

CHAPTER 6

Lands Department

Grant of land at Discovery Bay and Yi Long Wan

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GRANT OF LAND AT DISCOVERY BAY AND YI LONG WAN

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PART 1: INTRODUCTION

1.1 This PART describes the background to the audit and outlines the audit objectives and scope.

Background

1.2 Lantau Island, with an area of 147 square kilometres, is situated at the south west of the New Territories. In the 1970s, the Government granted land for holiday resort and residential development at Discovery Bay and Yi Long Wan of Lantau Island. Table 1 and Figure 1 show some basic information about these two land grants (see Appendix A for details).

Table 1

Land grants at Discovery Bay and Yi Long Wan

	Discovery Bay development	Yi Long Wan development
(a) Area	About 6,152,000 m ²	About 28,000 m ²
(b) Premium	\$61.5 million (Note)	\$2.2 million (Note)
(c) Date of execution of Agreement	10 September 1976	2 September 1975
(d) Height, plot ratio and/or gross floor area specifications under the lease	Not specified	The floor area of buildings should not exceed a plot ratio of 0.9. No buildings should contain more than four storeys.
(e) Nature of completed development	8,608 residential units would be provided upon full development.	200 residential units

Source: Lands Department records

Note: The premium had taken into account the value of land surrendered by the developers.

Figure 1
Location of the Discovery Bay and the Yi Long Wan sites



Legend: Discovery Bay site
 Yi Long Wan site

Source: *Lands Department records*

Audit review

1.3 The Audit Commission (Audit) recently carried out a review of the above holiday resort and residential developments. The review focused on the following aspects:

- (a) change in concept of the Discovery Bay development (see PART 2);
- (b) provision of facilities in the Discovery Bay development (see PART 3);
- (c) changes in Master Layout Plans (MLP — Note 1) and premium implications of the Discovery Bay development (see PART 4); and
- (d) site boundaries of the Discovery Bay and Yi Long Wan developments (see PART 5).

1.4 The audit has revealed that there is scope for improvement in administering land grants for large scale developments, such as the Discovery Bay development (see Photograph 1). For the Yi Long Wan development (see Photograph 2), the audit has revealed that there is a need to resolve the problem of encroachment on government land (see paras. 5.36 to 5.51).

Acknowledgement

1.5 Audit would like to acknowledge with gratitude the full cooperation of the staff of the Lands Department (Lands D) during the course of the audit review.

Note 1: *The conditions of certain leases of large scale developments may require the developer to submit an MLP showing the development proposal for approval by the Director of Lands before the actual development. The objectives of the MLP are:*

- (i) to ensure that the nature and layout of a particular large scale development are acceptable to the Government;*
- (ii) to ensure that the whole site is developed in an orderly and composite manner; and*
- (iii) to enable the developer to receive an early indication that the general nature of the development and the proposed layout thereof are acceptable.*

Photograph 1

The Discovery Bay development as at August 2004



Source: Photograph taken by Audit

Photograph 2

The Yi Long Wan development as at April 2004



Source: Planning Department records

PART 2: CHANGE IN CONCEPT OF THE DISCOVERY BAY DEVELOPMENT

2.1 This PART examines the change in concept of the Discovery Bay development.

Background

2.2 In July 1976, the Executive Council (ExCo) advised and the then Governor ordered that a grant of land at Discovery Bay, Lantau for a holiday resort and residential/commercial development should be made to a developer (hereinafter referred to as Developer A).

2.3 The original concept of the Discovery Bay development was the creation of a self-contained recreation and leisure community with a wide variety of recreational facilities. The Discovery Bay development was seen as a comprehensive resort facility, with fully furnished condominium style accommodation for use by local residents and visitors to Hong Kong. The original concept 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 (hereinafter referred to as public) and membership golf courses, tennis courts, swimming pools and other facilities.

2.4 In September 1976, the Government executed the lease at a premium of \$61.5 million. The whole site should be developed in conformity and in accordance with the MLP to be approved and signed by the then Secretary for the New Territories (Note 2).

Original development concept of Discovery Bay

2.5 According to an ExCo paper of December 1973 concerning the proposal of creating a “recreation and leisure community” at Discovery Bay:

- (a) the basic concept of the proposal was to create a self-contained **recreation and leisure community** with a wide variety of recreational facilities; and

Note 2: *The Secretary for the New Territories was the authority for the grant of land in the New Territories in 1976. With the re-organisation of the Government Secretariat in December 1981, the Secretary for City and New Territories Administration became the land authority. Since its establishment on 1 April 1982, the Lands D has been responsible for all land administration matters.*

- (b) the project was intended to attract:
 - (i) local residents who wished to take their families and friends for a day's outing, or rent a holiday home for themselves and their families, or purchase such a holiday home; and
 - (ii) international tourists requiring accommodation in budget or luxury class hotels or wishing to use the facilities on a daily basis.

Conditions in lease to ensure that development would proceed as planned

2.6 In December 1973, after considering the ExCo paper, ExCo advised and the Governor ordered that the scheme should be permitted to proceed, subject to satisfactory safeguards being included in the lease to ensure that the development would take place in accordance with Developer A's undertakings, and that proper standards were maintained throughout the terms of the lease. ExCo also asked for details of the lease conditions before the transaction was completed so that ExCo could be assured that sufficient safeguards had been built into the lease. The safeguards should ensure that:

- (a) the development would proceed as scheduled and would not be diverted into some other speculative use not in accordance with the proposed plan; and
- (b) overall management responsibility was retained and ensured by the conditions built into the lease in the event of failure to maintain the standards.

2.7 **According to an ExCo paper of July 1976, the user condition restricted the use of the land to the purposes of a holiday resort with limited residential and commercial purposes.** On 6 July 1976, having considered the lease conditions and the ExCo paper, ExCo advised and the Governor ordered that the land at Discovery Bay should be granted to Developer A for a **holiday resort and residential/commercial development** at the premium of \$61.5 million.

Lease conditions did not specify facilities required

2.8 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).

Change in development concept

2.9 Special Condition 6(a) of the lease conditions stated that, prior to the commencement of any “work” on the site, the grantee should submit, for the Secretary for the New Territories’ prior approval, an MLP showing:

- (a) the location and nature of buildings proposed to be erected on the site; and
- (b) the stages or phases by which it was proposed to develop the site.

In addition, Special Condition 6(b) stated that the whole site should be developed to the satisfaction of the Secretary for the New Territories in conformity and in accordance with the MLP approved and signed by the Secretary for the New Territories, and no alterations whatsoever should be made by the grantee to the MLP or to the development without the prior consent in writing of the Secretary.

2.10 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 metres;
- (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.

Note 3: *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 401,342 m² GFA and hotel accommodation of about 140,284 m² GFA.*

2.11 In mid-October 1977, when considering MLP 4.0, the then New Territories District Planning Division of the Town Planning Office (Note 4) commented that:

- (a) there was a general decrease of open space/conservation/park/playground areas, and a corresponding increase of residential areas; and
- (b) as the emphasis of the Discovery Bay development had always been on the provision of predominately recreational facilities, the density of residential development should be strictly limited. The transfer of building space not used for hotel purposes to residential accommodation use had changed the character of the scheme from a holiday resort to a garden estate.

2.12 **In view of the above, the New Territories District Planning Division said that it was against the change in the concept of the development. However, the then District Office/Islands (Note 5) said that the change, from a holiday resort to a garden estate, did not seem to be against the lease conditions.**

2.13 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 workers would be entitled to an annual seven-day holiday with effect from January 1978, 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

Note 4: *Since its establishment on 1 January 1990, the Planning Department oversees the work of the New Territories District Planning Division.*

Note 5: *Prior to 1 April 1982, the District Offices of the New Territories Administration handled land administration matters in the New Territories. Since the establishment of the Lands D on 1 April 1982, the Lands D has been responsible for all land administration matters.*

Note 6: *Prior to December 1981, policy on New Territories land matters was the responsibility of the then Secretary for the New Territories. With the re-organisations of the Government Secretariat over the years, land policy was the responsibility of the then Secretary for Lands and Works (December 1981 to August 1989), the then Secretary for Planning, Environment and Lands (September 1989 to December 1999) and the then Secretary for Planning and Lands (January 2000 to June 2002). With effect from 1 July 2002, the Secretary for Housing, Planning and Lands has the responsibility for land policy.*

the Discovery Bay development would not be complete. The facilities would only be financially viable when the housing development was reasonably advanced.

2.14 *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.

2.15 *Approval of MLP 5.0.* In September 1982, Developer A informed the Lands D that the development concept of the Discovery Bay development had changed, from that of a resort with 2,200 hotel rooms to that of a first-home community for 20,000 people. In applying for the deletion of some minimum associated facilities, including the public golf course and the cable car system (see PART 3), Developer A said that:

- (a) the objective of the Discovery Bay development was to build primarily “a community centred around recreation”. This would create a new lifestyle for people in Hong Kong; and
- (b) the development would provide a destination point for both local and international visitors. This had been clearly reflected in MLP 5.0 which was approved on 25 February 1982 (Note 8).

Note 7: *The previously approved MLP 3.5 provided for resort accommodation but not residential accommodation.*

Note 8: *Under Special Condition 5(b) of the lease conditions, a public golf course was one of the minimum associated facilities to be provided in the Discovery Bay development. However, the requirement to provide such a golf course was deleted from MLP 5.0.*

2.16 In July 1985, the Authorised Person for the Discovery Bay development (hereinafter refer to as the AP — Note 9) suggested to the Lands D that the surplus hotel and commercial GFA should be made exchangeable for residential GFA on a one to one basis. The AP said that his proposal (Note 10) retained the concept of developing a first-home residential community (with access to recreational facilities in, as far as possible, a natural environment). He said that as a result of the change of development concept over the past few years, the hotel development could no longer be considered as an integral part of the Discovery Bay development. He requested that maximum flexibility be given to the development.

Consideration as to whether Executive Council should be informed

2.17 In July 1985, the then Principal Government Land Agent of the Lands D (Note 11) said that the AP's submission raised the question as to whether the case should be reported to ExCo on "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 then Government Land Agent of the Lands D (Note 12) said that it was probably better tactics to refer the case to the then Land Development Policy Committee (Note 13) first and then to ExCo, if necessary.

2.18 On 10 October 1985, the then Development Progress Committee (DPC — Note 14) held a meeting to discuss Developer A's proposal. The Government Land Agent said that, in submitting the revised plan, Developer A 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 proposal, some of the development originally proposed for the upland areas would be redistributed to the lowland areas, bringing it close

Note 9: *An AP is a person whose name is on the APs' register kept under section 3(1) of the Buildings Ordinance (Cap. 123) as an architect, an engineer, or a surveyor.*

Note 10: *The AP's proposal was incorporated in MLP 5.3. The Director of Lands approved MLP 5.3 on 26 May 1987.*

Note 11: *In March 1998, the post was re-titled as the Deputy Director of Lands.*

Note 12: *In March 1998, the post was re-titled as the Assistant Director of Lands.*

Note 13: *The Land Development Policy Committee, which was chaired by the Chief Secretary, was responsible for overseeing the physical development of the territory and for giving broad approval to all major proposals affecting the development and planned use of land. It was dissolved in August 1994 because of the duplication in membership and function with the Lands and Works Policy Group of the Chief Secretary's Committee.*

Note 14: *The DPC was dissolved in July 1995. It was chaired by the Secretary for Planning, Environment and Lands, and was responsible for monitoring the general progress of physical development of the territory, approving detailed planning briefs, layouts and development plans, and dealing with specific land policies.*

to the commercial center and the pier. The development would be in the form of 25 high rise blocks, ranging from 14 to 22 storeys. The Government Land Agent also said that Developer A wanted:

- (a) the public golf course and the two hotels under the original plan to be dropped;
- (b) to regard the hotel requirement as optional; and
- (c) to convert the surplus commercial and hotel GFA to residential GFA on a metre for metre basis.

2.19 As the Discovery Bay development land grant had been approved by ExCo in July 1976, the Government Land Agent said that the DPC should consider whether the proposal should be submitted to ExCo for endorsement. **The then Deputy Secretary for Lands and Works 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 said that as the change had been taking place, there was no point in formally approving the change in concept. The then Secretary for Lands and Works, as the Chairman of the DPC, said that the Chief Secretary’s advice would be sought on whether ExCo’s approval was required.

2.20 On 10 October 1985, the DPC agreed that:

- (a) the requirement for building the public golf course and the cable car could be deleted, and Developer A would be 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; and
- (c) **the proposal to change the overall concept of the development would not require formal approval as “the original resort concept could not be enforced” in any case.**

No need to report to ExCo

2.21 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 and did not represent a major change in principle”.

Audit observations

Lease conditions did not specify facilities required

2.22 The lease conditions of the Discovery Bay development did not include specifications (such as the maximum and minimum GFA and the gross site area) on the facilities (such as resort accommodation and golf course) required.

Change in development concept

2.23 In seeking ExCo's approval of the Discovery Bay land grant in the 1970s, the Administration informed ExCo that:

- (a) the development concept was to create a self-contained **recreation and leisure community** with recreational facilities (see para. 2.5(a));
- (b) the use of the site would be restricted to the purposes of a **holiday resort with limited residential and commercial purposes** (see para. 2.7); and
- (c) the development was intended to attract local residents for a day's outing, or to rent or purchase a holiday home (see para. 2.5(b)).

Before approving the land grant, ExCo required the lease to have sufficient safeguards to ensure that the development would take place in accordance with the undertakings given by Developer A (see para. 2.6). **Although the lease conditions had indicated the minimum associated facilities to be provided, they did not specify the requirements for achieving the development concept (see para. 2.8). After the land grant had been executed, the then Lands and Works Branch found that "the original resort concept could not be enforced" under the lease conditions.** In September 1982, the Lands D noted that the development concept had changed from that of a resort with 2,200 hotel rooms to that of a first-home community for 20,000 people (Note 15).

2.24 **Having regard to the significant changes in development at Discovery Bay since 1985, and the fact that the development is still in progress, in August 2004, Audit asked the Administration whether there was a need to seek ExCo's endorsement to the change in concept of the Discovery Bay development. In response, in October 2004, the Secretary for Housing, Planning and Lands said that when it approved the**

Note 15: *The approved MLP 6.0E1 indicated that Discovery Bay would be developed up to a population capacity of 25,000.*

Discovery Bay Outline Zoning Plan (OZP — Note 16) on 11 March 2003, ExCo was aware of the planning intention for Discovery Bay which included the following:

- (a) **development to be compatible with the natural setting of the area;**
- (b) **low-density development which provided for a mix of residential and recreational uses;**
- (c) **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; and**
- (d) **adopting a stepped building height approach, with low-rise development on the headland and coastal lowland and high-rise development for the inland.**

In view of the forgoing, the Secretary for Housing, Planning and Lands did not consider it necessary to seek ExCo's covering endorsement again on the development concept of Discovery Bay.

Audit recommendations

2.25 Audit has recommended that the Director of Lands should, for a land grant for a development involving a particular concept:

- (a) **incorporate effective provisions into the lease conditions or other contract documents so that the provisions will be enforceable for implementing the concept; and**
- (b) **if the concept has been approved by ExCo, seek ExCo's endorsement before approving major changes to the concept.**

Response from the Administration

2.26 The Director of Lands agrees with the audit recommendations mentioned in paragraph 2.25.

Note 16: *OZP is a statutory plan prepared and published by the Town Planning Board under the provisions of the Town Planning Ordinance (Cap. 131). The OZP shows the proposed land uses and major road systems of individual planning scheme areas. Areas covered by the OZP are zoned for such uses as residential, commercial, industrial, open space, government, institution and community uses, green belt and other specified purposes.*

PART 3: PROVISION OF FACILITIES IN THE DISCOVERY BAY DEVELOPMENT

3.1 This PART examines the provision of facilities in the Discovery Bay development.

The minimum associated facilities required

3.2 According to the lease conditions of the Discovery Bay development, the grantee should erect, maintain and keep in use on the site membership club houses and a leisure resort and certain “minimum associated facilities”, which should include:

- (a) a hotel/hotels;
- (b) a dam, a reservoir, salt and fresh water storage and treatment areas;
- (c) a sewage treatment plant and a refuse disposal plant;
- (d) **a non-membership (i.e. public) golf course;**
- (e) **a cable car system;** and
- (f) a ferry pier.

While the hotels are still shown in the latest approved MLP 6.0E1, the public golf course had been deleted in MLP 5.0 and the cable car system in MLP 5.1 (see paras. 3.5 to 3.16).

3.3 About the associated facilities, in December 1973, ExCo was informed that:

- (a) there would be **a public and a membership golf course**, swimming pools, nature trails, horse riding, sailing and restaurants. These facilities would provide recreation and leisure opportunities for the people of Hong Kong as well as overseas visitors. An overall estimate of the recreational facilities to be provided indicated that **90% would be available to members of the public;**
- (b) in addition to the public golf course, it was intended to provide a 36-hole golf course which would be available to club members and hotel guests, and to non-members at off-peak periods; and

- (c) in order to provide easy access to the hill tops for hiking, viewing, and playing golf, special cable car systems would be provided. The use of these systems would prevent unnecessary disturbance to the hillside and landscape for purposes of access.

3.4 As mentioned in paragraph 2.6, ExCo asked the Administration to submit a set of lease conditions so that ExCo could be assured that sufficient safeguards had been built into the lease. **The Administration listed out the above minimum associated facilities in a copy of the lease conditions which was attached to the July 1976 ExCo paper (see para. 2.7).**

Deletion of public golf course

3.5 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 favourably 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.

3.6 When considering Developer A's proposal, the then Principal Government Land Agent of the then New Territories Administration reiterated that, when the Discovery Bay development project was first put to the Government for approval, the applicant had particularly stressed that recreational facilities would be provided for the public, and one of them was the public golf course. **The public facilities proposed were one of the main reasons for the Government to have approved the land grant.** When drawing up the lease conditions, certain minimum facilities were made mandatory in the lease conditions (see para. 3.2). **The Principal Government Land Agent said that because of the importance attached to the golf course proposal, this special public golf course requirement was more particularly referred to in a special lease condition (Note 17).**

Note 17: *Special Condition 54(c) of the lease conditions states that the grantee shall at all times during the continuance of the lease agree to operate and maintain to the satisfaction of the Secretary for the New Territories not less than one 18-hole public golf course open for use by members of the public.*

3.7 Despite the above comments, 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.

3.8 In mid-1982, there were discussions among government departments and between the Government and Developer A on whether a modification of the lease conditions was required to reflect the deletion of the public golf course. The then Recreation and Culture Department was also consulted and it welcomed the proposal that other recreational facilities would be provided in place of the public golf course. In December 1982, a Highways Department (HyD) representative attended a District Lands Conference (Note 19) to discuss whether a modification of the lease conditions was required to reflect the deletion of the public golf course. After the conference, the HyD said that it disagreed with the arguments put forward by Developer A. It said that:

- (a) golf in Hong Kong was a relatively “wealthy man’s game”. But that was the effect, not the cause, of such scant provision of golf facilities;
- (b) golf should rank as one of the middle-to-cheap individual sports, although not as cheap as team games;
- (c) the HyD believed that Hong Kong might have a very large unsatisfied market of potential golf players. The existing golf clubs were exclusive to members only; and
- (d) the HyD suggested that a research on the following:
 - (i) recent development of the demand for golf elsewhere, such as Japan;

Note 18: *The Secretary for City and New Territories Administration was the land authority from December 1981 to March 1982 (see Note 2).*

Note 19: *The District Lands Conference was chaired by the Government Land Agent of the Lands D. Its members included the responsible District Lands Officer, the case officers and representatives from other government departments concerned. The terms of reference of the District Lands Conference included the consideration, in light of overall land policy and land instructions, of the terms and conditions for the disposal of land.*

- (ii) whether it was economical to provide golf facilities; and
- (iii) whether land was available to provide golf facilities.

3.9 **As far as could be ascertained from the Lands D's records, the City and New Territories Administration had not carried out a research on the demand for golf facilities before it approved the deletion of the public golf course.**

3.10 In early March 1983, the then Registrar General's Department advised that there was no need to modify the lease conditions of the Discovery Bay development, if the Lands D agreed that:

- (a) MLP 5.0 had superseded the original MLP; and
- (b) MLP 5.0 did not show or refer to the public golf course and the cable car system.

3.11 In mid-March 1983, the Director of Lands informed Developer A that as MLP 5.0 had been approved, there was "no need for a separate modification concerning the non-membership golf course". **The approval of MLP 5.0 in effect deleted the requirement to provide a public golf course, notwithstanding that such facilities were specified in the lease conditions.**

Demand for golf courses

3.12 The HyD said that Hong Kong might have a very large unsatisfied market of potential golf players, at the time of deletion of the public golf course in 1982 (see para. 3.8(c)).

3.13 ***Option of joint venture not pursued.*** In May 1985, the Hong Kong Jockey Club sought the Government's assistance to identify a public golf course site. The Lands D said that the Government could examine the option of having the Hong Kong Jockey Club construct such a course on the public golf course site at Discovery Bay either with the land surrendered to the Government, or with Developer A and Hong Kong Jockey Club forming a joint venture. The Lands D discussed with Developer A about the possibility of it joining with the Hong Kong Jockey Club to develop the public golf course at Discovery Bay. Developer A welcomed the proposal, and suggested convening a meeting to discuss it. However, in October 1985, the proposal was dropped.

3.14 *Public golf courses constructed at Kau Sai Chau.* In 1994, the Government entered into a Memorandum of Understanding with the Hong Kong Jockey Club for the construction and management of public golf courses at Kau Sai Chau.

3.15 The two Kau Sai Chau golf courses, of 9-hole and 18-hole respectively, are open to the public at a daily green fee which varies with the age and residence status of the player, and the day of golf playing. In early 2004, the Government said that there was an enormous, unfulfilled demand for golf facilities in Hong Kong. The Hong Kong Jockey Club is going to construct another public golf course at Kau Sai Chau.

Deletion of cable car system

3.16 According to Special Condition 5(b) of the Discovery Bay lease conditions, a cable car system was one of the minimum associated facilities, the provision of which was mandatory under the lease. As mentioned in paragraph 3.3(c), the provision of the cable car system was to provide easy access to the hill tops and to prevent disturbance to the hillside and landscape. In September 1982, Developer A said that the popularity, safety factor and the financial viability for this system were open to question. The cable car system was no longer necessary as all the major roads in Discovery Bay had been built. In January 1983, the Government agreed to the deletion of the cable car system, and the deletion was made in MLP 5.1 approved in February 1985.

Audit observations

Deletion of public golf course and cable car system

3.17 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.

3.18 In December 1982, when the issue of deleting the public golf course was discussed, the HyD suggested that the Lands D should do some research on demand for golf facilities elsewhere (see para. 3.8(d)). In addition, the Hong Kong Jockey Club had applied for the building of golf courses in 1985. This indicated that it was worth conducting a research on the demand for golf facilities in Hong Kong around that time (see paras. 3.12 to 3.15). **Audit noted that the City and New Territories Administration had not carried**

out a research on the demand for golf facilities in Hong Kong before it approved the deletion of the public golf course in 1982 (see para. 3.7).

3.19 Upon Audit's enquiry, in October 2004, the Lands D said that it was for the government department concerned to decide whether research was required to justify its advice on whether the proposed facilities could be deleted (see para. 3.8). It would not be appropriate for the Lands D to question the grounds for a department with special knowledge/expertise for supporting (or not supporting) a lease modification proposal.

3.20 Apart from the public golf course, the provision of the cable car system was also mandatory under the lease. Notwithstanding this, in February 1985, the Director of Lands approved the deletion of the cable car system. **In so doing, the Lands D had not assessed the implications, financial or otherwise, of the deletion of the facilities. Audit considers that the deletion of such facilities could have premium implications as the market value of the development could have been affected.**

Audit recommendation

3.21 **Audit has recommended that the Director of Lands should assess the implications of deletion of facilities specified in the lease conditions before approving MLP amendments, having regard to the fact that any deletion may have premium implications.**

Response from the Administration

3.22 The **Director of Lands** generally agrees with the audit recommendation mentioned in paragraph 3.21. He has said that under the Lands D's current practice in the Revenue Assessment Manual, any deletion of facilities specified in lease conditions from an approved MLP is treated in the same way as any other modification of lease conditions. Premium will be charged should there be an enhancement in land value. An appropriate cross-reference will be made in the Lands Administration Office Instructions (LAOI).

PART 4: CHANGES IN MASTER LAYOUT PLANS AND PREMIUM IMPLICATIONS

4.1 This PART examines changes in the MLPs for the Discovery Bay development and their premium implications.

Provision of replacement facilities

4.2 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.

4.3 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.

4.4 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:

Table 2
Changes in recreational facilities in MLP 5.0
as compared with MLP 4.0

Recreational facilities	MLP 5.0 increase/(decrease) over MLP 4.0			
	GFA (m ²)	Gross site area (m ²)	GFA (m ²)	Gross site area (m ²)
(a) Aviary/botanical gardens (Note 1)	(500)	(96,000)		
(b) Camping/picnic area (Note 1)	(100)	(18,000)		
(c) Park/playground (Note 1)	(500)	(14,000)		
(d) Sports hall/entertainment facilities (Note 1)	(6,000)	(17,000)		
(e) Swimming/recreational facilities (Note 1)	(1,400)	(33,000)		
Net sub-total for items (a) to (e)			(8,500)	(178,000)
(f) Public golf course (Note 1)	(1,600)	(295,000)		
(g) Public recreational facilities (not itemised) (Note 2)	30,000	295,568		
Net sub-total for items (f) to (g)			28,400	568
(h) North golf course	(500)	(306,250)		
(i) South golf course	—	340,250		
(j) Golf facilities	(4,600)	(31,000)		
Net sub-total for items (h) to (j)			(5,100)	3,000
(k) Country club	5,500	15,500		
(l) Golf club	5,500	28,750		
(m) Marina/marina club	4,400	79,650		
(n) Racquets/racquets club	100	700		
(o) Recreation club	(1,900)	(20,000)		
Net sub-total for items (k) to (o)			13,600	104,600
Net total			28,400	(69,832)

Source: Lands D records

Note 1: These recreational facilities had been deleted in MLP 5.0.

Note 2: Public recreational facilities were proposed to be built on the areas where the public golf course was originally situated.

4.5 As shown in Table 2, Audit noted that, in addition to the deletion of the public golf course from MLP 5.0, the area of other recreational facilities deleted (i.e. items (a) to (e) in Table 2) also decreased by 8,500 square metres GFA, and 178,000 square metres gross site area. According to Developer A's December 1981 proposal, the replacement public recreational facilities would be provided wherever appropriate and would be distributed in the Discovery Bay site. The replacement facilities, which were accessible to the public, would be concentrated in the Tai Pak and Yi Pak areas.

4.6 *List of replacement facilities not available.* In February 1983, the Lands D said that the requirement to provide the public recreational facilities had been clearly indicated on MLP 5.0, both in location and in area. 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.

As-built replacement facilities not reconciled with those agreed

4.7 A number of recreational facilities were built during different phases of the Discovery Bay development. It is possible that some of them are the replacement public recreational facilities agreed with the Government. However, as far as could be ascertained from the Lands D's record, there was no verification of the specific as-built facilities with those agreed with Developer A to ensure that they had in fact been built.

4.8 In late June 2002, following a complaint by an Islands District Council Member (see PART 5 for details) and media reports about the deletion of the public golf course in the Discovery Bay development, the Secretary for Housing, Planning and Lands asked the Lands D whether Developer A had provided the replacement public recreational facilities as agreed. As the Lands D had no record of the specific replacement public recreational facilities provided by Developer A, it asked Developer A to provide details of the facilities.

4.9 In July 2002, Developer A informed the Lands D that it had provided the following public recreational facilities in the Discovery Bay development:

- (a) the Central Park in the northern part of the Discovery Bay site, with a site area of five hectares. The deleted public golf course was also originally located in this area;

- (b) a multi-purpose hall (246 square metres), a recreation deck (802 square metres), a seafront plaza (3,300 square metres), the south promenade (1,610 square metres), the north promenade (2,880 square metres) and the Piazza (6,740 square metres);
- (c) the beach at Tai Pak (70,900 square metres);
- (d) bicycle lanes; and
- (e) hiking trails.

4.10 Developer A also informed the Lands D that:

- (a) additional public recreational facilities would be provided in the Yi Pak Wan area;
- (b) details of the facilities to be provided were regularly reviewed, having regard to current trends and tastes in leisure activities. The facilities would be finalised nearer the time when the development of the relevant areas was planned to go ahead; and
- (c) although the golf club was a private club (see Photograph 3), the general public, including golfing societies and local residents, might use the facilities subject to an advance booking arrangement (Note 20).

Note 20: *At present, Developer A allows non-members to play at the private golf course on Mondays, Tuesdays and Fridays by prior arrangement and on payment of green fees.*

Photograph 3

The Discovery Bay membership golf course



Source: Photograph taken by Audit in August 2004

Concerns of some Legislative Council Members

4.11 In July 2002, some Legislative Council (LegCo) Members held a meeting with the Islands District Council Members to discuss the complaint concerning the deletion of the public golf course from the Discovery Bay development. In order to follow up the issue, several LegCo Members convened a case conference in August 2002 with the departments concerned.

4.12 At the conference, the LegCo Members asked the Lands D what other recreational facilities Developer A would provide to replace the public golf course. In response, the Lands D said that the public recreational facilities first proposed by Developer A were a children centre and an ornamental lake. The facilities provided at present included a plaza, a waterfront promenade, a public beach at Tai Pak Bay, a clubhouse and some other public recreational facilities proposed under the Yi Pak Wan project.

4.13 The LegCo Members said that the clubhouse was not a public facility, and the size of the public facilities might differ significantly from that of the originally proposed public golf facilities. As a result, there would be fewer recreational facilities for use by the public. The LegCo Members queried whether the Government had assessed the difference in area between the existing facilities and the public golf course, and the discrepancies between the actual facilities and those originally suggested.

4.14 In reply, the Lands D said that a golf course required a relatively large area of land whereas other recreational facilities required less land. It was therefore not appropriate to compare them by directly measuring their sizes. As regards the details of changes in recreational facilities, the Lands D only kept the outline plan without the detailed records of the specific changes. The LegCo Members expressed disappointment on the Lands D's reply.

Premium on approval of changes made in Master Layout Plans

4.15 As mentioned in paragraph 2.23, the Discovery Bay development concept has moved away from the original idea of an area with recreational and leisure facilities to a high-quality, self-contained residential development. In October 1985, when the proposal of deleting 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. However, in October 1985, when the DPC agreed with the changes made in MLP 5.1, it was silent on the modification of the lease conditions and the premium consideration. **In the event, no premium was charged for the changes in the development.** In this connection, Audit noted that:

- (a) in June 1994, the Lands D approved changes made in MLP 5.6 after collecting \$126 million from Developer A;
- (b) in July 1999, the Lands D approved changes made in MLP 5.7 after collecting \$220 million; and
- (c) in February 2000, the Lands D approved changes made in MLP 6.0E1 after collecting \$1,650 million.

4.16 A summary of the premium collected on approval of changes made in the MLPs of the Discovery Bay development is shown in Table 3.

Table 3

Premium on approval of changes made in MLPs

MLP No.	Approval date	Assessment basis	Premium	Major changes to the MLPs
			\$ million	
3.4	3.12.1975 (Note 1)	Not applicable	Not applicable	This was the MLP attached to the 6 July 1976 ExCo paper.
3.5	3.12.1975 (Note 2)	Not assessed	Nil	A public golf course with gross site area of 189,987 m ² (already provided in the lease conditions) was added to MLP 3.5.
4.0	23.1.1978 (Note 1)	Not assessed	Nil	Housing GFA of 524,000 m ² was added. Resort accommodation GFA of 401,342 m ² was deleted. Hotel GFA was decreased by 108,284 m ² . Public golf course gross site area was increased by 105,013 m ² .
5.0	25.2.1982	Not assessed	Nil	Membership golf club with GFA of 5,500 m ² and membership country club with GFA of 5,500 m ² were added. The public golf course with gross site area of 295,000 m ² was deleted and replaced by public recreation facilities with gross site area of 295,568 m ² . (Note 3)
5.1	16.2.1985	Not assessed	Nil	A membership racquet club was replaced by a residents club of the same GFA.
5.2	20.11.1985	Not assessed	Nil	Housing accommodation gross site area was increased by 47,189 m ² but there was no change in the housing GFA.
5.3	26.5.1987	Not assessed	Nil	Housing GFA was increased by 34,000 m ² . Commercial GFA was decreased by 6,000 m ² and hotel GFA was decreased by 28,000 m ² .
5.4	17.4.1989	Not assessed	Nil	Housing GFA was increased by 1,510 m ² and golf club gross site area was increased by 6,500 m ² .
5.5	8.12.1992	Not assessed	Nil	Petrol filling station GFA was increased by 240 m ² and marina club gross site area was increased by 15,200 m ² .

Table 3 (Cont'd)

MLP No.	Approval date	Assessment basis	Premium	Major changes to the MLPs
			\$ million	
5.6	7.6.1994	Full market value on the addition of 8,400 m ² of staff quarters	\$126 (Note 4)	Staff quarters GFA was increased by 8,400 m ² . South golf course gross site area was decreased by 4,250 m ² .
5.7	19.7.1999	Enhancement in value on conversion of 25,000 m ² hotel GFA into domestic GFA	\$220 (Note 4)	Hotel GFA of 25,000 m ² was replaced by the same housing GFA.
6.0E1	28.2.2000	Enhancement in value for the changes made in MLP 6.0E1	\$1,650 (Note 4)	Residential GFA was increased by 173,855 m ² , commercial GFA was increased by 18,166 m ² , hotel GFA was increased by 25,000 m ² , electric sub-station GFA was increased by 1,400 m ² , pumping station GFA was increased by 500 m ² and dangerous goods/liquefied petroleum gas store GFA was increased by 500 m ² .

Source: Lands D records

Note 1: Due possibly to lapse of time, Audit could not find copies of the approved MLP 3.4 and MLP 4.0 from the Lands D. Data were extracted from the unapproved ones in the Lands D's files.

Note 2: Audit noted that the approval date of MLP 3.5 (i.e. 3 December 1975) as stated in the approved MLP was not consistent with its submission date (i.e. 27 October 1976).

Note 3: The cable car system was deleted in a Supplementary MLP 5.0 which was approved on 27 October 1982.

Note 4: An administrative fee calculated according to Appendix II of the Lands D's Revenue Assessment Manual was charged, in addition to the premium.

4.17 As shown in Table 3, Audit noted that the Lands D only charged premium for the changes made in MLPs 5.6, 5.7 and 6.0E1. The Lands D had not charged premium for the changes made in the MLPs (MLP 5.5 and earlier) prior to 7 June 1994. As far as could be ascertained from the Lands D records, the reasons for not assessing and/or charging premium for the changes in those MLPs were not documented.

4.18 ***Premium charging on approval of MLPs.*** According to the Lands D, the general principle relating to the assessment of modification premium is that it shall be equal to the difference “between the value of the land under the previous conditions and its value under the modified conditions”. The Lands D’s Revenue Assessment Manual states 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 Fee for such approval should normally be assessed on the same basis as lease modification”. (Audit underlining)

Such fee should be approved by the Lands D’s Valuation Committee or Valuation Conference as appropriate. However, Audit noted that:

- (a) the Revenue Assessment Manual does not provide a definition of “certain conditions”; and
- (b) the word “may” implies that the charging of fee is discretionary. The Revenue Assessment Manual does not state under what conditions and how such discretion will be exercised.

The LAOI also does not stipulate clearly that the Lands D should charge MLP approval fee.

Audit observations

Replacement public recreational facilities not accounted for

4.19 As mentioned in paragraph 3.2, the public golf course and the cable car system were deleted in MLPs 5.0 and 5.1 respectively. When MLP 5.0 was submitted for the Government’s approval, it was agreed that some replacement public recreational facilities were to be provided (see para. 4.3). However, the Lands D did not maintain a record of the public recreational facilities actually provided. Discrepancies between the as-built facilities and those agreed with Developer A had not been accounted for. Furthermore, Audit noted that, in addition to deleting the public golf course, the areas of other public recreational facilities approved under MLP 5.0 were also reduced.

4.20 **Audit considers that the Lands D should ensure that all the replacement public recreational facilities will be provided by Developer A because the deletion of the public golf course was approved on the condition that such facilities would be**

provided. It is also necessary to maintain proper documentation of the replacement public recreational facilities provided.

Premium implications on MLP changes

4.21 The Lands D is empowered to charge premium and/or fees when approving changes in MLPs (see para. 4.18). However, as shown in Table 3, other than for the changes made in MLP 5.6, 5.7 and 6.0E1, Audit could not find evidence that the Lands D had collected any 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). The Government might have suffered losses in revenue. Audit considers that, where the fulfillment of lease conditions relies on the MLP, the Director of Lands should:

- (a) when approving a new MLP, assess the market value of the changes in the development and charge a premium accordingly; and
- (b) when drawing up lease conditions, state explicitly in the conditions that the Lands D will charge a premium for changes to an approved MLP so as to increase transparency.

4.22 Audit considers that the Lands D should clearly stipulate in the LAOI and the Revenue Assessment Manual that the Lands D will charge a premium for approval of MLP changes. The assessments made should be clearly documented, even if the outcome of an assessment is that no premium is chargeable (see para. 4.18).

Audit recommendations

4.23 Audit has *recommended* that the Director of Lands should:

- (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;
- (b) keep a proper record of the approved replacement public facilities and use it to verify subsequently that the facilities have in fact been built;
- (c) on approval of MLP changes, assess the premium implications of such changes and collect the premium, if any;

- (d) **in drawing up lease conditions, state explicitly in the conditions that premium will be charged on making changes to an approved MLP; and**
- (e) **clearly stipulate in the LAOI and the Revenue Assessment Manual that the Lands D should charge premium and administration fees, if any, for approval of MLP changes.**

Response from the Administration

4.24 The **Director of Lands** agrees with the audit recommendations mentioned in paragraph 4.23. He has said that the requirements to charge premium and administration fees, if any, for approval of MLP changes have already been stipulated in paragraph 14.6 in Section A of the Revenue Assessment Manual. The Lands D will amend the Revenue Assessment Manual and cross-reference it to the LAOI.

PART 5: SITE BOUNDARIES OF DISCOVERY BAY AND YI LONG WAN DEVELOPMENTS

5.1 This PART examines the setting out of the site boundaries of the Discovery Bay and Yi Long Wan developments.

Setting out of site boundaries

5.2 The lease conditions concerning the setting out of the site boundaries of the Discovery Bay and Yi Long Wan developments are shown in Appendix B.

5.3 As shown in Appendix B, the lease conditions of both the Discovery Bay and the Yi Long Wan developments:

- (a) required the grantees to apply to the Secretary for the New Territories for the site to be set out on the ground;
- (b) required the grantees to demolish buildings that had not been erected in due accord with such setting out. If the grantees failed to demolish such buildings, it would be lawful for the Secretary for the New Territories to demolish such buildings, and the grantees should pay the cost of such demolition; and
- (c) provided for the Secretary for the New Territories to determine the boundaries of the site before the issue of the Government Lease (Note 21).

5.4 In September 1975, the Government granted the Yi Long Wan site to a developer (hereinafter referred to as Developer B). In January 1976, upon Developer B's request, the then Crown Lands and Survey Office of the then Public Works Department set out the Yi Long Wan site boundaries.

5.5 In September 1976, the Government granted the Discovery Bay site to Developer A (see Table 1 in para. 1.2). **However, up to the time of audit (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 Discovery Bay development.** Details are given in paragraph 5.6.

Note 21: *Before the Conveyancing and Property Ordinance (Cap. 219) came into force in 1984, a developer had to apply to the Government for a Government Lease in order to convert its equitable interest in the site into a legal estate. It is now no longer necessary to issue a Government Lease.*

Discovery Bay site boundaries not set out

5.6 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 then 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.

Current procedures on setting out of site boundaries

5.7 The current master document of the lease conditions of the Lands D provides for the setting out of a site either by the Director of Lands "at such time as he sees fit", or at the request of the purchaser/grantee or his authorised representative. It also contains provisions on the setting out of site boundaries (Note 22) similar to those of the Discovery Bay and Yi Long Wan developments (see Appendix B).

5.8 According to the LAOI, the relevant District Survey Office of the Lands D should take action upon receipt of applications for the setting out of site boundaries. The purchaser/grantee (or his authorised representative) is called upon by the District Survey Office to attend, and to inspect the site boundaries as set out. From that time on, it becomes the purchaser/grantee's responsibility to preserve those boundary marks and to prevent any encroachment on the site boundaries. Building operations cannot commence until the site has been set out and all boundary marks are in position.

5.9 The procedures as stated in the LAOI have not clearly stipulated the requirements of setting out site boundaries before the disposal of a government site. The LAOI states that the setting out of a site is done by the Director of Lands "at such time as he sees fit" or upon the request by the purchaser/grantee. In May 2004, Audit asked the Lands D under what circumstances the Lands D would not set out site boundaries. In August 2004, the Lands D replied that the setting out of site boundaries before site disposal

Note 22: *The General Conditions of the master document of the lease conditions state that the Director of Lands shall, at such time as he thinks fit or upon application of the purchaser, set out the site on the ground. The purchaser shall not commence any operations for building on the site until it shall have been so set out by the Director.*

normally applies to sites offered for sale so that prospective purchasers are fully aware of the site boundaries.

Audit observations

Importance of setting out of site boundaries

5.10 Audit found that the LAOI has not clearly stipulated the requirements of setting out site boundaries before disposal of a government site. **Audit considers that the Lands D should stipulate in the LAOI the requirements to set out the site boundaries before site disposal. To facilitate the enforcement of the lease conditions, the Director of Lands should draw up a programme to complete the setting out of boundaries for sites granted but for which the boundaries have not yet been set out.**

5.11 As at August 2004, the Discovery Bay development is still in progress. As far as could be ascertained from the Lands D's records, up to July 2004, the Lands D had not yet set out the boundaries of the Discovery Bay site. **Audit considers that it is necessary to set out the site boundaries of the Discovery Bay site. If it is difficult to set out the boundaries of the whole site, a partial setting out of the site boundaries may be considered.** In so doing, the Government can at least set out the site boundaries of some sections of the site where there is development so that any possible encroachment on government land can be identified. In August 2004, upon Audit's enquiry, the Lands D said that the site boundaries of the Discovery Bay development had been surveyed by the Government and by Developer A's land surveyor. The exact site boundaries would be set out after the survey data had been agreed by Developer A and the Government.

Audit recommendations

5.12 **Audit has recommended that the Director of Lands should:**

- (a) **draw up a programme to complete the setting out of boundaries for sites granted but the boundaries of which have not yet been set out;**
- (b) **stipulate in the LAOI:**
 - (i) **the requirement that the boundaries of a government site should be set out before disposal of the site; and**
 - (ii) **the requirement that site boundaries should be set out in phases, if necessary; and**

- (c) **promptly agree the survey data with Developer A with a view to setting out the exact boundaries of the Discovery Bay site.**

Response from the Administration

5.13 The **Director of Lands** agrees with the audit recommendations mentioned in paragraph 5.12.

Encroachment on government land at Discovery Bay

Lands D informed of the encroachment

5.14 According to the route plan for the 18-hole south golf course at the Discovery Bay site, Developer A needed government land at Wong Chuk Long, which adjoins the western end of the south golf course, to accommodate the fourth and fifth holes (Note 23). The land was outside the boundary of the Discovery Bay site. In August 1981, Developer A applied to the Secretary for the New Territories for a Short Term Tenancy (STT) for the land. However, there are no records on the processing of this STT application.

5.15 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.

5.16 In October 1982, the Lands D considered the Supplementary MLP 5.0. It said that the encroached government land at Wong Chuk Long would be included in the boundary rectification exercise to be carried out under General Condition 3(a) (see Appendix B). On 27 October 1982, the Lands D approved the Supplementary MLP 5.0. Audit found that up to August 2004, the boundary rectification exercise had not yet been carried out.

Note 23: *According to the latest approved February 2000 MLP, there were two courses at the membership golf course at Discovery Bay, one was called the south golf course and the other the north golf course. The north golf course has not yet been built.*

Note 24: *A Supplementary MLP shows details of the layout of a site under the MLP.*

Government to carry out a survey at the end of the whole development

5.17 In March 1983, the Director of Lands informed Developer A that, due to the subsequent changes, the MLP (which had not yet been surveyed by the Government) could only be a guide to Developer A's development. The Director of Lands said that it would be more appropriate to await the issue of the Government Lease at the end of the whole development as the Government would carry out a survey. Audit notes that, since 1984, it is no longer necessary to issue a Government Lease (see Note 21).

5.18 In October 1996, Developer A again applied for an STT for the government land at Wong Chuk Long. On 12 May 1998, the application was rejected as the land was within the proposed extension of the Lantau North Country Park. The Lands D therefore asked Developer A to reinstate the land. However, the Lands D took no follow-up action to ascertain whether the land had been reinstated.

Short Term Tenancy granted on encroached government land

5.19 In April 2002, an Islands District Council Member wrote a complaint letter to the Lands D about the illegal extension of the Discovery Bay golf course to government land. The Lands D replied that it was true that there had been encroachment on government land. The area involved was sizeable and action was in hand to rectify the situation.

5.20 While the Lands D was investigating the complaint, in June 2002, Developer A informed the Lands D that the draft map for the Lantau North (Extension) Country Park gazetted on 13 July 2001 had excluded the encroached government land from the country park. He asked for reconsideration of his STT application made in October 1996.

5.21 ***Second encroachment discovered.*** After further site investigation and a detailed site survey, the Lands D found that, in addition to the land at Wong Chuk Long, another piece of government land adjoining the southern side of the south golf course had also been occupied by the golf course (hereinafter referred to as the second encroachment). In July 2002, the Lands D approved the STT for the two pieces of land (see Figure 2 in para. 5.26).

Third encroachment on country park discovered

5.22 In late July 2002, two weeks after the approval of the STT, the District Lands Office/Islands (DLO/Is) of the Lands D (see Note 5) discovered that the golf course occupied another piece of government land (hereinafter referred to as the third encroachment — see Figure 2 in para. 5.26). As the third encroachment was within the proposed Lantau North (Extension) Country Park area, the DLO/Is asked the Agriculture,

Fisheries and Conservation Department for comments, before granting an STT for this encroachment.

5.23 Meanwhile, in July 2002, the Islands District Council Member (see para. 4.8) complained to LegCo about the deletion of the public golf course and the proposed STT. The Islands District Council Member 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 LegCo Members also asked why the DLO/Is had not asked Developer A to reinstate the government land after the issue of the letter dated 12 May 1998.

5.24 In response, the Lands D said that:

- (a) in the letter dated 12 May 1998, the DLO/Is asked Developer A to reinstate the land because it was located within a proposed extension to the Lantau North Country Park;
- (b) owing to its remote and secluded nature, the absence of structures and that no nuisance was being caused, the DLO/Is accorded the matter low priority for land control action. This was in line with the Lands D's work priorities; and
- (c) although the use of the encroached land had never been legally formalised by way of lease or licence, the occupation of the land was 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.

5.25 In August 2002, the Agriculture, Fisheries and Conservation Department raised no objection to granting the STT because:

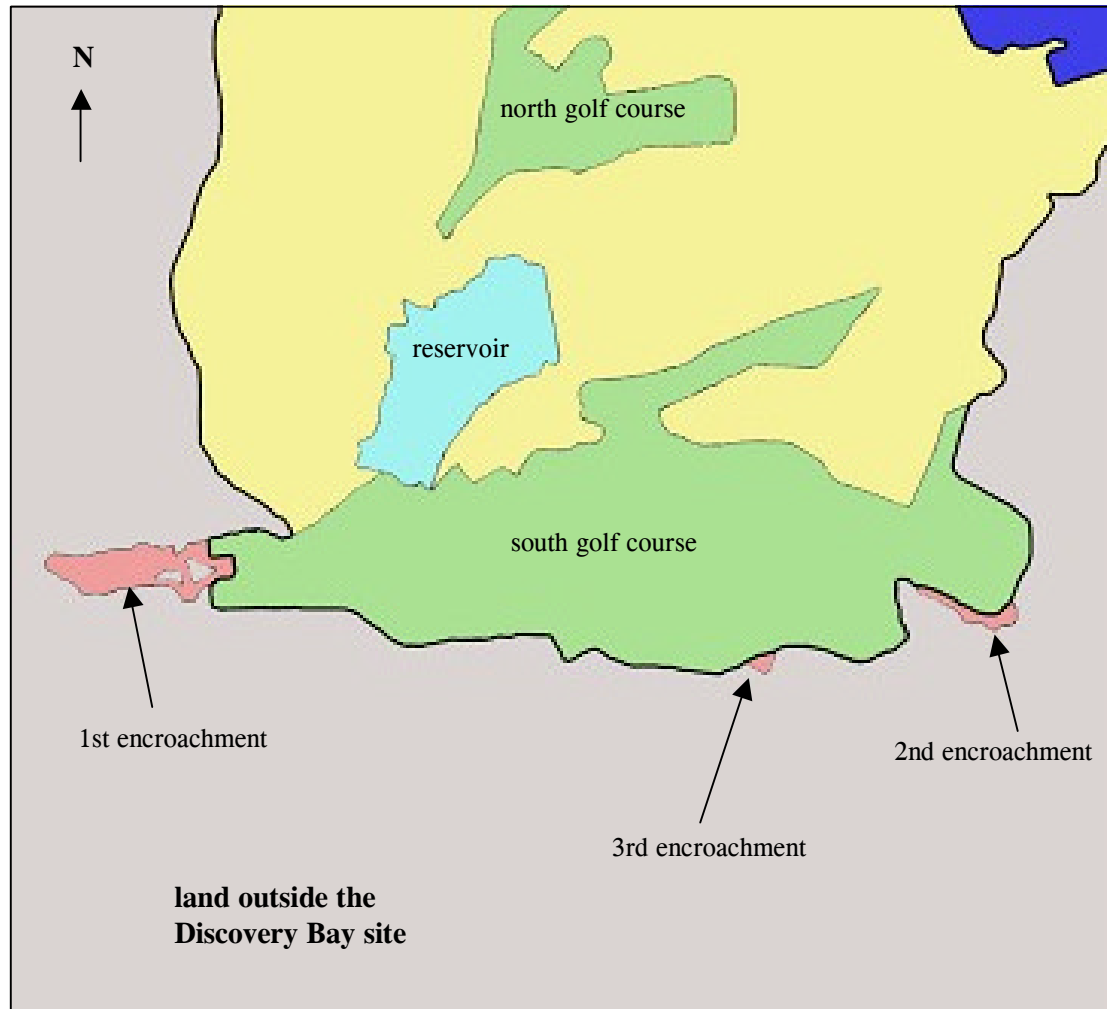
- (a) the encroachment area was not extensive; and
- (b) it was not very incompatible with the nearby grass slope and scrubland in terms of ecological habitat and landscape.






STT executed

5.26 In December 2003, Developer A settled the rent for 21 years (i.e. from 27 October 1982 to 26 October 2003) for the occupation of the government land. In July 2004, the Lands D and Developer A executed the STT for golf course purpose for the encroached government land (covering all the three encroachments — see Figure 2) after Developer A had paid the STT rental. The STT area is about 41,200 square metres.

Figure 2

Encroachments at the Discovery Bay site



- Legend:
-  boundary of the Discovery Bay site as indicated on MLP 6.0E1
 -  other developments in the Discovery Bay site
 -  golf courses
 -  encroachments on government land
 -  sea

Source: Lands D records

Ombudsman's investigation

5.27 In December 2002, after carrying out an investigation in response to the Islands District Council Member's complaint, the Ombudsman concluded that the Lands D had generally followed its established policies, procedures and practices. The Ombudsman recommended that the Lands D should review its policies, procedures and practices to improve its lease administration and to facilitate the monitoring of long-term, large-scale developments in remote areas.

5.28 In January 2003, the Lands D responded that:

- (a) there was no need to introduce fundamental changes to the existing arrangements for monitoring large-scale developments;
- (b) in the case of the Discovery Bay development, in the early 1980s, the Government was prepared to adopt a "fairly flexible approach" in order to facilitate what was then the largest land grant in Hong Kong;
- (c) it was Authorised Persons' job to ensure that developments were undertaken and completed in accordance with approved building plans, town planning requirements and the governing lease conditions; and
- (d) the relevant District Lands Officer would issue a Certificate of Compliance confirming that the finished development complied with the terms of the lease.

5.29 The Lands D also said, in its reply to the Ombudsman's further queries, that:

- (a) incidents of unauthorised encroachments during the development of a private site were very rare;
- (b) the existing land grant conditions were adequate to deal with encroachments. For example, the grantee was required to demolish a structure or part thereof, reinstate it properly and deliver vacant possession of the site to the Government, or the Government might exercise discretion and sell or lease such encroached land to the occupier; and
- (c) the existing mechanisms were considered to be working satisfactorily. There was no compelling reason for introducing a system of monitoring which would be labour-intensive and hardly of high priority.

Audit observations

5.30 The Lands D has been aware of the encroachments at the fourth and fifth holes of the Discovery Bay golf course since the early 1980s (see paras. 5.14 to 5.16). In 1996, the Lands D rejected Developer A's STT application on the grounds that the land involved was within the proposed extension of the Lantau North Country Park. In May 1998, the Lands D requested Developer A to reinstate the land. Despite the fact that the land had not been reinstated, the Lands D had not taken any follow-up action.

5.31 In July 2002, the Lands D approved the STT for the encroachments involved. **Audit considers it unsatisfactory that some 41,200 square metres of government land adjoining the Discovery Bay south golf course had been occupied without authorisation for over 20 years. The Lands D should have taken timely actions to rectify the encroachments, either by issuing an STT, or by requiring the land to be reinstated and returned to the Government.**

5.32 In May 2004, Audit asked the Director of Lands the reasons:

- (a) for not taking timely rectification action; and
- (b) for not seeking the Director of Agriculture, Fisheries and Conservation's advice earlier (see para. 5.22).

5.33 In August 2004, the Lands D said that:

- (a) the arrangement was to address the encroachment at the end of the Discovery Bay development by means of site boundary adjustment. The Lands D had not taken rectification action until February 2004 due to the fact that the Discovery Bay development was still on-going; and
- (b) it was only in 2002 that action to adjust the boundaries according to the letter of March 1983 (see para. 5.17) was appropriate (Note 25). The Lands D only

Note 25: *Audit considers that the Lands D should always take prompt land control action to remove any encroachment on government land.*

sought the Director of Agriculture, Fisheries and Conservation's advice in July 2002 because the STT proposal was then circulated to the relevant departments for comments. The Director of Agriculture, Fisheries and Conservation said that he had no comment on the proposal. However, in a subsequent detailed site survey, the third encroachment was discovered within the proposed area of Lantau North (Extension) Country Park. In August 2002, the Director of Agriculture, Fisheries and Conservation raised no objection to include this land in the STT.

Audit recommendations

5.34 **Audit has recommended that the Director of Lands should:**

Timeliness of rectification measures

- (a) **take timely land control action to remove any encroachment on government land;**
- (b) **if land control action is not appropriate, take other action (such as the issuance of an STT) to rectify the encroachment;**

Site boundaries of large scale developments

- (c) **implement effective measures for deterring encroachment on government land; and**
- (d) **implement a monitoring system (such as conducting regular site inspection) to identify and rectify land encroachments.**

Response from the Administration

5.35 The **Director of Lands** agrees with the audit recommendations mentioned in paragraph 5.34.

Encroachment on government land at Yi Long Wan

5.36 There was also encroachment on government land at the Yi Long Wan site. Details of the encroachment are described in paragraphs 5.37 to 5.44.

Encroachment known to Lands D

5.37 In October 1979, the then New Territories Administration found in the Yi Long Wan MLP that certain buildings were outside the boundaries of the land grant. To rectify the encroachment, Developer B applied to the District Office/Islands for a setting out plan (with dimensions) on an “as built” basis. The New Territories Administration asked Developer B to provide justifications for extending the site boundaries.

5.38 In January 1980, the New Territories Administration informed Developer B that it did not approve the Yi Long Wan development works under the “Design Disposition and height clause” (Note 26) of the lease conditions. The New Territories Administration said that the development works should cease. As far as could be ascertained from the Lands D’s records, Audit could not find any follow-up action that the Lands D had taken on the issue.

Pre-sale consent given for Yi Long Wan development

5.39 In March 1980, the then Registrar General’s Department gave a pre-sale consent (Note 27) to Developer B so that he could enter into Agreements for Sale and Purchase of the flats of the Yi Long Wan development. A few days after issuing the pre-sale consent, the District Office/Islands agreed that the site boundaries should be adjusted to cover the encroached government land. However, the District Office/Islands had not informed the Registrar General’s Department of the encroachment problem before the Registrar General’s Department gave the pre-sale consent.

Note 26: *Under Special Condition 15 of the lease conditions, the design, and disposition and height of any buildings to be erected on the site should be subject to the approval in writing of the Secretary for the New Territories.*

Note 27: *Under Special Condition 3 of the lease conditions, the grantee should not assign, underlet the site or enter into any agreement so to do except with the prior consent of the Secretary for the New Territories.*

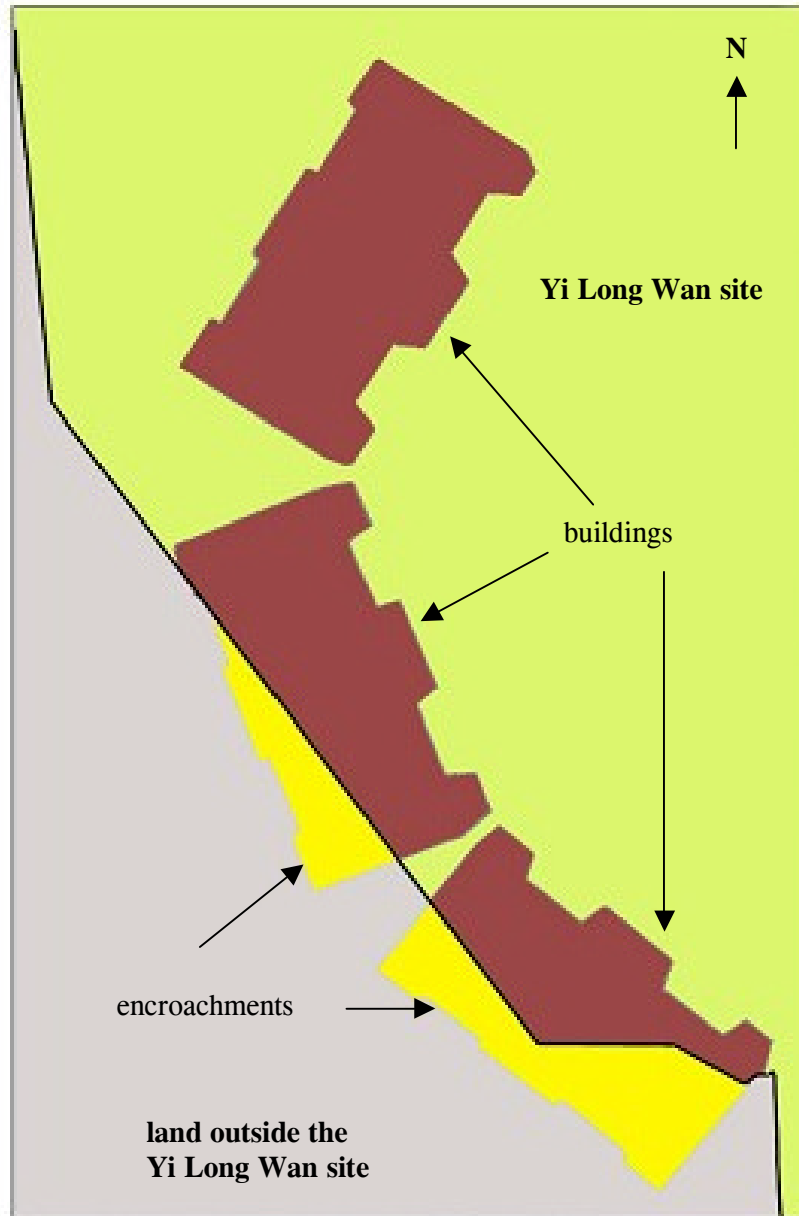
5.40 In December 1980, the District Office/Islands and Developer B agreed that a Certificate of Compliance would be issued, on the condition that Developer B would give an undertaking that he would pay additional land premium for extending the site boundary to cover the encroached government land. On 5 December 1980, the District Office/Islands issued the Certificate of Compliance and Developer B gave the undertaking to the District Office/Islands. Audit noted that the District Office/Islands had not sought legal advice, before it agreed with Developer B to issue the Certificate of Compliance.





5.41 In January 1983, the DLO/Is sent a draft plan of the revised site boundaries to Developer B. Developer B requested DLO/Is to confirm that there would be no premium or other sum payable for revising the site boundaries. In March 1983, the DLO/Is disagreed with such a request.

5.42 In December 1983, the DLO/Is found that part of two buildings in multiple ownership was on government land (see Figure 3). In response to the DLO/Is' enquiries about the rectification of the site boundary, the Registrar General's Department replied that:

- (a) since the site had fallen into multiple ownership, it would be difficult to carry out rectification action; and
- (b) despite the undertaking, it would be difficult to ask Developer B to pay a premium for the extra piece of land.

Figure 3
Encroachments at the Yi Long Wan site



- Legend:
-  boundary of the Yi Long Wan site
 -  encroachments
 -  Yi Long Wan site
 -  land outside the Yi Long Wan site

Source: *Lands D records*

5.43 During 1984 to 1986, there had been discussions on suitable legal documentation for the site boundary rectification. Since then, there was no follow-up action by the Lands D.

5.44 In May 2000, the DLO/Is asked the Legal Advisory and Conveyancing Office (LACO) of the Lands D about the issue. Up to the time of audit (July 2004), there was no record showing that there was any response from LACO.

Audit observations

Certificate of Compliance and pre-sale consent

5.45 In 1979, the New Territories Administration found that there was encroachment at the Yi Long Wan site. To rectify the encroachment, Developer B approached the District Office/Islands to adjust the site boundaries (see para. 5.37). In March 1980, the Registrar General's Department gave its pre-sale consent (see para. 5.39). Subsequently, it was found difficult to resolve the site boundary problem as the site was under multiple ownership. **Audit considers that the District Office/Islands should have informed the Registrar General's Department of the land encroachment problem, before the Registrar General's Department issued the pre-sale consent to Developer B.**

5.46 In December 1980, the District Office/Islands agreed to issue the Certificate of Compliance in return for Developer B's undertaking to pay additional land premium for adjusting the site boundaries. Audit noted that:

- (a) the letter of undertaking (see para. 5.40) had not been vetted by the Registrar General's Department; and
- (b) the District Office/Islands had not sought legal advice before agreeing to the issuance of the Certificate of Compliance (see para. 5.40).

5.47 **Audit considers that:**

- (a) **there was a lack of coordination between the District Office/Islands and the Registrar General's Department, before the latter gave its pre-sale consent to Developer B;**

- (b) **the District Office/Islands should have sought legal advice before agreeing to the arrangements for issuing the Certificate of Compliance; and**
- (c) **the Lands D should have taken follow-up action to resolve the site boundary problem.**

5.48 In response to the Ombudsman's review, in January 2003, the Lands D said that, upon the satisfactory completion of a development project, the relevant District Lands Officer should issue a Certificate of Compliance confirming that the completed development complied with the terms of the lease (see para. 5.28(d)). **However, as illustrated in paragraph 5.46 above, the Certificate of Compliance was issued before the rectification of the site boundary problem. There is room for improvement in the procedures for issuing the Certificate of Compliance. Audit considers that the Lands D should review the effectiveness of using the Certificate of Compliance as a control measure.**

Audit recommendations

5.49 **Audit has recommended that the Director of Lands should:**

- (a) **work out a practical solution with Developer B and the individual unit owners of the Yi Long Wan development to resolve the land encroachment problem;**
- (b) **seek legal advice prior to issuing the Certificate of Compliance and pre-sale consent, if problems of the site boundary of a development are found; and**
- (c) **review the effectiveness of using the Certificate of Compliance as a control measure against land encroachment.**

Response from the Administration

5.50 The **Director of Lands** agrees with the audit recommendations mentioned in paragraph 5.49. He has said that:

- (a) in respect of the audit recommendation in paragraph 5.49(a), the Lands D is considering possible ways to resolve the encroachment at the Yi Long Wan development. When the Lands D has formulated a proposal, it will contact the relevant parties; and

- (b) as regards the audit recommendation in paragraph 5.49(c), for encroachments discovered before issuing the Certificate of Compliance, the Lands D considers that withholding the issue of the Certificate of Compliance until the encroachment is rectified is a very effective means of land control.

5.51 The **Ombudsman** generally agrees with the views in the Audit report. She has said that there is certainly scope for improvement in the way the Lands D administers land grants and enforces leases. She believes that this stems, in part, from the Lands D's *de facto* power to formulate its own policies on land matters, without supervision by (or reference to) higher authority. In fairness, part of the problem may have also been the result both of resource constraints and the fairly relaxed attitude over the decades.

Key information about the land grants

	Discovery Bay development	Yi Long Wan development
(a) Location	Adjacent to Tai Pak Wan and Yi Pak Wan at the north-eastern part of Lantau Island.	Southern end of the Chi Ma Wan peninsula at Lantau Island.
(b) Area	About 6,152,000 m ²	About 28,000 m ²
(c) Basis of valuation	Market value	Market value
(d) Premium	\$61.5 million	\$2.2 million
(e) Date of execution of the Agreement	10 September 1976	2 September 1975
(f) Building covenant period	To expend a sum of not less than \$600 million over a period of 120 months from the date of the lease.	To expend a sum of not less than \$2.7 million before the expiration of 60 months from the date of the lease.
(g) User restriction under the lease	For the purposes of the club houses, courses, leisure resort facilities and the minimum associated facilities (see para. 3.2) indicated on the master layout plan, and such recreation, residential and commercial purposes and uses ancillary thereto as might be approved in writing by the then Secretary for the New Territories.	For residential and country club purposes together with such recreational facilities and uses ancillary thereto.
(h) Design and disposition and plot ratio of buildings on the site	Subject to the master layout plan approved in writing by the Secretary for the New Territories.	Subject to the master layout plan approved in writing by the Secretary for the New Territories.
(i) Height, plot ratio and/or gross floor area specifications under the lease	Not specified	The floor area of buildings should not exceed a plot ratio of 0.9 and no buildings should contain more than four storeys.
(j) Year of completion of the development	Development is still in progress	1980
(k) Nature of completed development	According to the latest approved February 2000 MLP (i.e. Master Plan 6.0E1), 8,608 residential units would be provided upon full development.	200 residential units

Source: Lands D records

Lease conditions on the setting out of site boundaries

A. Discovery Bay development

(a) General Condition 1:

- The grantee shall apply to the Secretary for the New Territories for the site 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 for the New Territories so to do, demolish such building and shall rebuild as directed by the Secretary for the New Territories.

- If the grantee fails to demolish any building as aforesaid, it shall be lawful for the Secretary for the New Territories to have such building demolished, and the grantee shall pay on demand the amount certified by the Secretary for the New Territories to be the cost of such demolition.

B. Yi Long Wan development

(a) General Condition 3:

- The grantee shall apply to the Secretary for the New Territories for the site to be set out on the ground and shall not commence any operations for building thereon until it shall have been so set out.

- If the grantee erects any building otherwise than in due accord with such setting out, he shall, when called upon by the Secretary for the New Territories so to do, demolish such building and shall rebuild as directed by him.

- If the grantee fails to demolish any building as aforesaid, it shall be lawful for the Secretary for the New Territories to have such building demolished, and the grantee shall pay on demand the amount certified by the Secretary for the New Territories to be the cost of such demolition.

A. Discovery Bay development

(b) General Condition 3(a):

- The boundaries of the site shall be determined by the Secretary for the New Territories (whose decision shall be final) before the issue of the Government Lease.

B. Yi Long Wan development

(b) General Condition 5(a):

- The boundaries of the site shall be determined by the Secretary for the New Territories (whose decision shall be final) before the issue of the Government Lease.

- In the event of any excess or deficiency in area being found to exist as compared with the area specified in the lease conditions the amount to be paid by or refunded to the grantee in respect of such excess or deficiency will be calculated at the rate of \$188.3 per m² (or \$17.50 per square foot).

Source: Lands D records

Chronology of key events

The Discovery Bay development

December 1973	ExCo agreed that the proposal of creating a recreation and leisure community at Discovery Bay should be permitted to proceed.
July 1976	ExCo approved the grant of land to Developer A for a holiday resort and residential/commercial development.
September 1976	The then Secretary for the New Territories executed the lease at a premium of \$61.5 million.
July 1977	The Secretary for the New Territories agreed that setting out of the site boundaries was not required at that time.
July 1977	It was proposed to change the public golf course to some other form of public recreational use.
March 1979	Developer A sought the Secretary for the New Territories' approval in principle to abandon the concept of a public golf course and instead, to locate within the site suitable areas for active public recreation.
August 1981	Developer A applied to the Secretary for the New Territories for an STT application for a piece of government land at Wong Chuk Long to accommodate the fourth and fifth holes for the south golf course.
December 1981	Developer A submitted a proposal on the provision of replacement public recreational facilities for day visitors with a much wider range of pursuits.
February 1982	The Secretary for City and New Territories Administration approved MLP 5.0 which removed the requirement for the provision of the public golf course.
September 1982	The Lands D was informed that the development concept of the Discovery Bay project had changed from a resort with 2,200 hotel rooms to a first-home community for 20,000 people.
October 1982	The Lands D approved the Supplementary MLP 5.0 and said that the encroached government land at Wong Chuk Long would be included in the boundary rectification exercise to be carried out in future.

Appendix C
(Cont'd)

March 1983	The then Registrar General's Department advised that there was no need to modify the lease conditions concerning the public golf course as the approval of MLP 5.0 in effect deleted the facilities.
March 1983	The Director of Lands said that the Government would carry out a survey upon the issue of the Government Lease at the end of the whole development.
February 1985	The Director of Lands approved MLP 5.1 which removed the requirement for the provision of the cable car system.
June 1994	The Lands D approved changes made in MLP 5.6 after collecting \$126 million from Developer A.
October 1996	Developer A applied for an STT for the government land at Wong Chuk Long.
May 1998	The STT application was rejected as the government land was within the proposed extension of the Lantau North Country Park.
July 1999	The Lands D approved changes made in MLP 5.7 after collecting \$220 million from Developer A.
February 2000	The Lands D approved changes made in MLP 6.0E1 after collecting \$1,650 million from Developer A.
June 2002	Developer A asked the Lands D to reconsider the STT application as the draft map for the Lantau North (Extension) Country Park had excluded the encroached government land from the country park.
July 2002	The Lands D approved the STT for golf course purpose.
July 2004	The STT for golf course purpose was executed.

The Yi Long Wan development

September 1975	The Government granted the Yi Long Wan site to Developer B.
January 1976	The then Crown Lands and Survey Office of the then Public Works Department set out the Yi Long Wan site boundaries.

Appendix C
(Cont'd)

October 1979	The then New Territories Administration found in the Yi Long Wan MLP that certain buildings were outside the land grant boundaries.
January 1980	The New Territories Administration informed Developer B that it did not approve the Yi Long Wan development works.
March 1980	The then Registrar General's Department gave Developer B a pre-sale consent.
March 1980	The then District Office/Islands agreed that the site boundaries should be adjusted to cover the encroached government land.
December 1980	Developer B gave an undertaking to pay additional land premium for adjusting the site boundaries.
December 1980	The District Office/Islands issued the Certificate of Compliance.
December 1983	The DLO/Is found that part of two buildings in multiple ownership was on government land.
January 1984	The Registrar General's Department advised that it would be difficult to carry out site boundary rectification action as the site had fallen into multiple ownership.
1984 to 1986	There had been discussions on suitable legal documentations for rectification of the site boundary.
May 2000	The DLO/Is asked the LACO's advice on the site boundary rectification problem.

Acronyms and abbreviations

AP	Authorised Person for the Discovery Bay development
Audit	Audit Commission
Developer A	Developer of the Discovery Bay site
Developer B	Developer of the Yi Long Wan site
DLO/Is	District Lands Office/Islands
DPC	Development Progress Committee
ExCo	Executive Council
GFA	gross floor area
HyD	Highways Department
LACO	Legal Advisory and Conveyancing Office
Lands D	Lands Department
LAOI	Lands Administration Office Instructions
LegCo	Legislative Council
MLP	Master Layout Plan
m ²	square metres
OZP	Outline Zoning Plan
STT	Short Term Tenancy