sub-divisions to reflect the variations in height and building form in individual neighbourhood. Another seven hectares of land are zoned "Residential (Group D)" ("R(D)") to encourage improvement to and upgrading of existing temporary domestic structures and houses at Nim Shue Wan and Cheung Sha Lan. In this zone, very low-rise and low-density development may be permitted on application to the Board.

8. About 188 hectares of land are zoned "Other Specified Uses" for uses such as commercial complex cum residential development, hotel, golf course, marina, sports and recreation club, staff quarters, petrol filling station, service area and reservoir, etc.. Some 10 hectares of land are zoned "Government, Institution or Community" ("G/IC") to demarcate existing and reserved sites for major Government, institution or community facilities serving the needs of the local residents as well as visitors. Major existing Government, institution or community facilities include schools, a fire station/ambulance depot, post office, electricity sub-station, telephone exchange, pumping stations and the Trappist Haven Monastery. This zone is divided into four sub-areas, with variations in maximum height and/or Gross Floor Area (GFA) restrictions.

9. About 11 hectares of land are zoned "Open Space" ("O") to cover the existing beach in Tai Pak and the proposed central park and waterfront promenade at Yi Pak. The fringe areas in the central and southern parts are zoned "Green Belt" ("GB"), while the uplands in the west

and north are zoned "Conservation Area" ("CA") to define the limit of development and to protect the natural landscape. The two zones take up about 167 and 241 hectares respectively. The mangrove area at Yi Pak and the coastal areas at Tai Pak, Sam Pak and Sze Pak are zoned "Coastal Protection Area" to protect the natural coastlines and coastal features. This zone covers about 13 hectares.

10. Part of the proposed Lantau North (Extension) Country Park, about 63 hectares, is also included in the approved OZP and zoned "Country Park". All uses within this zone are subject to the provisions of the Country Parks Ordinance (Cap. 208).

11. In order to preserve the existing amenity and character of the Area and to avoid excessive development, development restrictions on building height, plot ratio and/or GFA are stipulated in the Notes for most of the land use zones.

Objections

12. During the exhibition of the draft Discovery Bay OZP No. S/I-DB/1, 674 valid objections were received, of which 41 objections were subsequently withdrawn. The objections were mainly against the "Other Specified Uses" annotated "Golf Course" ("OU(Golf Course)") zoning for the proposed second golf course site, the extent of the conservation-related zones, the non-adherence to the approved Master Plans under the lease, and the proposed 24-storey hotel and 25-storey developments in Yi Pak. In particular, there were conflicting views between two groups of objectors i.e. some residents of Discovery Bay and Green Lantau Association and the Hong Kong Resort Company Ltd. (HKR), the developer for the Discovery Bay development. The residents requested that the "OU(Golf Course)" site should be rezoned to "CA" to preserve the existing natural environment. The HKR, however, proposed to extend the "OU(Golf Course)" zone to the area zoned "CA" adjoining the existing service reservoir to help facilitate the linking up of the proposed and existing golf courses.

13. After giving consideration to the objections, the Board decided to propose amendments to the draft OZP to meet/partially meet some of the objections, including rezoning the "OU(Golf Course)" site to "CA" and "GB" zones because the site was not suitable for golf course use as development would displace a piece of natural environment and affect some natural streamcourse and some popular hiking trails, reprovisioning for the second golf course by rezoning a site zoned "R(C)12" and a small piece of adjacent land zoned "GB" to the north of the existing golf course to "Other Specified Uses" annotated "Golf Course cum Residential Development" ("OU(Golf Course cum Residential Development)")

to centralise the golf course facilities in one location, adjusting the boundary of certain zones and amending the Notes of the OZP.

14. On 14 June 2002, the proposed amendments were notified in the Gazette under section 6(7) of the Ordinance. 526 valid further objections were received and four of them were subsequently withdrawn. The further objections were all related to the proposed amendments to the second golf course. After considering the further objections under section 6(8) of the Ordinance on 19 July 2002, the Board decided to meet/partially meet some of the further objections by reverting part of the "OU(Golf Course cum Residential Development)" zone back to "GB" so as to avoid unnecessary cutting of natural slopes and extension of development area at a visually prominent upland location which would cause visual intrusion to the Hong Kong Disneyland. The proposed amendment was also confirmed by the Board as a decision made under section 6(9) of the Ordinance.

IMPLICATIONS OF THE PROPOSAL

15. Approval of the draft OZP itself has no financial or civil service implications.

Economic Implications

16. The further population increase in the Area will be about 9,400 mainly from the future phases of the Discovery Bay development in Yi Pak. There will be positive economic implications arising from the revenue generated from the premium collected from the private residential development, investment on the infrastructure work and jobs created.

Environmental Implications

17. The approved Discovery Bay OZP No. S/I-DB/2 provides the planning framework to guide future development and redevelopment of the Area. Appropriate planning controls have been adopted in the light of the environmental and infrastructural constraints in the Area.

Sustainability Implications

18. The approved OZP does not have major sustainability implications. It nevertheless strikes a balance between conserving the natural environment of the Discovery Bay area and providing compatible low-density development in a car-free environment.

PUBLIC CONSULTATION

19. Consultation with the Peng Chau/Discovery Bay Area Committee (the Area Committee) was conducted on 7 August 2001. Members of the Area Committee had no adverse comments on the draft Discovery Bay OZP but considered that private cars should be allowed to use the Discovery Bay Tunnel Link. The Board considered that the tunnel link should be restricted to the use of residents' services buses and emergency vehicles, taking into account the capacity constraint of the external road links of Lantau and the need to maintain the relatively car-free environment of the Discovery Bay development.

PUBLICITY

20. The approved Discovery Bay OZP will be printed and exhibited in accordance with section 9(5) of the Ordinance. A press release will be issued on the date of exhibition. A spokesman will be available for answering media enquiries.

ENQUIRY

21. Any enquiry on this brief can be addressed to Miss Ophelia Y.S. Wong, Assistant Director of Planning/Board, Planning Department, at Tel. No. 2231 4606.

PLANNING DEPARTMENT
March 2003

Annex D

March 20, 1979

Ref: F-XDB

The Hon. D. Akers-Jones, CMG, JP
Secretary for the New Territories
New Territories Administration
4/F &5/F, H.K. Housing Authority HQ. Building
181, Princess Margaret Road
Kowloon.

Dear Mr. Akers-Jones,

Discovery Bay - Non-membership Golf Course

As you are aware we have now awarded a contract for the dam diversion tunnel to Aoki Construction Co, of Japan. We have awarded this contract initially because of delays in our negotiations with a third party known to you who is keen to participate. Whatever the state of these negotiations we propose to award by 1 June 79 the second major infrastructure contract which will provide serviced land for housing at Tai Pak. This will be followed or possibly accompanied by a contract for the dam.

We have taken advantage of this enforced lull to engage Messrs. Chankland Cox to review and refine Master Plan 4.0. One area on which the planners have focussed is Area 16, Non-membership Golf Course. You will recall that Area 16 comprises some of the flattish land inland from Yi Pak through which access can be gained via a low saddle to a small beach at the northern extremity of our development area. Between Yi Pak and this small beach is a hill rising to over 300 ft.

Master Plan 3.5 showed a hotel on top of the hill, a public works area on the small beach and an 18 hole golf course plus 675 housing units in the remainder. The golf course itself occupied 47 acres. Master Plan 4.0 shows this entire area as Non-membership Golf Course.

We have considered the economics of such a golf course and have concluded that it is not viable. Even if it were viable, the users would be drawn exclusively from the higher-income brackets and relatively few people. ... would make use of this little tract of land. I attach a paper which seeks to explain these points in more detail.

.....2/-

March 20, 1979

The Hon. D. Akers-Jones, CMG, JP
New Territories Administration
Kowloon.

We acknowledge our responsibility to provide active recreation for the public, i.e. non Club members, at Discovery Bay but feel we could better discharge this responsibility by providing some form or forms of recreation other than golf. We are therefore writing to seek your approval in principle.

(a) to abandon the concept of a Non-membership Golf Course and

(b) instead to locate either in the same general area or elsewhere within the site A suitable area or areas for active public recreation.

Once we have your approval in principle we will consider the forms of active recreation that will be most suitable and will of course keep you advised on our thinking.

Yours sincerely,
HONG KONG RESORT CO. LIMITED

Bryson Cha
Managing Director

Encl:
PC/ph

1. Conclusion

1.1 Economically, the non-membership golf course does not seem viable.

1.2 Various factors have been looked at. These are:

a. the captive market.
b. the cost of the game i.e. equipment etc.
c. the operation cost and corresponding charges for players.

2. The Captive Market

2.1 There is a total of 2,500 - 3,000 golf members in Hong Kong, about 2,500 of whom belong to the Royal HK Golf Club and 300 belong to the Shek O Country and Golf Club. The 300 odd corporate memberships issued by the RHKGC were very popular and there is a waiting list of 50. The Shek O club gives priority to applicants who hold senior executive positions. These factors indicate several points:-

2.1.1 Only a very small percentage of the population is interested or even plays golf.
2.1.2 Many enthusiastic golfers are white-collar executive workers, middle-upper income class.
2.1.3 Many companies, most probably those hiring expatriate personnel, would buy a nominee debenture for senior staff.

In toto, therefore, golf seems to be a "wealthy man's game", appealing to the higher income groups - a very small proportion of the "public".

3. The Cost to the Player

3.1 Golf clubs vary from HK$600 per set of 7 to HK$4000 per set of 14. For beginners, a set of 7 is sufficient and the cost, depending on the same brand, varies from HK$600 - HK$1500 per set.

3.2 Golf shoes is a must - minimum costing HK$240 per pair.

3.3 New golf balls cost HK$50 per dozen. (used HK$36 per dozen)

3.4 Caddy and green fees charged vary from HK$100 to HK$200. This is a variable dependant on the management and maintenance costs of the course.

In total, using minimum figures, a person who wants to play golf without belonging to a club must spend roughly HK$1000 for the equipment and HK$100 each time for green fees. The weekend green fee for visitors is now HK$150.

.....2/-

4. Cost of Operating the Golf Course

No estimate has yet been made for constructing in 18-hole course in Area 16 as shown on Master Plan 4.0 but obviously, because of the terrain, the capital outlay would be considerable.

Maintenance cost varies but roughly, depending on the configuration and quality of the course, the maintenance comes to about $1 million per year for a 18-hole golf course plus its ancillary facilities.

Moreover, from the operations of numerous golf courses around the world, it has been shown that the maximum number of players using a 18-hole golf course per day is roughly 260. Assuming that there is a total of 90 - 100 public holidays per year (Sundays, public holidays and half day Saturdays) and assuming the weather for 45 - 50 days of this period is unsuitable for playing, the total number of the public served per year on such a non-membership golf course is only 11,700 to 13,000.

Not only does such a facility serve a small percentage of the public but also it is doubtful whether a non-membership golf course would be a viable economic enterprise. In order to recover both the capital and the recurrent costs, the green fees charged per person would be phenomenal bearing in mind the frequency of use is highest during weekends only.

MEMO

From Registrar General (L.O.)

Ref. (46) in L.O. 40/1582/73 IV (NTS)

Tel. No. 5-95336

Date 3rd March 1983

To Government Land Agent (Disposal)

Your Ref. (174) in LND 1/IS/PL/82 IX

dated 28.2.83

Discovery Bay
Lot 385 in DD 352, Lantau

I have the following comments to make on the letter of the Hong Kong Resort Company Limited dated 1.2.83 :-

(a) Paragraph 3 (Page 1)

I agree that subject to Special Conditions 9 and 10 of New Grant No. 6122 if the Grantee shall have first satisfied you that not less than $600 million have been spent on some parts of the lot in respect of which a partial certificate of compliance has been issued he may under Special Condition 8(d) assign other parts of the lot solely for the purpose of development in accordance with the Master Layout Plan and in compliance with the conditions in the New Grant.

(b) Paragraph 4(a) (Page 2)

I confirm that the company's understanding with regard to Special Condition 5(a) is correct.

(c) Paragraph 4(b) (Page 2)

If you have agreed that Master Plan 5.0 has superseded the original Master Plan and if Master Plan 5.0 does not show or refer to the non-membership golf course and the cable car system, I agree that there would be no need to modify New Grant No. 6122 so far as these two facilities are concerned. I also agree that the letter confirming the agreed amendments should be registered in the District Land Office, Islands.

(L.S. Shum)
p. Registrar General
(Land Officer)

LSS/is

Land Policy Meeting Paper LPM 3/87
For discussion on 25.5.87
File Ref: BLD 1/IS/PL/82 XI

Lot 385 in DD 352, Discovery Bay, Lantau

Recommendation

Members are asked to approve that the maximum permitted gross floor area for the residential, commercial and hotel areas be fixed at 613,155 m^2 and that the minimum gross floor areas for the public works and community facilities be those as shown in the present and proposed Master Layout Plan (MLP) No.5.3 as 24,875 m^2 and 18,040 m^2 respectively.

Background

2. The Conditions of Exchange dated 10 September 1976 states tht 6,578,381.2 sq.ft. of agricultural land and 42,179.6 sq.ft. of building land totalling 6,620,560.8 sq.ft. be surrendered in exchange for the grant of 66,217,000 sq.ft. of Government land. These Conditions do not specify a maximum gross floor area permitted but refer to the development being in accordance with an approved Master Layout Plan. The basis of the exchange was basically 1.1 ratio in that the approved MLP No.3.5 permitted a gross floor area of 6.6 million sq.ft. (613,155 m^2) which excluded the Recreational Areas but included 15,794 m^2 for Public Works; 1,858 m^2 for the Fire and Police Station and 2,787 m^2 for the school totalling 20,439 m^2. The residential, commercial and hotel gross floor areas totalled 592,716 m^2. (Option 1) In 1977, the first revision to MLP No.3.5 was approved as MLP No. 4.0 which showed 6,550,000 sq.ft. (608,510 m^2) (Option 2) but wrongly coverted this to 607,000 m^2 for the residential, commercial and hotel areas. Whilst the community facilities i.e. the school, fire and police station were included in the overall permitted gross floor area of 6.6 million sq.ft. (613,155 m^2), the area devoted to Public Works (15,794 m^2) was excluded and hence the increase in the residential, commercial and hotel areas by the same amount. Subsequent revisions of the MLP's in 1981 (MLP No.5), 1983 (MLP No.5.1), 1985 (MLP No.5.2) which is the current approved plan

showed the same amount of gross floor areas (wrongly converted as 607,000 m^2) for the residential, commercial and hotel areas but showed an increase in the Public Works and community facilities to 42,915 m^2. Both these figures of 607,000 m^2 and 42,915 m^2 are also shown in the proposed MLP No.5.3 which is present under review.

Arguments

Three options are as follows:-

Option 1 - 592,716 m^2

3. This figure represents the residential, commercial and hotel gross floor areas as contained in the original MLP No.3.5. However, the total gross floor area permitted of 613,155 m^2 (6.6 million sq.ft.) includes 20,439 m^2 devoted to public works and community facilities. The Hong Kong Resort Company submits that this is inequitable in that the whole of the 613,155 m^2 should apply to the residential, commercial and hotel areas as stated under Option 3.

Option 2 - 608,510 m^2

4. This figure is shown wrongly on the currently approved MLP No.5.2 as 607,000 m^2 and is again shown on the proposed MLP No.5.3 presently under review. This figure of 607,000 m^2 originated from the first review of the original MLP No.3.5 and was approved in 1977 as MLP No.4.0, and has been shown in subsequent revisions of the MLP since. The correct figure of 608,510 m^2 represents an increase of 15,794 m^2 over Option 1 and is due wholly to the exclusion of the public works areas comprising a sewage treatment plant, storage yard, refuse disposal plant, ferry and service areas.

Option 3 - 613,155 m^2

5. As mentioned above this figure represents the maximum permitted gross floor areas on the original MLP No.3.5 and formed the basis for the 1976 exchange. Whatever reasons there may have been in 1976 for requiring Hong Kong Resort Company to surrender land on a foot-for-foot basis in exchange for

gross floor areas which included 220,000 sq.ft. (15,794 m^2) for public works and (4,645 m^2) for community facilities, the Company submits that this is no longer equitable or appropriate in that the 6.6 million sq.ft. surrendered should now equate only to the residential, commercial and hotel areas. The Company further argues that MLP No.3.5, approved in 1976, considerably under-estimated the gross floor areas required for public works and community facilities when compared with the proposed MLP No.5.3 which gives an increase of 22,476 m^2 as the following table shows:

	MLP 3.5	MLP 5.3
Public Works/ transport	15,794 m^2	24,875 m^2
Fire and Police	1,858 m^2	2,860 m^2 (as built)
School	2,787 m^2	15,180 m^2 [1,954.8 m^2 as built 891.8 m^2 being built]
	20,439 m^2	42,915 m^2

This was partly because MLP No.3.5, with 1,750 hotel rooms and 2,675 condominum units, was slanted towards a resort concept and a second home. The present MLP No.5.2 and the proposed MLP No.5.3 is devoted largely to first homes for local people and this has greatly increased the requirement for public works and community facilities. For example, in MLP No.5.2 the Company has provided a 25,075 m^2 site for a school. with 24 primary and 36 secondary classrooms - to date 11 classrooms have been built and 8 are about to be built in connection with Phase III. So far as the Fire and Police Station are concerned, not only the Company provide a bigger building, at Government's requirement, than was originally anticipated, but the cost was $6.6 million as against the $2.25 million which was allowed against the premium. The Company argues that the core infrastructure, already built at a cost of some $700 million is able to support additional gross floor area and an increased population. The reservoir has a capacity of 750 million gallons and, once adjacent catchment areas are tapped, will be able to supply a population of over 30,000. The Company deemed it prudent to build a larger reservoir than that envisaged in MLP No.3.5, approved in 1976, which had a capacity of only

600 million gallons. The Company also planned the reconstituted Tai Pak Beach, the culverts and the drains to cope with the worst storm anticipated in 200 years, whereas this could have been planned for 25 years and periodic flooding would have had to be accepted. Part of this high infrastructure cost is attributable to Government's encouragement or insistence. For example, Government encouraged the enlargement of the reservoir and insisted upon a dual carriageway with a 24 ft. road reserve through the centre of the development. As so much money had to be spent "up front" on the infrastructure, the viability of the project depends upon its full utilisation.

Conclusion

6. Option 1 relates directly to the 1976 transaction and the original MLP No.3.5 whereby the public works and community facilities were included in the permitted gross floor area of 6.6 million sq.ft. (613,155 m^2). This would be difficult to enforce now in view of MLP No.4.0 and its subsequent revisions and would obviously be strongly resisted by the Company.

7. Option 2 relates to MLP No.4.0 and its subsequent revisions whereby the public works areas of 15,794 m^2 were excluded from the overall permitted gross floor area of 6.6 million sq.ft. and reflects the present position shown on the current MLP No.5.2 (to be correctly converted from imperial to metric i.e. 6,550,000 sq.ft. = 608,510 m^2 not 607,000 m^2).

8. Option 3 seeks to exclude the community facilities in addition to the public works areas in Option 2, from the overall permitted gross floor area of 6.6 million sq.ft. (613,155 m^2). Whilst it must be recognised that in any development of this nature, there must be a certain amount of community facilities to be provided, and in this case there is a school plus Government facilities in the Fire and Police Station, it is arguable whether these should be accountable in the overall permitted gross floor area of 613,155 m^2 (6.6 million sq.ft.). However, the value of the increased gross floor area between Options 1 and 2 (4,645 m^2) worth approximately $11.6 million in premium terms is offset against the cost of constructing the increased school facilities alone of 12,393 m^2 (15,180 m^2 in MLP No.5.3 against 2,787 m^2 in MLP No. 3.5) which would cost over $24 million excluding fitting-out costs.

9. Whichever of the options are now considered appropriate, given the history of this development, will be shown on the next revision of the MLP. This figure will then form the basis for future negotiations over the premium to be charged for any further increase in the permitted gross floor area. Any subsequent increases made in respect of the public works areas and community facilities will not then be a factor which needs to be taken into account, as has been the case with the recreational facilities. If the recommendation is agreed, then this could be reinforced by a modification of the Conditions of Exchange.

Buildings & Lands Department

May 1987

Submitted by PGLA/S - GLA/HK

DOCUMENT SUMMARY

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Document Name: BLD 1/IS/PL/82 XI
Operator: pk
Author: TM/pk

Comments: L.385 DD 352 Dis.Bay

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Pages to be printed 5

Revised

Land Policy Meeting

Minutes of Meeting held at 2.30 p.m. on Monday, 25 May 1987, in Buildings and Lands Department Conference Room, 2nd Floor, Murray Building

Present:

Mr. CHAU Cham-son	-	DBL(Chairman)
Mr. SHUM Lap-shing	-	ARG
Mr. A.P. Asprey	-	DS(LW)
Mr. D.M. Scott-Will	-	PGLA(C)
Mr. F.D. Roome	-	PGLA(S)
Mrs. Rita Lau	-	PAS(NT) for RS(NT)
Mr. Frankie Lui	-	PAS(HK&K) for RS(HK&K)
Mr. C. Gately	-	AD/P (Secretary)

In Attendance:

Mr. M.J. Lewis	-	PAS(LW)
Mr. T.M. Mills	-	GLA/HK for Item III

I. Confirmation of Minutes of Last Meeting

In view of the large number of amendments proposed by DS/LW and PAS/LW, a revised set of Minutes is attached.

II. Matters Arising

2. Item V - Resumption of Private Streets (LPM Paper No. 1/87)

PAS(HK&K) reported that he had written to S for T and understood that S for T's approval was now being sought for the preparation of draft drafting instructions on the proposed amending legislation.

3. Item VI - Petrol Filling Stations

The Secretary reported that copies of the information sheet on standards and locational factors for petrol filling stations had been obtained from the Town Planning Office and sent to PAS/LW and the other Members of the Meeting.

III. Lot 385 in DD 352 Discovery Bay (LPM Paper No. 3/87) (BLD 1/IS/PL/82 XI)

4. At the request of PGLA/S, GLA/HK was invited to join the meeting for this item. The Chairman briefly explained the background to the case. The Discovery Bay project had originally been launched as a recreational resort development. Subsequent amendments to the original Master Plan had been dealt with by the NTA prior to the formation of Lands Department and the sum total now was that the Discovery Bay project represented a new town. There was little option but to accept all the previous amendments and recognize the updated version.

5. GLA/HK then briefed the meeting on the three options described in LPM Paper No. 3/87. This led to a lengthy discussion which indicated differing views on the best solution even within the Land Administration Office.

Action PGLA/S

6. It was eventually agreed to adopt Option 2 with a permitted gross floor area of 608,510 m^2 which would form the basis for future negotiations over any premium to be charged for increases in GFA in future.

IV. Re-development Orders and Exclusion Orders (Draft ExCo Paper) (BLD 1/HPY/58 III

7. DS/LW referred the meeting to the LWB re-draft of an ExCo paper prepared and circulated by BLD. He queried the need for this submission now. He also felt that there were two policies in conflict. One policy encouraged comprehensive rather than piecemeal development whilst the other policy urged people to develop sites and not sit on them for speculative purposes.

8. PGLA/S said that the BLD drafts had been discussed and agreed by LAM and circulated accordingly. He felt that the paper had been held up for so long that it was no longer worth pursuing. It should be dropped and resurrected if need be.

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本署檔號 Our Ref UB/PAC/ENG/43-3

1 February 2005

來函檔號 Your Ref CB(3)/PAC/R43

Clerk, Public Accounts Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central
Hong Kong
(Attn: Ms Miranda Hon)

Dear Ms Hon,

The Director of Audit's Report on
the results of value for money audits (Report No. 43)

Chapter 6: Grant of land at Discovery Bay and Yi Long Wan

Thank you for your letter of 26 January 2005 requesting for my comments on the Director of Lands' explanation in his letters dated 8 January 2005 and 25 January 2005 regarding paragraph 4.17 of the Audit Report, which stated that the Lands Department (Lands D) had not charged premium for the changes made in MLP 5.5 and earlier prior to 7 June 1994, and that the reasons for not assessing and/or charging premium for the changes in those Master Layout Plans (MLPs) were not documented. I set out my comments as follows:

(a) ***the reply to Question (j) on p.3 of the Acting Director of Lands' letter dated 8 January 2005 in which he stated that, "It was the normal practice not to charge premium for changes to MLPs which did not require a modification of the lease in 1970s and 80s as long as there was no increase in total gfa."***

(i) ***"Normal practice" not substantiated.*** As far as could be ascertained from the Lands D's records, the acting Director of Lands' statement was not substantiated in either the Lands Administration Office Instructions or the Revenue Assessment Manual. Audit is not aware of any approval from the Executive Council (ExCo) for such "normal practice";

(ii) ***Increase in total GFA and change in user mix.*** Audit would like to recapitulate the increase in **total GFA** and changes in **user mix** (mentioned in Note 3 in para. 2.8, para. 2.10 and Table 3 in para. 4.16 of the Audit Report), as follows:

User	MLP 3.5	MLP 4.0	MLP 4.0 increase/ (decrease) over MLP 3.5	
	GFA (m^2)	GFA (m^2)	GFA (m^2)	
(a) Housing accommodation	**–**	**524,000**	**524,000**	
(b) Resort accommodation	**401,342**	**–**	**(401,342)**	} (Note 1)
(c) Hotel accommodation	**140,284**	**32,000**	**(108,284)**	} (Note 1)
(d) Commercial	51,097	45,000	(6,097)	
(e) Others	41,341	40,600	(741)	
Total GFA per MLP	634,064	641,600	7,536	
Discrepancy (Note 2)			1,510	
Increase in total GFA			9,046	

Note 1: In April 1977, ExCo was informed of the GFA of the resort and hotel accommodation (para. 2.8 of the Audit Report refers).

Note 2: According to the Lands D, the discrepancy was due to a conversion error (from square feet to square metres).

As shown in the above table, the approval of MLP 4.0 in January 1978 had resulted in:

— an increase in total GFA over that approved in MLP 3.5; and

— a significant change in **user mix**, particularly the deletion of the resort accommodation and the **addition of 524,000 square metres housing accommodation GFA** (para. 2.10 of the Audit Report refers).

The then New Territories District Planning Division of the Town Planning Office also commented in mid-October 1977 that there was a corresponding increase of residential areas (para. 2.11 of the Audit Report refers);

(iii) it is also relevant to point out that, while the then Secretary for the New Territories was delegated with the authority to approve changes to MLPs (para. 2.9 of the Audit Report refers), Audit is not aware that he had been given any **explicit** authority of not charging premium if there was enhancement in value arising from changes in lease conditions;

(iv) ***Changes to MLP.*** According to the Director of Lands' statement in the Public Accounts Committee (PAC) hearing held on 13 December 2004, the MLPs and the lease conditions of the Discovery Bay site had equal standing and effect (line 36 on page 17, and lines 5 to 7 on page 71 of the PAC Verbatim Report dated 13 December 2004 refer). Therefore, any modification of the MLP (such as the increase in the total GFA and the significant change in user mix in MLP 4.0 over MLP 3.5) would in substance tantamount to a modification of the lease conditions;

(v) ***Deletion of public golf course and cable car system constituted lease modifications.*** The provision of the public golf course and the cable car system was a mandatory requirement stipulated in **Special Condition 5(b) of the lease** of the Discovery Bay development (paras. 3.2, 3.6 Note 17, 3.16 and 3.20 of the Audit Report refer). Moreover, because of the importance attached to the public golf course proposal, the developer's responsibility to maintain the public golf course was more particularly referred to in **Special Condition 54(c)** of the lease (para. 3.6 and Note 17 of the Audit Report refers). In the circumstances, the deletion of:

— the public golf course in MLP 5.0 in February 1982 (by the then Secretary for City and New Territories Administration — para. 3.7 of the Audit Report refers); and

— the cable car system in MLP 5.1 in February 1985 (by the Director of Lands — paras. 3.16 and 3.20 of the Audit Report refer)

constituted **modifications of the lease conditions.**

(vi) To conclude, as mentioned in para. 4.21 of the Audit Report, the Government might have suffered losses in revenue. The Lands D had not assessed the implications, financial or otherwise, of the deletion of the facilities, and the reasons for not assessing and/or charging premium for the changes in those MLPs were not documented (paras. 3.20 and 4.17 of the Audit Report refer);

(b) ***the Director of Lands' letter dated 25 January 2005***

(i) According to Section 7 of Land Administration Policy on Modification and Administrative Fees (amended on 1 April 1984), as a general rule for lease modification, "Premium will normally be required representing the difference in value between the lot as formerly restricted and as modified..... The general principle relating to the assessment of modification premia is that the lessee must pay for any enhancement in the value of the lot deriving from the modification";

(ii) in other words, premium assessment should be done by comparing the current land values under the modified lease conditions (and/or MLP) and the original lease conditions;

(iii) having regard to the general rule in (b)(i) above, the unit land cost (accommodation value) and the valuation benchmark (i.e. ground floor shop value) adopted at the date of execution of the lease conditions are not relevant to the premium assessment of a lease modification at a later date (para. 3 of the Director of Lands' letter dated 25 January 2005 refers);

(iv) in view of this, Audit does not concur with the Director of Lands' views that "adopting the highest use value among the mix in calculating the land premium to be paid by the developer upfront for the grant... had obviated the need for further premium assessment when changes in the development mix were subsequently made to the MLP as long as the total permitted GFA was not exceeded."; and

(v) furthermore, as explained in para. a(ii) above, there had been an increase in total GFA and **changes in user mix** since the change from MLP 3.5 to MLP 4.0. Audit therefore also does not concur with the Director of Lands' view quoted in (b)(iv) above and his conclusion that he does "not consider it appropriate to compute the premium for each of the changes made to the MLP prior to 7 June 1994."

A Chinese translation of this letter will be forwarded to you shortly.

Yours sincerely,

(Peter K O Wong)
for Director of Audit

c.c. Secretary for Housing, Planning and Lands
Secretary for Financial Services and the Treasury
(Attn: Mr Manfred Wong)
Director of Lands

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來函檔號 Your Ref: CB(3)/PAC/R43

25 January 2005

Clerk
Public Accounts Committee
Legislative Council
8 Jackson Road
Central
Hong Kong
(Attn: Ms Miranda Hon)
[Fax: 2537 1204]

Dear Ms Hon,

The Director of Audit's Report on the results of value for money audits (Report No. 43)

Chapter 6: Grant of land at Discovery Bay and Yi Long Wan

I write further to para. 2 of my letter of 24 January 2005 regarding the request of the PAC for information on the estimated amounts of premium involved in each of the changes made in the MLPs prior to 7 June 1994 based on the market conditions at the time when the changes were made (your letter of 2 December 2004 refers).

On the basis of file records, the original premium of $61.5 million charged for the Discovery Bay development land exchange was based on an estimated sale price of $300/ft^2 which was applied to the total GFA for all the

uses permitted (i.e. without distinguishing between commercial, residential and hotel). This valuation was supported by the analysis of the two public land auctions in Mui Wo conducted in 1973. These land auctions produced a ground floor shop value at about $300/ft^2$ and upper floor residential flat value at about $200/ft^2$ which we believe were adopted as the benchmark for valuing Discovery Bay at that time. Moreover, the unit land cost (commonly known as accommodation value (AV)) derived from the estimated sale price also compared favourably with that of two land exchanges in Mui Wo and Cheung Chau for hotel development in the early 1970s.

The application of $300/ft^2$ to the total GFA permitted under the approved MLP meant that the enhancement, if any, in subsequent changes to the MLP had already been captured in the approval of the first MLP by adopting the highest use value among the mix in calculating the land premium to be paid by the developer upfront for the grant. This had obviated the need for further premium assessment when changes in the development mix were subsequently made to the MLP as long as the total permitted GFA was not exceeded. That being the case, we do not consider it appropriate to compute the premium for each of the changes made to the MLP prior to 7 June 1994.

Yours sincerely,

(Patrick Lau)
Director of Lands

c.c. Secretary for Housing, Planning and Lands
Secretary for Financial Services and the Treasury
(Attn: Mr Manfred WONG)
Director of Audit

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16 February 2005

Ms Miranda Hon
Clerk to PAC
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Legislative Council Building
8 Jackson Road
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Hong Kong
[Fax: 2537 1204]

Dear Ms Hon,

The Director of Audit's Report on the results of value for money audits (Report No. 43)

Chapter 6: Grant of land at Discovery Bay and Yi Long Wan

Please refer to the Director of Audit's letter to you dated 1 February 2005 copied to me and others. While the concern of the Director of Audit is appreciated, it is incumbent on me to make sure that the issues involved are understood in the proper context. I write therefore to set the record straight and to facilitate consideration by the Public Accounts Committee in perspective.

2. To set the scene, I wish to set out the basic considerations underlying the handling of the Discovery Bay case in the seventies and eighties –

(i) Since the subject land grant contained an MLP clause to enable the Administration to exercise detailed control over the implementation of the development within the approved parameters stipulated in the lease conditions, premium would not be charged on each and every occasion when amendments to the MLP were made, unless such changes would require lease modification and/or there was an increase in the total permitted GFA (for revenue generating purposes). This practice adopted for cases under similar situations in that period was also adopted in this case.

(ii) How the premium for the land transaction concerned was calculated was explained in my letter dated 25 January 2005, namely the **highest land use value among any of the permissible mix** as specified in the MLP was adopted. This means that Government was able to capture the highest revenue income at the outset without any downside risk due to fluctuations in the property market. On the part of the developer, the certainty in his financial commitment under the land transaction plus the flexibility of being able to make more timely decisions in response to changes in market conditions would arguably be essential for a project of this magnitude and nature.

(iii) On the above basis, as explained in my letter dated 25 January, 2005, this has obviated the need for further premium assessment when changes in the development mix were subsequently made to the MLP as long as the total permitted (revenue-generating) GFA was not exceeded.

3. I would now offer my more specific response to the Director of Audit's comments, as follows:

Audit's Comments	Our Response
(a) ***the reply to Question (j) on p.3 of the Acting Director of Lands' letter***	Our response as provided, is factual to the best of our knowledge. It should be

dated 8 January 2005 in which he states that, "It was the normal practice not to charge premium for changes to MLPs which did not require a modification of the lease in 1970s and 80s as long as there was no increase in total GFA." (i)***"Normal practice" not substantiated.*** As far as could be ascertained from the Lands D's records, the acting Director of Lands' statement was not substantiated in either the Lands Administration Office Instructions or the Revenue Assessment Manual. Audit is not aware of any approval from the Executive Council (ExCo) for such "normal practice";	appreciated that most land administrative practices evolve over time in the light of experience and changes in circumstances and the Lands Department did not come into existence until 1982. Our understanding of the practice prevailing two to three decades ago should not be negated simply by the Director of Audit being unable to locate any written material to substantiate our statement.
(ii) ***Increase in total GFA and change in user mix.*** Audit would like to recapitulate the increase in **total GFA** and changes in user mix (mentioned in Note 3 in para 2.8, para 2.10 and Table 3 in para 4.16 of the Audit Report), as follows (see footnote on the next page):	It has to be re-emphasized that, despite the changes to the GFA in various MLPs up to MLP 5.5, the revenue – generating GFA did not exceed the permitted maximum of 608,510m^2 as determined by the Land Policy Meeting (LPM) held on 25 May 1987. Copies of the paper and the minutes of the LPM have been forwarded to the PAC at its second hearing on 13 December 2004.

(iii) it is also relevant to point out that, while the then Secretary for the New Territories was delegated with the authority to approve changes to MLPs (para 2.9 of the Audit Report refers), Audit is not aware that he had been given any **explicit** authority of not charging premium if there was enhancement in value arising from changes in lease conditions;	Please see paragraph 2 above. The last paragraph of my letter dated 25 January 2005 is relevant.
(iv) ***Changes to MLP.*** According to Director of Lands' statement in the Public Accounts Committee (PAC) hearing held on 13 December 2004, the MLPs and the lease conditions of the Discovery Bay site had equal standing and effect (line 36 on page 17, and lines 5 to 7 on page 71 of the PAC Verbatim Report dated 13 December 2004 refer). Therefore, any modification of the MLP (such as the increase in the total GFA and the significant change in user mix in MLP 4.0 over MLP 3.5) would in substance	Please see paragraph 2 above. My letter dated 25 January 2005 is also relevant.

	tantamount to a modification of the lease conditions;	
(v)	***Deletion of public golf course and cable car system constituted lease modifications.*** The provision of the public golf course and the cable car system was a mandatory requirement stipulated in **Special Condition 5(b) of the lease** of the Discovery Bay development (paras 3.2, 3.6 Note 17, 3.16 and 3.20 of the Audit Report refer). Moreover, because of the importance attached to the public golf course proposal, the developer's responsibility to maintain the public golf course was more particularly referred to in **Special Condition 54(c)** of the lease (para 3.6 and Note 17 of the Audit Report refers). In the circumstances, the deletion of: - the public golf course in MLP 5.0 in February 1982 (by the then Secretary for City and New Territories Administration – para 3.7 of the Audit Report	The deletion was dealt with by way of consent given under the MLP clause set out in SC 6 of the Conditions of Exchange which reads as follows : - "*.....the whole of the Lot shall be developed or redeveloped to the satisfaction of the Secretary in conformity and in accordance with the Master Layout Plan approved and signed by the Secretary who shall retain a copy thereof, and no alterations whatsoever shall be made by the Grantee to the Master Layout Plan or to the development or any redevelopment without the prior consent in writing of the Secretary,.....*" The then Registrar General in 1983 had advised that there would be no need to modify the lease insofar as the deletion of the non-membership golf course and the cable car system were concerned. A copy of the advice has been forwarded to the PAC at its second hearing on 13 December 2004.

refers); and - the cable car system in MLP 5.1 in February 1985 (by the Director of Lands – paras 3.16 and 3.20 of the Audit Report refer). constituted **modifications of the lease conditions.**	
(vi) To conclude, as mentioned in para 4.21 of the Audit Report, the Government might have suffered losses in revenue. The Lands D had not assessed the implications, financial or otherwise, of the deletion of the facilities, and the reasons for not assessing and/or charging premium for the changes in those MLPs were not documented (paras 3.20 and 4.17 of the Audit Report refer)	As explained in my letter dated 25 January 2005 we do not consider that there might have been loss in revenue as suggested and the need to calculate such figures does not arise.
(b) The Director of Lands' letter dated 25 January 2005. (i) According to Section 7 of Land Administration Policy on Modification and Administrative Fees (amended on 1 April 1984), as a general rule for lease	S. 7 of LAP remains a valid rule for general application for assessing premium arising from lease modifications. The case in question is not inconsistent with s. 7 of LAP. As explained in my letter dated 25 January 2005 and set out above we do not concur with the Director of Audit's views that a series of further premiums should have been collected for changes in

	modification, "Premium will normally be required representing the difference in value between the lot as formerly restricted and as modified ..... The general principle relating to the assessment of modification premia is that the lessee must pay for any enhancement in the value of the lot deriving from the modification"; (ii) in other words, premium assessment should be done by comparing the current land values under the modified lease conditions (and/or MLP) and the original lease conditions; (iii) having regard to the general rule in (b)(i) above, the unit land cost (accommodation value) and the valuation benchmark (i.e. ground floor shop value) adopted at the date of execution of the lease conditions are not relevant to the premium assessment of a lease modification at a later date (para 3 of the Director of Lands' letter dated 25 January 2005 refers);	the development mix, even though the revenue-generating GFA has not been exceeded and the types of uses are not beyond what were allowed in the conditions of exchange executed in 1976. Such suggestion fails to take account of the established facts of this case that the developer had already paid for such flexibility at the time of the original grant.

(iv) in view of this, Audit does not concur with the Director of Lands' views that "adopting the highest use value among the mix in calculating the land premium to be paid by the developer upfront for the grant ... had obviated the need for further premium assessment when changes in the development mix were subsequently made to the MLP as long as the total permitted GFA was not exceeded"; and (v) furthermore, as explained in para a(ii) above, there had been an increase in total GFA and changes in user mix since the change from MLP 3.5 to MLP 4.0. Audit therefore also does not concur with the Director of Lands' view quoted in (b)(iv) above and his conclusion that he does "not consider it appropriate to compute the premium for each of the changes made to the MLP prior to 7 June 1994."	

In conclusion, we strongly disagree with the views held by the Director of Audit in his letter of 1 February 2005 especially that "the Government might have suffered losses in revenue", having regard to the manner that the original premium was calculated. The Director of Audit's suggestion that a series of further premiums should have been collected for changes in the development mix up to 608,510m^2 (revenue-generating GFA) would constitute double charging since the facts established indicate that the developer, at the time of the original grant, had already paid for the flexibility of varying the development mix subsequently reflected in successive MLPs.

I should be grateful if the above comments would be taken into account in preparing and publishing the PAC's final report.

Yours sincerely,

(Patrick Lau)
Director of Lands

c.c. Secretary for Housing, Planning and Lands
Secretary for Financial Services and the Treasury
(Attn: Mr Manfred Wong)
Director of Audit

地政總署
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8 January 2005

Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

(Attn : Ms Miranda Hon)

Dear Ms Hon,

The Director of Audit's Report on the results of value for money audits (Report No. 43)

Chapter 6 : Grant of land at Discovery Bay and Yi Long Wan

I refer to your letter of 17th December 2004 and as requested provide the following additional information :-

(a) It was mentioned at the hearing that the Lands Department (Lands D) had formulated measures regarding the setting out of boundaries of a government site before disposal of the site (paragraph 5.12(b)(i) of the Audit Report refers). What the details of the measures are.

Sites for public auction or tender are normally fenced and their boundaries will be set out before sale. For sites granted by private treaty grant and extension, the plans in question include boundary dimensions and bearings, and the site area to facilitate the design of the development. The site boundaries will be set out on ground in advance or within 3 months after the completion of the land transaction so that the positions of the boundary marks can be shown to the landowner or his/her representative. Thereafter, it is the landowner's responsibility to protect the boundary marks placed on ground.

(b) ***A copy of the letter dated 10 August 1981 from Developer A to the District Office/Islands applying for a Short Term Tenancy (STT) for government land at Wong Chuk Long, which adjoins the western end of the south golf course at Discovery Bay (DB) (paragraph 5.14 of the Audit Report refers).***

Developer A's letter to DO/Is dated 10.8.1981 is attached at Appendix I.

(c) ***Whether the exclusion of the encroached government land at Wong Chuk Long from the boundary of the Lantau North (Extension) Country Park in 2001 was partly due to the fact that Developer A had repeatedly applied for a STT for the land (paragraph 5.20 of the Audit Report refers).***

LandsD's files do not contain any record showing the reason(s) for excluding the encroached government land at Wong Chuk Long from the boundary of the proposed Lantau North (Extension) Country Park in 2001. The assistance of Agriculture, Fisheries and Conservation Department and Planning Department is being sought in this regard.

(d) ***When the plan for the Lantau North Country Park extension was first proposed and finally approved.***

The draft plan in respect of the proposed Lantau North (Extension) Country Park was gazetted for public inspection on 13.7.2001. The draft plan has not yet been approved by the CE in Council.

(e) ***According to paragraph 5.15 of the Audit Report, Developer A said that the extension of the area for the golf course had been agreed in prior meetings with the Secretary for the New Territories (SNT). Whether there were records of those meetings; whether Lands D had ascertained with the SNT at that time the truthfulness of Developer A's claim of agreement with the SNT.***

LandsD's files do not contain any record of discussions between the then SNT and Developer A. Similarly we do not have any file record showing whether or not LandsD had ascertained with the then SNT the truthfulness of Developer A's claim of agreement.

(f) ***A copy of the paper of 29 July 2002 from the Lands D to the Legislative Council (paragraphs 5.23 and 5.24 of the Audit Report refer).***

D of L's letter to LegCo dated 29.7.2002 (with enclosures) is attached at Appendix II.

(g) ***According to paragraph 5.33(a) of the Audit Report, the Lands D had not taken timely rectification action on the encroachments on government land at DB due to the fact that the DB development was still on-going. Whether this was a normal arrangement in the 1980s to address encroachment on government land, and whether there were cases in the 1980s which were handled in a similar manner.***

This approach was not the normal arrangement in the 1980s to address encroachment on government land.

(h) ***The reasons why there was a provision concerning the rate of payment for any excess or deficiency in area of the site in the General Conditions of the lease conditions of the Yi Long Wan development, but not in those of the DB development (2nd inset under General Condition 5(a) in Appendix B of the Audit Report refers).***

The records of Master Lease conditions in LandsD show that between the grant of the lot at Yi Long Wan in 1975 and the Discovery Bay in 1976 there was a change in approach and the rate of payment condition was dropped.

(i) ***The reasons for the different approaches in addressing the land encroachment problem at DB and Yi Long Wan although both developments were located in Lantau Island and developed in the same period.***

The golf course encroachment was (and remains) an unbuilt open area operated by a single entity. The grant of a STT was the appropriate means to regularize it. The circumstances of the encroachment at Yi Long Wan involving two privately owned residential blocks in multiple ownership constructed partially outside the lot are quite different from those of Discovery Bay and therefore warrant different treatment.

(j) ***Regarding the amount of STT rent paid by Developer A (paragraph 5.26 of the Audit Report refers), the amount of rent originally proposed by the Lands D and the estimated amount of revenue that could have been generated by the encroached land if it had not been used by Developer A.***

The negotiated rental of $7.23M to cover the 21 year period from 27.10.1982 to 26.10.2003 was based on evidence of market transactions. The figure initially proposed in the negotiation by LandsD was $11.2M for the same period.

The 3 encroached areas are remote and hard to access. The areas adjoining the encroached land at Wong Chuk Long are either steep sloping government land or private land owned by Developer A. As regards the other two encroached areas, they are largely sloping areas. We do not consider that they are capable of separate alienation or use by any party other than Developer A and as such no revenue would have been generated if they had not been used by Developer A.

(k) With reference to paragraph 5.24(c) of the Audit Report, the legal basis of the Lands D's view that "It could be argued that a form of tenancy had been in place".

LandsD's view is based on the legal advice that the letter of 16.3.1983 created a relationship of landlord and tenant.

Yours sincerely,

(J. S. Corrigall)
Director of Lands (Ag)

c c Secretary for Housing, Planning and Lands]
Secretary for Financial Services and the Treasury]
(Attn : Mr Manfred Wong)] - w/o encl
Director of Audit]
AA/SHPL]

Encl

[DiscHay_Ques02]

Our Ref. P-3i/2393

District Officer
District Office, Islands
4/F International Building
Hong Kong

10th August 1981

Attention: Mr Bernard Chan

Dear Sir

PROPOSED TENANCY - WONG CHUK LONG

We wish to apply for a short term tenancy of the crown land coloured pink on the attached plan amounting to approximately 50,000 sq mtr. We require this land in order to ensure that a full 18 holes course is available for play by our projected opening date in the Autumn of 1982.

Variations in the building programme for the additional facilities in the Diana Farm area will mean that this area will not be completed in the time frame previously envisaged.

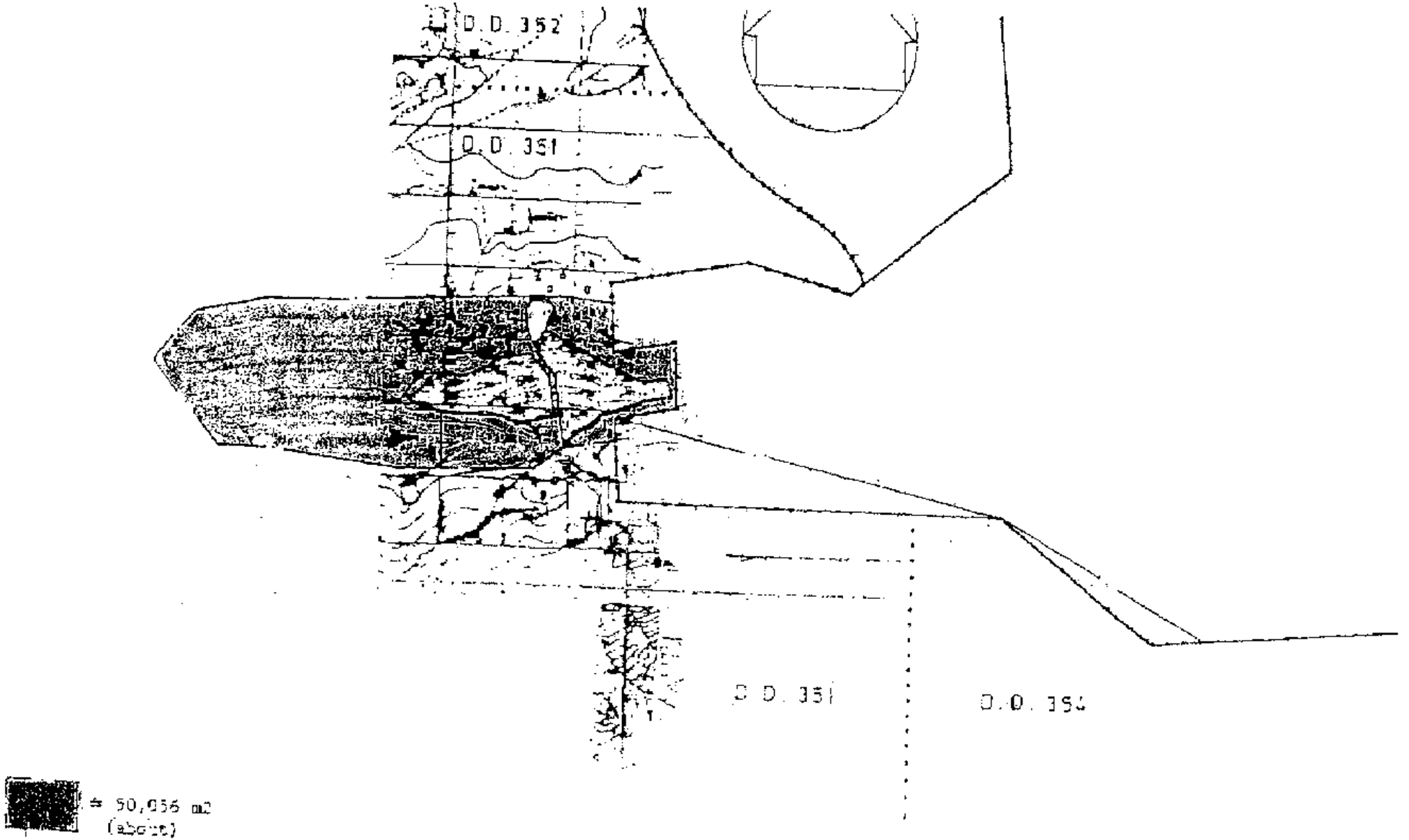
We trust that this request will meet with your favourable consideration and look forward to hearing from you in the near future.

Yours faithfully
HONG KONG RESORT CO. LIMITED

Roger B Thompson
Administrative Director

RT/rm

Enc



(Subject to survey)

地政總署
LANDS DEPARTMENT

地政惠民 廿載耕耘
Twenty Years of Quality Service

Appendix II

我們矢志竭力不懈
We strive to achie

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(Fax No. : 2521 7518)

29 July 2002

Secretary General,
Legislative Council Secretariat,
Legislative Council Building,
8 Jackson Road,
Central,
Hong Kong.

(Attn.: Miss E. Wong)

Dear Miss Wong,

Occupation of Government Land
Discovery Bay Golf Course

I refer to your letter dated 19 July 2002 and would respond to the points raised therein as follows:-

(1) (a) The lot of Discovery Bay (DB) was granted to Hong Kong Resort Company Limited (HKR) by Conditions of Exchange (New Grant No. 6122) dated 10 September, 1976. Pursuant to Special Condition No. 54(a) of the Conditions of Exchange (see **Annex A**), HKR is permitted to operate a golf course or golf courses in the area shown coloured red hatched black on the grant plan (see **Annex B**). Special Condition 54(c) also requires HKR to provide not less than one 18-hole non-membership golf course open for use by members of the public. The original proposal as shown on Master Plan (MP) 4.0 (see **Annex C**) indicates the

provision of a non-membership golf course in the north. Another golf course was also proposed in the southern part of the lot. In 1979, HKR (see **Annex D**) requested for Government's agreement to (i) abandon the non-membership golf course which, as explained by HKR, would only serve a limited number of the public and not be economically viable; and (ii) allow HKR to provide either in the same area or elsewhere on DB alternative recreation facilities that would benefit a larger sector of the public. The provision of alternative public recreational facilities in lieu of non-membership golf course was considered acceptable by Government. The proposal was approved under MP No.5 (see **Annex E**) on 25 February 1982. The then Director of Lands in his letter dated 16 March 1983 and 21 September 1983 (see **Annexes F and G**) to HKR also confirmed that a separate lease modification was not required in view of the approved MP 5.0.

(b) On 10 August 1981, HKR applied to the Government for a Short Term Tenancy (STT) (see **Annex H**) to cover adjoining government land at Wong Chuk Long in order to make way for a full 18-hole golf course. Although no records on processing HKR's application can be traced, it is, however, noted from the Building Plan Conference (BPC) Notes dated 7 October 1982 (see **Annex I**) in respect of the Supplementary Master Plan (SMP) for Golf Course and Clubhouse – Stage I that the 4th and 5th holes of the golf course are located outside the DB lot. It is also stated in the Notes that the occupation of government land would be included in Government's future rectification exercise. The SMP was approved by the BPC of Lands Department on 27 October 1982 (see **Annex J**).

(c) Presumably, the then government might have contemplated to apply General Condition No. 3(a) of the Conditions of Exchange of DB to rectify the lot boundaries at a later stage rather than granting a STT to HKR. However, there is no file record to prove this intention. General Condition No. 3(a) stipulates that "*The boundaries of the lot shall be determined by the Secretary (whose decision shall be final) before the issue of the Crown Lease*". By his letter dated 16 March 1983 to HKR (3rd paragraph) (see **Annex F**), the then Director of Lands stated that "**It may therefore be more appropriate to await the issue of the Crown Lease at the end of the whole development whereupon Government will carry out a survey of the lot boundaries**".

(d) On 17 October 1996, HKR applied again for a STT (see **Annex K**) to cover the concerned government land which was already in use as part of the south golf course. Following consultation with the concerned departments, DLO/Is on 12 May 1998 rejected the application on the ground that the government land involved was within the proposed extension of the Lantau North Country Park at that time (see **Annex L**). HKR was asked to reinstate the government land. In response to DLO/Is's letter of 27 May 2002 (see **Annex M**) requiring reinstatement of the occupied government land, HKR requested to re-activate its previous application for a STT to cover the extended golf course (see **Annex N**).

(e) It can be seen from the above that the lease governing the DB development originally made provision for both a private and public golf course. The public golf course proposal in the north was abandoned as mentioned in para. (1)(a). The existing golf course in the south was never planned as a public golf course from the very beginning. Therefore, the question of changing the nature of the golf course from public to private is considered not relevant. HKR's proposal to replace the requirement of a public golf course by alternative public recreational facilities which would benefit a large sector of the public is not unreasonable bearing in mind that golf playing was not so popular in Hong Kong twenty years ago. Government was aware of the occupation of government land in the early 1980s and it was then decided that the issue be addressed in the future boundary rectification exercise. Given the historical background above, I cannot agree that there has been mal-administration by Government in handling the matter.

(2) Government is considering to rectify the situation by the issue of a STT to cover the areas of the DB golf course which have occupied government land. It is intended to collect rent, to be assessed on full market rent basis, with effect from the time of occupation. As the collection of rates is under the purview of the Rating and Valuation Department(R&V), you may wish to write to R & V for their advice.

(3) Change in public recreational facility provisions in the course of large scale development like DB is not unreasonable. According to Land Registry record, the date of the (Principal) Deed of

Mutual Covenant of DB is 30 September 1982. The completed houses/flats in DB were assigned and occupied after the approval of MP 5.0 (approved on 25 February 1982) under which the non-membership golf course had already been abandoned. Therefore, the question of payment of compensation to DB residents in respect of the change is considered not relevant.

(4) The total area of occupation on government land is in fact less than 4% of the total area of the golf course (about 104ha) within the private land in DB. It is considered that such a comparatively small additional area would not have any adverse impact on the residents of DB.

Kindly note that except for Annexes A and B, all other annexes either involve third party information or internal discussion and advice under the Code of Access to Information and should not be released to the complainant/District Council concerned.

Yours sincerely,

(Ms. Olga LAM)
for Director of Lands

Encls.

c.c. w/o encl. DPO/SK&Is, PlanD (Attn.: Ms. C.M. LI) Fax : 2890 5149
DEP, EPD (Attn.: Mr. Y.M. HUI) Fax : 2591 0558
DAFC, AFCD (Attn.: Miss C.Y. HO) Fax : 2377 4427
DO/Is, HAD (Attn.: Miss Kathy CHAN) Fax : 2815 2291
DLO/Is (Attn.: Mrs. Florence TSANG) Fax : 2850 5104

OL/FT/LSK/cf

Annex F

16th March, 1983

(178) in LEO 1/IS/PL/82 IX

Hong Kong Resort Co. Ltd.,
26/F, Realty Building,
71 Des Voeux Road, Central,
Hong Kong.

Dear Sirs,

Discovery Bay - Lot 385 in DD 352
Conditions of Exchange

Thank you for your letter dated 1st February 1983 which I have discussed with the Registrar General. I can now confirm that, subject to Special Conditions 9 and 10 of New Grant No. 6122, once I am satisfied that not less than $600 million has been spent on some parts of the lot in respect of which a partial certificate of compliance has been issued you may under Special Condition 8(d) assign other parts of the lot solely for the purpose of development in accordance with the Master Layout Plan No. 5 and in compliance with the conditions in New Grant No. 6122.

I also confirm that your understanding in paragraph 4(a) (page 2) in respect of Special Condition 5(a) is correct, and that in view of the agreed Master Layout Plan No. 5 there is no need for a separate modification concerning the non-membership golf course. However, since the cable-car system is shown, a separate modification would in theory be necessary, but deletion of this in any future revision of the Master Layout Plan would obviate this necessity.

Although the original lease plan with the subsequent golf course extension, enlargement of the reservoir etc. is now largely historical, the present MLP No. 5 is not subject to Government survey and can only be a guide to your Company's present and future intentions. In other words neither plan at this stage is really satisfactory. It may therefore be more appropriate to await the issue of the Crown Lease at the end of the whole development whereupon Government will carry out a survey of the lot boundaries.

Finally, I agree that a formal letter should in due course be registered in the District Lands Office, Islands confirming the amendments so far agreed.

Yours faithfully,

(Sgd.) J. R. Todd
(J.R. Todd)
Director of Lands

地 政 總 署
LANDS DEPARTMENT

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本署檔號 Our Ref: LD 1/IS/PL/82 (TC) XXIII
來函檔號 Your Ref: CB(3)/PAC/R43

24 January 2005

Clerk
Public Accounts Committee
Legislation Council Building
8 Jackson Road
Central
Hong Kong
(Attn: Ms Miranda Hon)
[Fax: 2537 1204]

Dear Ms Hon,

The Director of Audit's Report on the results of value for money audits (Report No. 43)

Chapter 6: Grant of land at Discovery Bay and Yi Long Wan

I refer to your letter of 13th January 2005 and as requested provide the following additional information.

(a) An elaboration of the basis for the legal advice that "the letter of 16.3.1983 created a relationship of landlord and tenant" (the reply to question (k) in the Director's letter of 8 January 2005 (PAC/R43/CH6/GEN/9) and paragraph 5.24(c) of the Audit Report refer).

In considering Developer A's application for a Short Term Tenancy (STT) in July 2002, Lands D had taken legal advice on the status of

the encroached land. The advice was that Government had acknowledged the occupation of the land by Developer A in a series of correspondence over a number of years since March 1983 and had indicated in writing that the encroachment would be regularized upon issue of the Crown Lease at the completion of the whole development when Government would carry out a survey of the lot boundaries. In October 1996, Developer A applied for a STT of the encroached land. This was rejected at the time as the land was within the proposed extended limits of the Lantau North Country Park. Developer A reactivated their application for a STT in mid 2002, and this was approved by the District Lands Conference in July 2002.

Based on the foregoing sequence of events and course of conduct by Government in its dealings with Developer A regarding the encroached land between the time of Government becoming aware of the encroachment in 1982 and issue of a formal STT in 2002, legal advice to Lands D was that a form of tenancy would have been created. Since Developer A has been occupying the encroached land with the full knowledge and acquiescence of Government in this period (with the intention of regularization upon the completion of the development of Discovery Bay) it could not be said to be a trespasser. It was a tenant at will from the Government, subject to agreement of boundaries and any other terms, including rent or mesne profits payable for the period of its occupation prior to issue of the formal STT. It was on this basis that Government was entitled to demand the payment of the rent or mesne profits for the period from 1982 to mid 2002.

(b) ***Regarding the Chief Secretary (CS)'s decision in 1985 that there was no need to report to the Executive Council (ExCo) on the change in concept of the Discovery Bay development (paragraphs 2.19 to 2.21 of the Audit Report refer),Sir David Akers-Jones stated in his reply of 5 January 2005 to the question on 2.21 (L2) (p.8 of Part 2) that he "accepted DPC's advice that it was unnecessary to refer to ExCo since the resort concept was maintained and the changes did not represent a major change in principle". In this connection, the Committee would like to know whether, apart from the file minute dated 17 October 1985 from Mr J R Todd (SLW) to the CS, there are any other documents/information relating to the DPC's advice to the CS***

and the process leading to CS's decision, which has not been provided to the Committee. If there is such documents/information, the Committee would like to be provided with a copy of the documents and/or the information.

I would confirm that, to the best of our knowledge, apart from that already provided to the Public Accounts Committee, there are no other relevant documents/information relating to the DPC's advice to the CS and the process leading to the CS's decision.

With regard to answer (c) of my letter dated 8th January 2005 relating to your letter of 17th December 2004 I would supplement as follows :

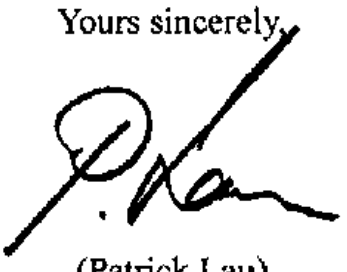
(c) ***Whether the exclusion of the encroached government land at Wong Chuk Long from the boundary of Lantau North (Extension) Country Park in 2001 was partly due to the fact that Developer A had repeatedly applied for a STT for the land.***

The boundary of Lantau North (Extension) Country Park originally proposed in 1996 on the one hand included part of the golf course area on encroached Government land but on the other hand excluded another part on encroached Government land. Following consultation among concerned Government departments, the Director of Agriculture, Fisheries and Conservation excluded the entire encroached area from the proposed boundary of Lantau North (Extension) Country Park in 1999. This was reflected in the draft map for the Lantau North (Extension) Country Park gazetted in July 2001 and the Discovery Bay Outline Zoning Plan gazetted in September 2001. There was no information on record that the STT applications by Developer A had influenced the determination of the proposed boundary of an extended Lantau North Country Park.

The PAC has also requested information on the estimated amounts of premium involved in each of the changes made in the MLPs prior to 7 June 1994 based on the market conditions at the time when the changes were made (your letter of 2 December 2004 refers). I would revert on this question separately.

The PAC may also be interested to know that the dimension plan survey for the Discovery Bay development boundary has now been completed by the District Survey Office/Islands, and the setting out work will be completed by end of March 2005 (paras. 5.5 and 5.12(c) of the Audit Report refer).

Yours sincerely,



(Patrick Lau)
Director of Lands

c.c. Secretary for Housing, Planning and Lands
Secretary for Financial Services and the Treasury
(Attn: Mr Manfred WONG)
Director of Audit

Sir David Akers-Jones

Unit 333, Block 4, Parkview
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Tel: (852) 2491 9318
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E-mail: akersjon@pacific.net.hk

5 January 2005

Dr. the Hon Philip Wong, GBS
Chairman,
Public Accounts Committee
Legislative Council, HKSAR

Dear Sir,

Response to Public Accounts Committee (PAC) Queries
Chapter 6, Director of Audit Report No.43

Further to the letter from the Clerk of the PAC dated 14 Dec 2004, I submit my response in two parts as attached:

Part 1 – a general statement setting out the historical background to the Discovery Bay development.

Reading the transcripts of the public hearings, it seems to me that some of the expressed views on the matter lack an understanding of the period. They also reflect an apparent mistrust in the government which facilitated Hong Kong's economic development during those years. The information I have provided to the best of my knowledge and memory is due to my belief that the issues must be looked at against the whole background of the seventies and eighties during which time the developments took place.

Part 2 includes a point-to-point response to questions raised in the letter.

I have answered your questions & those raised by members of the PAC to the best of my ability and there is nothing I can usefully add to what I have written. You will appreciate that with limitation of memory, at the age of 77 and 25 years later, I cannot recall detail of the discussions on the issues. However after having read my response, if members have supplementary questions, I should be grateful if they

Sir David Akers-Jones

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would let me know what they are and I shall be glad to try to answer them.

I have arranged for this submission to be translated into Chinese and shall send it to you by 7 January.

Yours faithfully,

David Akers-Jones
Encl.

050105_DAJ_final reply to Cover ltr & Part i

Hong Kong in 1970's to 1980's

Surrender & Re-grant of Land

The Discovery Bay development originated in 1973 when Exco authorized the Government to proceed with a scheme at Discovery Bay proposed by Mr. Edward Wong who planned to embark on a holiday resort and residential/commercial development at Discovery Bay. In 1976, Exco approved an exchange of land to Mr. Wong's company, Hong Kong Resort Company Limited. The exchange was partly land he owned and partly a Letter B exchange ie a surrender and re-grant of land he owned which he wished to develop in a certain way rather than a fresh private treaty grant.

Normally land exchanges or surrenders and re-grants do not need to go to Exco for approval because the developer is, in effect, developing his own land in accordance with a relevant Zoning Plan. On this occasion, it went to Exco probably because it involved breaking ground in the New Territories and was a very large innovative project. I was familiar with the area having first visited it as long ago as 1958 to inspect an abattoir.

In 1977, when Mr. Wong's business went into liquidation and the development was in the hands of the mortgagee bank, another developer (a joint venture) took over the development (by buying Mr. Wong's shares in his company) with the encouragement of the Hong Kong Government which feared that this huge project would founder. Understandably the Government did not want the land to remain under the control of the mortgagee.

Economic Growth in 1970's

In 1966 and 1967, Hong Kong was hit by riots and strikes. Social problems, housing shortages, unemployment were general while the economy was weak – in Christopher Howe's *The Political Economy of Hong Kong Since Reversion to China*, real GDP growth between 1973 to 75 was recorded as 1.3% on average per annum only. This was followed by a period of accelerating growth which presented government officials with a challenge of a different nature

Hong Kong enjoyed this period of rapid economic growth in the 70's under the

governorship of the late Lord Murray MacLehose. His administration saw him moderating the traditional attitude of disinterest in community problems and foresaw the need for a more balanced, progressive and proactive social development regime. Lord MacLehose's 10-year reign contributed to many achievements by Hong Kong, most notably the following:

- An ambitious housing and new town development programme which provided homes for the great number of immigrants and refugees.
- Development of the New Territories to provide sites both for huge housing developments and industrial parks. Tsuen Wan, Kwai Chung, Tai Po, Tuen Mun and Shatin were all 'products' of this era.
- An enviable transport infrastructure with the construction of the MTR system.
- Thorough Government reforms to reduce red-tape and optimize efficiency to meet spiraling community development and infrastructure demands.
- Forceful and effective combat against widespread corruption by the introduction of the ICAC which answered direct to the then Governor of Hong Kong.

Administrative Procedures

It is against this background that from as long ago as 1960 when public housing and urban development was extended to the New Territories, the NT Administration greatly strengthened its land administration with the attachment of professional chartered surveyors and lawyers to oversee land transactions with technical knowledge and expertise to ensure the public interest was properly safeguarded. As development proceeded, the number of estate surveyors seconded by the Director of Land and Survey increased dramatically while the staff of lawyers was commensurately increased.

In 1973, at the time of government's initiative to build homes for 1.5m people in the New Territories and new towns, I was appointed as the Secretary for the New Territories (SNT). This was a new post replacing the former District Commissioner. The SNT was on all fours with other government Secretaries, and he was responsible for implementing government policies and development in the New Territories. I remained in this post for an unprecedented period of twelve years. It is curious, to say the least, that the matters raised by the Director of Audit about the seventies and eighties are raised after a period of 20 –25 years and were not raised at the time or in subsequent years.

Among my staff during those years was a team of estate surveyors headed by a Principal Government Land Agent (PGLA) responsible to me as Secretary. The policies and practices of the urban area were applied to the New Territories.

Because of the relatively small number of large development sites, there were few Master Layout Plans (MLPs) in the 1970's. The practice for dealing with these plans, including the question of whether a premium should be charged, involved examination by experienced chartered surveyors to see if each complied with the underlying lease and with the appropriate development criteria. Thus the Discovery Bay MLP and changes to it emphatically required professional officers to take premium considerations of the lease into account.

For the approval of MLPs for the New Territories, the process would have the applicant typically sending the MLP to the District Office (DO), headed by an Administrative Grade Officer. The Estate Surveyor in the district, a chartered surveyor, would examine it and consult other departments where necessary before putting it with other land cases to the monthly District Conference (later the District Land Conference (DLC)) headed by the DO and attended by the Senior Estate Surveyor (SES), later a Chief Estate Surveyor (CES), and representatives of other departments. The views of all departments were taken into account.

When the District Conference or DLC approved the MLP, it would go to New Territories Administration Headquarters to PGLA/NT (via a senior officer such as a Chief Estate Surveyor) and my recollection is that PGLA/NT would table it either at the monthly New Territories Lands Meeting (NTLM) or at a similar meeting of senior administrative officers, estate surveyors and lawyers. Only when NTLM or the group of officers recommended its approval would PGLA/NT put the recommendation by a minute on the file to me as SNT for formal approval. PGLA's recommendation therefore would represent the collective view of the professional estate survey staff.

I would not have approved a MLP or changes to a MLP or any land transaction that had to be dealt with by me without a full discussion with the PGLA. If the PGLA/NT thought a premium or other conditions of approval were justified, he would have recorded it and action would have been taken.

For valuations, there was also a set procedure. A Valuation Committee met each month in HQ and was made up of Senior Estate Surveyors and Estate Surveyors from all districts. Valuations for premium etc. were made by the District Estate

Surveyors and then discussed and approved by the central Valuation Committee. If an estate surveyor in a district was uncertain whether a MLP had a valuation implication he would put it to the Valuation Committee, after discussing it with his senior. The MLP then went to PGLA/NT and NTLM or to other senior officers. Appeals by developers from Valuation Committee in NTA/HQ would go to urban area Valuation Committee.

While there were few MLPs processed in this period, the question of premium for a change for MLP was always actively considered. These were well known procedures understood by the staff. And as will be gathered from this description well established administrative procedures were in place to ensure that decisions could not be made by a single officer.

The description above is how things worked. It should inspire confidence that there was a due process to which we were all bound and which provided the ultimate safeguard for the public interest as well as the integrity of the individuals involved.

As the Secretary, I was tasked to see to it that the Governor's intention to achieve his objectives was followed, while ensuring that proper checks and balances were in place to ensure that the public interest was protected. I was authorized to make judgments but, since I was not a valuer or a professional land person, always based them on the input of my executive and professional colleagues. Thus decisions when they were made always had the benefit and support of sound professional advice and recommendations.

When the Discovery Bay project was put to Exco in 1976, the Exco Memorandum proposed that, "the land at Discovery Bay should be granted to Developer A for a holiday resort and limited residential/commercial development...." (2.7, Chapter 6, Director of Audit Report No.43). However the decision of Exco, after having considered the contents of the memorandum and the lease conditions attached to it, gave the following advice and the Governor ordered that land should be granted to the Developer for the purposes of "a holiday resort and residential/commercial development at the premium of $61.5 million" (2.7, Chapter 6, Director of Audit Report No.43). This represents a significant change from which all subsequent developments followed. The Secretary for the New Territories, myself, would normally have been present during the discussion of this memorandum by Exco.

This Exco decision became the parameter within which the subsequent development took place and it had to conform to this decision. Did changes

conform with the development of a resort with residential/commercial development? Were they soundly based and well supported? The authority to ensure this was placed in the hands of the Secretary for the New Territories. In 1978 the Secretary for the New Territories was appointed to Exco.

Throughout its thirty years of history the development of Discovery Bay has conformed with the description that it was a resort, is a resort and will continue to be a resort. This is even reflected in the Explanatory Statement in the Discovery Bay Outline Zoning Plan of 27 years later in 2003. "It is primarily a car-free environment evolved from the original concept of a holiday resort approved in 1973. This intention [*of a resort*] is still maintained by the existing and planned provision ..."

A resort can take many forms but essentially it is a place where people go to get away from crowded urban living. All the residents of Discovery Bay are there for that reason and it is noteworthy that even when there is currently access by motor vehicles to Discovery Bay private transport vehicles have to stop at the perimeter!

The development of Discovery Bay was the first large-scale project of its kind in Hong Kong and development has continued over a period when dramatic changes in Hong Kong's socio economic environment have taken place. Changes to a MLP to reflect this were therefore inevitable. The important thing is that, as and when changes were proposed, they were dealt with properly by well-defined and understood procedures and were not taken by one person acting alone and autocratically.

It is noteworthy that to avoid public expenditure on the wild and rocky landscape of Discovery Bay the Developer was asked to shoulder the provision of public services and facilities which would normally be provided by the Government. These included the ferry service, building of a reservoir, provision of water and sewage treatment to the development, access roads, a fire service and police station, urban management services including cleaning and security, and to go to considerable extra expense at the request of government to provide a water supply to surrounding villages. Despite having to make these provisions which normally fall to the Government to provide the Developer was assessed and paid rates as if in the urban area.

xxx

The matter of my invitation to become a non-executive director of Mingly was mentioned during the PAC hearing. Mingly is principally an investment company. The invitation was made in year 2000, 13 years after my retirement as Chief Secretary.

Part 1 ends

Replies to Specific Items
Public Account Committee's letter dated 14 December 2004

Item (a)

2.8 (L1)

Question

On 10 September 1976, the Secretary for the New Territories executed the lease for the Discovery Bay development. However, the lease conditions did not specify the maximum and minimum gross floor area (GFA), and the gross site area of the facilities (such as the resort accommodation) to be provided by Developer A. In addition, the lease conditions did not restrict the owners to use their flats only as holiday homes. In April 1977, Exco was informed that the conditions allowed for low density development which, at the maximum, would provide over 401,342 square metres of residential resort accommodation and 140,284 square metres of hotel accommodation (Note 3).

Response

The lease was drafted by a lawyer of the Registrar General's Department. Instructions to the lawyer on what was to go into the lease conditions would have been given in the usual scrutiny by all the various interested departments, both within and outside the then Public Works Department and the New Territories Administration. There were standard clauses (then known as FG Clauses) which the various departments could direct to go into lease conditions.

I do not know why it was decided to specify the exact extent of development permitted by a master plan rather than in the lease conditions but I believe that because a master plan would combine control with flexibility. It would not then be necessary to modify the lease every time there was a change to the development. I note that para. 2.7 of the Audit Report said that the lease conditions were considered by Exco.

I cannot recall the details of the referred 1977 Exco paper. Nevertheless, the residential development of Discovery Bay development does not depart from "residential resort accommodation" which is elaborated further in my reply to item (b) below.

Note 3 (L1) in para. 2.8

Question

According to the then prevailing MLP 3.5 approved by the Secretary for the New Territories on 3 December 1975, the Discovery Bay development would provide resort accommodation of about 401, 342m² GFA and hotel accommodation of about 140,284m² GFA.

Response

Presumably, this was decided after inter-departmental consideration of the submission by the developer.

2.10 (L1)

Question

In September 1977, MLP 4.0 was submitted for the Secretary for the New Territories' consideration. Under MLP 4.0:

(a) the hotel GFA was reduced from 140,284 square metres to 32,000 square meters;
(b) the resort accommodation GFA of 401,342 square metres was deleted; and
(c) housing accommodation GFA of 524,000 square metres (including garden houses GFA of 301,000 square metres and holiday flats GFA of 223,000 square metres) was added.

Response

The developer would have made a formal application for approval of this MLP and the changes from the previous MLP would have been justified by the developer in such an application.

As explained by the Director of Lands at the second hearing, the total residential, commercial & hotel GFA did not increase beyond the maximum 608510 m^2 approved at the outset of the development. Whether or not premium was payable would have been given full consideration not by one official acting on his own but together with his

colleagues and superiors. It seems that no premium was charged after this proper consideration, no doubt taking into account the drastic slump in the property market.

2.13 (L1)

Question

In late October 1977, Developer A wrote to the Secretary for the New Territories (Note 6) to elucidate certain key concepts in the revised MLP 4.0. As Hong Kong worker would be entitled to an annual seven-day holiday with effect from January 1976, a new group of potential visitors to Discovery Bay had arisen and ways should be sought to bring the facilities within the reach of such people in addition to those who were better off. The holiday flat concept in MLP 4.0 was to build high-rise condominiums containing fully furnished units of various sizes. The units would be sold to buyers either for their own use or for leasing. Developer A was aware that, under the lease conditions, he had to provide the facilities (including the public golf course) without which the Discovery Bay development would not be complete. The facilities would only be financially viable when the housing development was reasonably advanced.

Response

This would be the justification I referred to in my response under 2.10(L1). To me, it shows clearly the intention of the developer to meet the intention of the original resort concept and to make appropriate planning changes to meet socio-economic development in Hong Kong at that time.

2.14 (L1)

Question

Approval of MLP 4.0. In November 1977, the Secretary for the New Territories accepted MLP 4.0 for the following reasons:

(a) the basic concept of building a resort was continued;
(b) substantial recreational facilities were brought forward in MLP 4.0;
(c) furnished holiday flats were substituted partly for the hotel rooms and partly for the more spacious and expensive residential accommodation (Note 7) in MLP 3.5. This would open up the area to more people; and

(d) MLP 4.0 conformed with the approved lease conditions which had been submitted to Exco.

In January 1978, the Secretary for the New Territories approved and signed MLP 4.0.

Response

The Secretary for the New Territories had authority under the lease conditions to give consent to alterations of master plans. Refer to the reply to item (b) below regarding the general procedures for processing master layout plans at that time.

I am not sure where these reasons quoted above have been extracted from, e.g. from a minute on a file? However, they appear to me at this distance of time to be adequate reasons for my decision at the time. I have no other comment as I have no other specific recollection.

As at today, I still consider that the present Discovery Bay is, in effect, a large seaside resort. This is elaborated in my reply to item (c) below.

3.5 (L3)

Question

In July 1977 (i.e. less than one year after the land grant), Developer A proposed to change the public golf course to some other form of public recreational use which would provide for more people and be a greater attraction. The Secretary for the New Territories said that he would consider quite favorably such a change if Developer A would meet that criteria. In March 1979, based on the argument that it was not **economically viable to provide a public golf course**, Developer A sought the Secretary for the New Territories' approval in principle:

(a) to abandon the concept of a public golf course; and
(b) instead, to locate within the site suitable areas for active public recreation.

Response

I understand the developer applied to waive the requirement to create a public golf course by demonstrating that such a facility with maximum usage would only accommodate a small number of players per day. Players would also incur

considerable extra expenditure and a costly ferry trip. In the early days, golf was not the popular game it has since become but even now by the nature of the game it cannot cater for mass participation. The decision not to go ahead with a full-blown public golf course at that time was supported by the responsible department for recreation - the then Recreation & Culture Department. (The strange intervention by the unrelated Highways Department was no doubt inspired by that individual's personal enthusiasm and background). No doubt, too, the department's recommendation was made because of an unwillingness on the part of the government possibly to take on the management and maintenance responsibility for something that would be a drain on resources. It should be mentioned that the membership golf course has been available to members of the public on weekdays since its completion.

The reference to Kau Sau Chau brings out a case in point. It was built with a philanthropic expenditure of charitable funds of $500 million from the Jockey Club with the management responsibility left with the Jockey Club not the Government.

The public golf course was replaced by the much more extensively used 700m long man-made beach built with I understand some 300,000 m3 sand transported by barges from the Mainland. Both residents and visitors alike are free to use the public beach. It is enjoyed by rich and poor alike with altogether different usage from a golf course whether public or not. Compare both sides of the road at Deep Water Bay: few people on the golf course, masses on the beach. Other recreational facilities which have been provided by the developer are described in paras. 4.7 – 4.10 in the Audit Report. No doubt these developments were the subject of discussion between the developer and the Government in fulfillment of the pledge to provide an alternative to the public golf course.

3.17 (L4)

Question

In 1973, when Exco agreed that the Discovery Bay development could proceed, Exco was informed that a public golf course would be built and that 90% of the recreational facilities would be available to the public. In addition to the public golf course, a 36-hole membership golf course was included. In September 1976, the Secretary for the New Territories granted the land to the developer. However, in February 1982, after consideration of Developer A's proposal, the Secretary for City and New Territories Administration approved MLP 5.0 and the public golf course had been deleted.

Response

See previous answers.

4.2 (L1)

Question

In 1979, Developer A agreed with the Secretary for the New Territories to replace the public golf course by some active public recreational facilities in the same area or elsewhere within the Discovery Bay site. It was said that the provision of active public recreational facilities would be more appealing to the majority of the local population than a golf course. In December 1982, when the deletion of the public golf course and the cable car system was discussed, the then Recreation and Culture Department welcomed the proposal that other recreational facilities would be provided in place of the public golf course.

Response

This shows that other departments of the Government supported the deletion of the golf course. As to the cable car, which has caused considerable attention, I would like to comment as well.

Cable Car

At Discovery Bay, the land slopes quite steeply from the foreshore. Leading to the North is a steep hill and to the south an extensive undulating plateau. The cable car was to provide access to the plateau. However when the reservoir was built and further extended, the paved construction roads provided an easy and more useful access to the plateau and the cable car was deleted and the landscape and environment incidentally spared this ugly and unnecessary intrusion. It was an imaginative idea but totally unnecessary and useless hence its deletion.

5.6 (L8)

Question

In August 1976 (one month before the execution of the lease conditions), the then Government Land Surveyor of the Public Works Department said that the boundary

corners of the Discovery Bay site would be pegged by interpretation of position of points from ground features shown on Developer A's plans. He also said that no boundary dimensions would be provided as a survey would be done after fencing of the site. In May 1977, the Government Land Surveyor said that although considerable preparation for the boundary pegging was made, the pegging itself had not yet been done in order to avoid possible abortive work. The Secretary for the New Territories also agreed that such setting out would not be required at that time. In July 1977, the then District Office/Islands of the New Territories Administration informed the Government Land Surveyor that no further work should be done until Developer A had decided on the type of fence to be provided and was ready to let the fencing contract.

Response

Boundary pegging was the duty of the Government Lands Surveyor. It may have been the practice at that time that boundary pegging would be carried out upon completion of a large development to avoid abortive works. In any case, as the boundaries of this lot were very long and extended over very rough and steep terrain and this Crown Land area had never been properly surveyed (indeed I believe there was not even one proper survey for any area of Lantau at the time) it would have made good sense for the developer to proceed on indicative boundaries and to do the exact boundary fixing after development was completed. This seems to have been a reasonable explanation of what happened.

Mr McGraw referred to by the Director of Audit would have been either a Senior or Chief Estate Surveyor in New Territories Administration Headquarters with delegated authority to deal with this sort of thing.

5.15 (L5)

Question

In September 1982, Developer A submitted a Supplementary MLP 5.0 (Note 24) for the south golf course and clubhouse development to the Lands D for approval. The route plan for the 18-hole south golf course showed that the fourth and fifth holes were on government land at Wong Chuk Long. Developer A said that the extension of the area for the fourth and fifth holes had been agreed in prior meetings with the Secretary for the New Territories.

Response

Most probably there were meetings on this, but I cannot recall details of the discussions. There would have been meetings with my staff. I do not read the reference in the developer's letter as meaning necessarily that the developer had meetings with me. The developer may well have been referring to meetings with the headquarters staff of the New Territories which may not have involved meetings with me at all. Nevertheless it seems from the decision taken that the extensions into the hillside to complete the golf course onto Crown Land hillside which did not conflict with any public use at the time were seen as something which could be sorted out at a later date, which indeed they were and rent duly charged and backdated.

2.21 (L2)

Question

In a DPC meeting held on 14 November 1985, the Secretary for Lands and Works reported that the Chief Secretary considered that "there was no need to go to Exco or the Land Development Policy Committee as the .... development followed on from the development so far approved (i.e. resort development) and did not represent a major change in principle".

Response

The Development Progress Committee (DPC) was chaired by the Secretary for Lands and Works and consisted of senior officials relevant to this objective. It included the Principal Assistant Financial Secretary. In other words, it was a most senior and responsible organ of government. The year was 1985. The Joint Declaration had just been approved. HE the Governor and the Executive Council were very occupied. The Governor himself was beginning a long period of shuttling between Beijing and London. On the Chief Secretary, myself, fell additional administrative responsibilities. I accepted DPC's advice that it was unnecessary to refer to Exco since the resort concept was maintained and the changes did not represent a major change in principle.
Please refer to my reply to item (c) below.

3.7 (L1)

Question

Despite the above comments [from PGLA], in February 1982, the then Secretary for City and New Territories Administration (Note 18) approved MLP 5.0 which removed the requirement for the provision of the public golf course (295,000 square metres gross site area). In September 1982, Developer A said that:

(a) the public golf course had limited use and was for the more wealthy people; and
(b) some modifications had been made to public recreation aspects, encompassing a whole range of activities which appeal to all ages and income groups.

Response

I do not recall the details of the discussions relating to replacement of the public golf course with public recreation facilities. (See my response under 3.5 (L3)) My officers would have considered the matter on a collective basis at the time and would have consulted all the necessary departments.

Even with hindsight and the relevant information furnished in the Audit Report, I consider that this was a right decision at that time because

(a) golfing was a game for the elite at that time. It did not have wide popular appeal;
(b) more people, particularly blue and white collar workers, could enjoy the replacement public recreation facilities including the beach; and
(c) the replacement public recreation facilities had the same gross site area as and even greater gross floor area than the public golf course (Table 2 of Audit Report refers)..

It should again be mentioned that the membership golf course has been available to members of the public on weekdays since the completion.

3.17 (L6)

Question

In 1973, when Exco agreed that the Discovery Bay development could proceed, Exco was informed that a public golf course would be built and that 90% of the recreational

facilities would be available to the public. In addition to the public golf course, a 36-hole membership golf course was included. In September 1976, the Secretary for the New Territories granted the land to the developer. However, in February 1982, after consideration of Developer A's proposal, the Secretary for City and New Territories Administration approved MLP 5.0 and the public golf course had been deleted.

Response

The public golf course was replaced with public recreation facilities of the same gross site area and even greater gross floor area as explained in above response under. 3.7.

4.3 (L1)

Question

In December 1981, when submitting MLP 5.0 for the Secretary for City and New Territories Administration's approval, Developer A submitted a proposal on the provision of "replacement public recreational facilities" for day visitors with a much wider range of pursuits.

Response

See previous answers. This proposal would have been part of the overall package of amendments to the MLP the developer was putting forward.

4.4 (L1)

In February 1982, the Secretary for City and New Territories Administration approved MLP 5.0. Compared with MLP 4.0, there were changes in MLP 5.0, as follows:

Response

Based on Table 2 of Audit Report, it is noted that there was a net increase in gross floor area of recreation facilities from MLP 4.0 to MLP 5.0. Although the gross site area of the recreation facilities was shown to be reduced, the public beach in Discovery Bay was not included in the Table.

Item (b)

Question

According to paragraph 2.14 of the Audit Report, the Secretary for the New Territories accepted Master Layout Plan (MLP) 4.0 in November 1977, and approved and signed it in January 1978. According to paragraph 3.7 of the Audit Report, the Secretary for City and New Territories Administration approved MLP 5.0 in February 1982. The PAC would like to know whether you had consulted any government departments/officials or held any relevant meetings before approving MLPs 4.0 and 5.0 and, if so, details of the discussion.

Response

I was the Secretary for the New Territories from 1973 to 1985, an unprecedented period of twelve years. It is curious, to say the least, that the matters raised by the Director of Audit about the seventies and eighties are raised after a period of 20 –25 years and were not raised at the time or in subsequent years.
Among my staff during those years was a team of estate surveyors headed by a Principal Government Land Agent (PGLA) responsible to me as Secretary. The policies and practices of the urban area were applied to the New Territories.

Because of the relatively small number of large development sites, there were few Master Layout Plans (MLPs) in the 1970's. The practice for dealing with these plans, including the question of whether a premium should be charged, involved examination by experienced chartered surveyors to see if each complied with the underlying lease and with the appropriate development criteria. Thus the Discovery Bay MLP and changes to it emphatically required professional officers to take premium considerations of the lease into account.

For the approval of MLPs for the New Territories, the process would have the applicant typically sending the MLP to the District Office (DO), headed by an Administrative Grade Officer. The Estate Surveyor in the district, a chartered surveyor, would examine it and consult other departments where necessary before putting it with other land cases to the monthly District Conference (later the District Land Conference (DLC)) headed by the DO and attended by the Senior Estate Surveyor (SES), later a Chief Estate Surveyor (CES), and representatives of other departments. The views of all departments were taken into account.

When the District Conference or DLC approved the MLP, it would go to New Territories Administration Headquarters to PGLA/NT (via a senior officer such as a Chief Estate Surveyor) and my recollection is that PGLA/NT would table it either at the monthly New Territories Lands Meeting (NTLM) or at a similar meeting of senior administrative officers, estate surveyors and lawyers. Only when NTLM or the group of officers recommended its approval would PGLA/NT put the recommendation by a minute on the file to me as SNT for formal approval. PGLA's recommendation therefore would represent the collective view of the professional estate survey staff.

I would not have approved a MLP or changes to a MLP or any land transaction that had to be dealt with approved by me without a full discussion with the PGLA. If the PGLA/NT thought a premium or other conditions of approval were justified, he would have recorded it and action would have been taken.

As such, I am sure that other government departments would have been consulted and relevant meetings held prior to the approval of MLP 4.0 and 5.0. However, with limitation of memory and at the age of 77 and 25 years later, I cannot recall detail of the discussions at that time related to these master layout plans.

Item (c)

Question

The PAC would like to know the rationale for the Chief Secretary's view in October/November 1985 that there was no need to go back to the Executive Council or the Land Development Policy Committee regarding the change in the concept of the Discovery Bay development (paragraph 2.21 of the Audit Report refers).

Response

When the Discovery Bay project was put to Exco in 1976, the Exco Memorandum proposed that, "the land at Discovery Bay should be granted to Developer A for a holiday resort and limited residential/commercial development...." (2.7, Chapter 6, Director of Audit Report No.43). However the decision of Exco, after having considered the contents of the memorandum and the lease conditions attached to it, gave the following advice and the Governor ordered that land should be granted to the Developer for the purposes of "a holiday resort and residential/commercial

development at the premium of $61.5 million" (2.7, Chapter 6, Director of Audit Report No.43). This represents a significant change from which all subsequent developments followed. The Secretary for the New Territories, myself, would normally have been present during the discussion of this memorandum by Exco.
This Exco decision became the parameter within which the subsequent development took place and it had to conform to this decision.

As pointed out in para. 2.21 of the Audit Report, I considered that there was no need to go to Exco or the Land Development Policy Committee because the development up to that time did not represent a major change in principle.

Throughout its thirty years of history the development of Discovery Bay has conformed with the description that it was a resort, is a resort and will continue to be a resort. This is even reflected in the Explanatory Statement in the Discovery Bay Outline Zoning Plan of 27 years later in 2003,

"It is primarily a car-free environment evolved from the original concept of a holiday resort approved in 1973. This intention [*of a resort*] is still maintained by the existing and planned provision ..."

A resort can take many forms but essentially it is a place where people go to get away from crowded urban living. All the residents of Discovery Bay are there for that reason and it is noteworthy that even when there is currently access by motor vehicles to Discovery Bay private transport vehicles have to stop at the perimeter!

The lease conditions, which had been presented to Exco, expressed the development concept by the terms "leisure resort facilities" in the user clause S.C. 7 and "leisure resort and associated facilities" in S.C. 5(b). The scope of the words "leisure resort and associated facilities" can only be understood by reference to the Master Layout Plan and the whole of the user condition.

The lease conditions, being a practical blueprint for the development, allow flexibility in that "such recreational, residential and commercial purposes and uses ancillary thereto as may be approved in writing by the Secretary" are also permitted. The changes were therefore evolutions of the original concept in the developer's thinking as the practical difficulties in developing this huge site in a viable way emerged and the need to adjust the balance between residential and commercial facilities and the leisure resort facilities became more evident.

Seaside resorts in other places, e.g. Port Grimaud in France, Blackpool in the U.K., Gold Coast in Australia, Miami in the U.S.A. cater for both permanent residents and temporary residents who come to use the resort facilities. Indeed, without a permanent population, these resort towns could not operate.

Part 2 ends

DM 5/1 05.

Opening Statement for PAC Appearance on 12 January 2005
Sir David Akers-Jones

Morning, Mr. Chairman, ladies and gentlemen of the Public Accounts Committee. Before I take questions, I'd like to say a few words:

1. I am **over 77 years old** and **retired for over 17 years**. It is **very difficult** for a man of my **age** and who has been **out of Government so long to recall** things that took place over a quarter of a century ago. Many of the people who worked with me during the relevant time are unfortunately no longer with us.
2. I am being asked to deal with **events that took place over 25 years ago without** the benefit of any **contemporaneous papers** and both the time lapse and lack of access to information makes it very difficult to recollect details
3. However, I am here before you today, 25 years on, to protect the reputation of those who worked with me, many of whom are no longer with us and who cannot defend themselves, who served Hong Kong well and with the highest integrity.
4. I have **tried my best to piece together** to the best of my ability with the assistance of former colleagues and friends **as full a picture as possible** to the best of my knowledge and belief of what happened and the procedures followed by way of a full written response, which you may wish to disclose to the public.
5. I need time to recollect such past events and may not be able to give quick oral answers in addition to the written responses provided
6. It should be borne in mind that my **involvement** in the Discovery Bay matter was **very limited and took place over the short period** of time between 1977 and 1982 when I was the Secretary for the New Territories.

My **successors** who took over my functions more or less followed a **similar policy direction**. By 1982, the functions of the Secretary for NT and its successor City & NT Administration had been taken over by Secretary for Land & Works and the Lands Department. So many departments have reviewed my work.

7. During the period when I was Secretary for NT, I had a **very capable team** of estate surveyors and legal advisers and I **relied on their expertise and assistance** when making decisions. There were well defined and established procedures and officials within a clear chain of command with no-one acting alone.
8. In my experience, there were **proper contemporaneous records** of transactions and I am very surprised to find that many documents have not been kept or are now missing.
9. In addition, before I made any decision, there would be input from various other departments.
10. In addition, neither the Director of Audit nor the **PAC** has ever previously made any recommendations or comments on the Discovery Bay Development when I was Secretary for NT or as far as I recall any time thereafter until now.
11. At the time when I was Secretary for the NT, there was **no planning controls** legislation in place in the NT. Also, there were few proposed developments the size of Discovery Bay at that time.
12. By way of background, in the early 1970's, Discovery Bay was a barren rocky area without any infrastructure and no development in the area. Moreover, the time taken to travel there in those days was quite long and so it was not foreseen, at that time, that Discovery Bay would be a suitable place for residences of people working in the urban areas of Hong Kong.
13. The original developer Mr Edward Wong had a good innovative idea but unfortunately, it later went into liquidation after heavily mortgaging the property to the bank. The whole Discovery Bay Project was at substantial risk of not proceeding at all and there were concerns that the mortgagee

bank may take possession of the land (though I am not at liberty to discuss the issues arising from that). Accordingly, it was important that the development be permitted to proceed with a certain degree of flexibility. This more flexible approach was allowed by Exco granting to the developer the land at Discovery Bay for a holiday resort/commercial development (as opposed to a previously restrictive approach adopted by Exco to restrict the use of land merely for the purposes of a holiday resort with **limited** residential and commercial use – note the exclusion of the word "limited" from the division of Exco). [This is quoted from paragraph 2.7 at p7 of Part 1 Chapter 6 of the Audit Report].

14. It was the lease conditions that specify the planning intention of the land (there being no outline zoning plan). In the master layout plan under the lease conditions was a mechanism for giving control with a degree of flexibility. This was drafted by a senior official in the Registrar General's Department.

15. The master lay out plan provisions incorporated into the lease conditions were clear and, following my short period of involvement in the Discovery Bay Project as Secretary for NT, was up to my successors to deal with any lease conditions (or master lay out plan provisions) as they deemed appropriate.

16. Given the barrenness, long distance, the lack of infrastructure and difficulty of access to urban areas of Hong Kong in the 1970's and there being no precedent for such an idea, it would have been difficult to assess its popularity in terms of how many people would buy holiday homes or use the recreation facilities or if it would have been different had a hotel been built. In addition, it would have been hard then let alone now to assess the value of a hotel development as opposed to a holiday home development in respect of such a risky development. With far better infrastructure and facilities provided by developers and the benefit of hindsight, it is much easier to assess the popularity of the area now, compared to a quarter of a century ago. In any event, the estate surveyors

in those days would have made their best valuation assessments at that time and I would have followed their advice and legal advice when making any decisions.

17. I believe that Discovery Bay has well surpassed expectations of being a resort though I am surprised that 25 years later, it has become such a convenient haven for commuters who like the resort environment and no-one could have dreamed that it would be so close to MTR, Disney, the airport and other transport facilities. It would have been unreasonable to limit the periods of stay of owners of holiday homes and expect them to only stay there on weekends and on retirement.

18. I believe that Discovery Bay was a resort and would remain one with its fine recreational golf and yacht club facilities, the access by the public to the golf during the week, the beach fronts and restaurant cafes and landscaping in the area. Moreover public services such as fire stations, ferry service, police station, water sewage and cleaning etc.., were all provided by the developer (as opposed to by Government) from scratch. If there were no flexibility allowed by Exco and, the MacLehose and subsequent Administrations, the development would not have been commercially viable and would not have been anywhere near the success it is today.

19. It is easy with the benefit of hindsight now for people to make comments about what could have been done better. While I was Secretary of the NT, the original developer went into liquidation and Hong Kong was not the financial centre it is now but was emerging out of the recessions of the late 1960's. The Administration under Lord MacLehose encouraged dynamic and innovative ideas and projects which have been extremely successful.

20. At the relevant time, while I was Secretary for the NT, I had no better or worse relations with developers and other tycoons than other senior officials then and now. To show my lack of closeness, I was not asked to be a director (albeit an independent non-executive director) of the

Discovery Bay developer until 2000, some 13 years after my retirement as Chief Secretary: a very long time after I left Government.

21. Of the New Territories Administration which oversaw the massive development of the NT in those days, I can only say, in conclusion, that they have done a good job for Hong Kong. As is inscribed on Sir Christopher Wren's tomb in St. Paul's Cathedral in London, 'If you are looking for a memorial, look around you'.

xxx

OS

The question arises whether, in view of the initial ExCo approval in 1976 and the potentially [illegible] changes now contemplated, ExCo approval need be sought at this stage. I would think probably not but would be grateful for your advice.

(J.R. Todd)
SLW
17/10/85

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10 January 2005

來函檔號 Your Ref. CB(3)/PAC/R43

Clerk, Public Accounts Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central
Hong Kong
(Attn: Ms Miranda Hon)

Dear Ms Hon,

The Director of Audit's Report on the results of value for money audits (Report No. 43)

Chapter 6: Grant of land at Discovery Bay and Yi Long Wan

Thank you for your letter of 6 January 2005 requesting for information regarding Part 2 of the letter of 5 January 2005 from Sir David Akers-Jones on "Replies to Specific Items". I set out the information as follows:

The Committee would like to know whether there was a drastic slump in the property market in the period around 1977

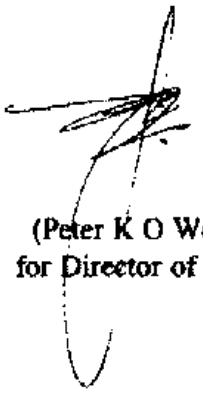
(a) Audit does not have information regarding whether there was a "drastic slump" in the property market in the period around 1977. Nevertheless, according to the "Estimates of Revenue and Expenditure for the year ending 31st March 1979", it was mentioned that there was an economic recession in 1975-76 and continuing recovery during 1976-77.

The Committee would like to know where the reasons have been extracted from

(b) The reasons as stated in paragraph 2.14 of the captioned Audit Report were extracted from a minute dated 11 November 1977 in a Lands Department's file. The minute was written by the then Secretary for the New Territories to the then Principal Government Land Agent.

A Chinese translation of this letter will be forwarded to you shortly.

Yours sincerely,



(Peter K O Wong)
for Director of Audit

c.c. Secretary for Housing, Planning and Lands
Secretary for Financial Services and the Treasury
(Attn: Mr Manfred Wong)
Director of Lands