

公開拍賣土地的管理工作

The administration of sale of land by public auction

主席：

各位早晨。歡迎各位出席政府賬目委員會就審計署署長第 37 號報告書第 7 章有關“公開拍賣土地的管理工作”進行的公開聆訊。證人包括地政總署署長布培先生、屋宇署署長梁展文先生、屋宇署副署長張孝威先生、規劃署署長馮志強先生、規劃地政局局長曾俊華先生、規劃地政局副局長(市區重建及屋宇)余志穩先生。

首先請劉慧卿議員提問。

劉慧卿議員：

多謝主席。我主要是討論第四部分，其實這部分跟其他部分都有關連的，主要是有關小西灣賣地的問題。

根據審計署署長報告書，當時的都會計劃及在《香港規劃標準與準則》中指出，小西灣有一個減低人口密度的規劃目標。而當時各部門同意該地的最高地積比率是 6.5 倍，但是後來比率提升至 8.819 倍，即是說起多了 41000 多平方米。

審計署署長從經濟角度尤其關注到一點，就是若早知道可以增加建築樓面面積的話，該地的底價便應該調高 10 億元。就此引申出許多問題。

首先我希望提問的是：第一，有關小西灣這個都會計劃，一直以來政府及《香港規劃標準與準則》都同意其地積比率是 6.5 倍。但是，於第 3.9 段提及的會議中，改變了一些事項。在 1996 年 9 月 27 日的地區地政會議上，與會成員懷疑能否達到特別條件擬稿所定的住用部分最高地積比率 6.5 倍，有成員建議刪除擬稿中第 10(b)(i) 條有關住用部分最高建築樓面面積的條件，理由是可以讓準買家採用靈活的設計。即是本來是有寫最高地積比率的，但後來在賣地條款就沒有寫了。這就是其中一個問題的出處，因為刪除了第 10(b)(i) 條，就令地產商有爭拗。首先我想有關的官員向我們解釋一下。就算當時質疑會達不到最高地積比率 6.5 倍，但亦不必刪除這個限制；這邏輯我已不太明白，而審計署署長可參閱的文件並不多，只是知道這個會議。我認為這是其中一個引發以後問題的開端。因為如果刪除了條款，日後發展商就會有爭拗。有關的官員可否對第 3.9 段作出解釋？以及這類事情是否經常發生？哪一位可以作出解釋呢？

主席：

報告書第 5 頁的註 5 提到地區地政會議由有關地區的地政總署助理署長擔任主席，主要是地政方面的官員。對於這個問題，我想布培先生作出回應較為適當。

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Mr R D POPE, Director of Lands (D of L):

Thank you very much indeed, Mr Chairman. The District Lands Conference is indeed chaired by the Assistant Director of my department, but its members comprise a representative from the Planning Department, the Buildings Department and many other government departments. I would like to use the word “discussion” rather than “argument” when arriving at the plot ratio. There was some discussion at the District Lands Conference, and the decision of that Conference was that we would leave the question of restriction of plot ratio silent; just say “subject to the Building (Planning) Regulations...”

I think the Director of Planning can explain more about the planning aspect in a moment, but as I said, the consensus of that meeting was that we would remain silent on the maximum floor area, and just state that the floor area should be subject to the Building (Planning) Regulations – which is quite normal in what we call this sort of development. It is quite common. We just leave it silent. The Director of Planning can add more on the planning side.

主席：

根據報告書第 3.8 段，似乎是規劃署的同事提出刪除條款，馮志強署長可否作出回應？

規劃署署長馮志強先生：

主席。對於是否規劃署要求刪除這條條款的問題，其實當時是一個集體討論所作出的集體決定。而最初是規劃署建議在賣地條款內加入 6.5 倍地積比率的條款。據我瞭解，在地區地政會議上討論時發覺該地盤要發展是有很多制肘的，包括安排一個公共的交匯處、多個公共停車場、並提供緊急的通道。所以當時考慮到該地盤發展的制肘相當大，所以如果讓發展商多些靈活性，效果可能會比較好。基於此集體討論從而得出該集體決定。

主席：

劉慧卿議員。

劉慧卿議員：

主席。我最怕是集體決定，變成無人負責，我希望問局長及署長。規劃署代表提出刪除條款的建議，署長同意有關修改，因地盤有很多制肘，刪除限制可提供靈活性給準買家。但當時可能預見不到後來會出現的問題。現在回頭看，你認為後來出

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現的情況是否問題呢？報告書第 4.34(d)段提及小西灣土地底價應調高 10.18 億。在拍賣完畢後，買家又找屋宇署提出地盤的分類和街道一詞的定義等問題，屋宇署署長又三次諮詢律政司的法律意見。對於這些問題，是不是因你們在規劃時有很多事情未弄清楚所導致？這樣就浪費了多少時間。你們這些高官就高薪厚祿，究竟你們是不是刻意製造這些混亂的呢？報告書指出了當時有發展商查詢該幅土地的分類、住用部分的建築樓面面積和發展密度，他們已發現這些灰色地帶，但你們仍然這樣做，那你們是否刻意地製造混亂而令到後來很多紛爭出現？

主席：

布培先生。

D of L:

Mr Chairman, can I maybe correct a misunderstanding? The chairman of the District Lands Conference is indeed the final authority on these matters. As the Land Authority, my representative has the authority to make a decision on the conditions of sale, but this is normally arrived at by discussion, and this is what happened in this case. There was a discussion, and the consensus of opinion was to leave it silent. But at the end of the day, if there were disagreement, it was the chairman of the District Lands Conference who can make a decision.

It is not a question of trying to avoid it or trying to make a collective decision. At the end of the day it is the chairman of the District Lands Conference's decision. Personally, I do not think there was confusion over this matter. As I said, it was decided that the plot ratio, the floor area, should not be stated as maximum, because as I understand it, the metroplan guidelines are only guidelines. They are not statutory. I think we have had this before at the Public Accounts Committee. We have said that it is the outline zoning plan which is the plan that is statutory and specifies the plot ratio of a particular site; and we have said on previous occasions that where the Administration wants the plot ratio of a particular site to be specified, that will be stated in the outline zoning plan. There was no such specification in the outline zoning plan for this area. Therefore it was quite correct for the committee and the chairman of District Lands Conference to leave the matter open, and just leave it that it was up to the developer to try to get as much plot ratio or development on the site as he wished.

Originally I think the idea was that members thought that maybe he could not even get 6.5. As it happened, yes, he got 11.8. But that does not necessarily matter, because as I said, it was not a statutory plan. There was no reason for the Chairman of the District Lands Conference to specify a plot ratio, because that plot ratio was not specified in the outline zoning plan. The metroplan guidelines are only guidelines. They are not statutory. Again, maybe the Director of Planning can talk a little bit more about this, as regards guidelines, statutory plans and things like this.

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主席：

我想劉議員希望馮署長作出解釋，特別是他提到有意保留靈活性，我相信各位都希望知道保留靈活性的好處，若不保留靈活性，投標價會否更低？馮署長。

規劃署署長：

多謝主席。關於靈活性方面，當日地區地政會議成員考慮到地盤發展的制肘，如果這個地盤是甲類地盤的話，要安排設立公共停車場、公共交匯處、消防通道，還有零售設施設在樓下三層的話，如果樓下三層全是非住宅用途，所得住宅的建築比率可能少於 6.5 倍，有鑑於此，當日提到給予發展商較大靈活性，設計上可以做得更好。我相信地區地政會議大部分成員亦覺得地盤的分類應該是甲類，後來變成丙類地盤，這點當時可能未考慮到。

主席：

劉慧卿議員。

劉慧卿議員：

主席。關於地盤是甲類還是丙類，我們稍候再作討論，你們有否視察過，竟可將地盤由甲類變為丙類。至於靈活性的問題，你認為發展商有很多制肘而給予靈活性，最終發現地產商比你們精明，可以興建到 8 點幾倍或更高的地積比率，而你以為只可興建至 6 倍多，但問題是你們用什麼基礎去訂定底價呢？你應有一個基礎去訂定 63 億元的底價，這顯示土地將來的發展潛力，因此審計署署長批評你們，給了一個如此大的靈活性，多出四萬一千平方米，如果當時知道靈活性這麼大，你的賣價可能會高於 118 億元，你是以甚麼基礎制定底價？你給予發展商靈活性，即地積比率可能會高於 6.5 倍，那底價是否應相應提高？

主席：

布培先生。

D of L:

Mr Chairman, yes, if we have thought that the plot ratio would have been higher, obviously, we would have set a higher reserve price, but that in a way is academic because instead of 6 or 7 billion dollars, we got 11.8 billion dollars. And that I think is the highest price ever paid at auction - 11.8 billion dollars, we never got that much before or since. We wish we were getting it now.

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But yes, we valued it as a class A site and in hindsight that was incorrect. If we have known we would have got a class C site, we would have valued it higher. But as I said, that was as it happened – that was superseded by events because we have got a lot more. I understand that all the bidders at the auction were assuming or certainly towards the end of auction, assuming it was a class C site anyway. And this is why the price went so high. And of course, we were in a very volatile property market in those days and prices were very high. It was very difficult to value property in those days because prices were going up astronomically.

主席：

劉慧卿議員。

劉慧卿議員：

主席。我想提問最後一個問題。你是否承認當時是作出了錯誤的估計？你不能說當時 118 億的賣價已經很高，不能賣得更高的了，這是不可能的，沒有人會知道，審計署署長認為可以增加 10 億元底價，是否可賣到 128 億元呢？處理的過程是否有問題？你是否認為應避免將來再有你估計這是甲類地盤，他卻說是丙類的情況出現。你不容許以後再有類似情況發生，因為上次的處理是錯誤的，對嗎？

D of L:

Mr Chairman, I do not accept that a mistake was made. That is not the case. My department, when valuing the site, obtained advice from the Buildings Department, and the advice we received was that it was a Class A site; so we valued it accordingly. We took the best professional advice we could obtain at the time. It transpired that because of a legal argument, the site became a Class C site, and they were able to get an additional plot ratio.

That is not a mistake. That is just professional judgment. As I say, the end result was much, much higher than the reserve price we fixed in those days, at 6 billion or 7 billion. It was much, much more. So there is no question of somebody having lost any money by that mistake, because the error was made because we obtained professional advice and it transpired that because of legal arguments, that advice was not correct at the time. Nobody could know originally what the classification was. Until a developer puts in a scheme, it is very difficult for the Buildings Department or ourselves to make any judgment on whether it is a Class A, B or C site. It all depends on the scheme when it is submitted.

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劉慧卿議員：

請梁署長就有關提供錯誤意見方面作出解釋？

主席：

梁署長。

屋宇署署長梁展文先生：

主席。我們的同事是以當時地盤的情況的資料做判斷，正如地政總署署長布培先生所解釋，直至地產商有一個正式的發展建議，是很難確知地盤是屬於哪一類型的地盤分類。而當時同事所提供的意見只能夠參考當時已知的資料，比如要建設私家街這個構思當時是沒有人知道的，按當時已知的資料判斷應該是一個甲類的地盤，因為我們的同事是不能夠預知未來會發生的事情的。

主席：

現在讓李華明議員及劉江華議員跟進。

李華明議員：

主席。根據以下幾個理由，我很贊同劉慧卿議員所說這是一個錯誤。第一，報告書第 3.4 段提及在 1996 年 5 月，規劃署署長通知地政總署港島東區地政專員，小西灣 土地的住用發展部分的最高地積比率應該是 6.5 倍，可興建 1940 個單位，而最終成為 8.819 倍，興建了三千多個單位，比原來估計的多出 35%。你們的解釋是開會時有代表認為基於公共緊急車輛通道的問題，住用部分的最高建築樓面面積未必能夠達到 6.5 倍的地積比率，這個代表是誰要找出來。但為何不修改為 7 倍或許 7 倍多呢？為何會刪除這條款？為何不設一個平衡點？參考其他部分，再作估計，然後才下判斷呢？你的決定就是 silent。

主席。不要忘記在拍賣前有準買家查詢今天所發生的一切事情，包括該幅土地的甲、乙、丙分類、住用部分的建築樓面面積、發展密度、交匯處和停車場設計等關鍵性的地方。準買家曾經詢問過規劃署的，可惜無法查出他們如何回答，否則就更加清晰當時的錯誤了。政府部門不可能不將這些條款加入賣地章程，而且地產商亦詢問了，但最終什麼條款都不列入其中。當中有否疏忽？我不知道背後還有什麼問題？為何如此簡單便達至這個結果？能否在此作出回應？

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Chairman:

Mr Pope, I think I will direct it to you.

D of L:

Thank you, Mr Chairman. Yes, as I think I explained earlier, the initial proposal was a 6.5 plot ratio, but then after discussion at the District Lands Conference, it was agreed not to stipulate any maximum floor area. That was arrived at by the whole committee, and the chairman therefore directed that the maximum floor area not be stated.

As I said, in retrospect we do not believe that was an error, because the only stipulation on floor area was contained in the metroplan, and as I know it, the metroplan is only a guideline. It is not an outline zoning plan, which is the only plan that really specifies maximum floor area. The outline zoning plan in this area does not specify a maximum floor area. Therefore it was agreed not to include it.

The site classification: Mr LEUNG has explained why we could not specify at that stage what it was, and indeed, my department's view is that we should not specify; we should just leave it up to the developer to work it out for himself, really; and the best price can be obtained in that way.

It has also been agreed - the Administration, my colleagues and I have discussed this matter - that we accept the Director of Audit's concern that any inquiries on the sale site should be answered by the Lands Department, not by the Buildings Department or Planning Department, unless there is a non-specific question. It will always be directed to the Lands Department. It has also been agreed, and we have discussed this with the representatives of the profession, that, in fact, my department will not interpret lease conditions for purchasers. We will not really entertain questions about "How do you interpret this lease?" We will suggest that they go to their legal adviser on these matters, because then they base it on their own advice, not on advice from the department.

It has been agreed that any questions directed at government should be directed to the Lands Department rather than the other departments, because the Lands Department operates the lease conditions, and we thoroughly agree with the Director of Audit that my department should be the only one that answers any questions. Occasionally there are situations arising in sale conditions - not in this case, fortunately, but in other sale conditions - where there is an error in the conditions; and in those cases that error will be corrected and it will be published in the newspaper so that everybody knows the change in lease conditions that has occurred because of this clarification. We do that when errors are found, but thankfully that does not happen very often.

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主席：

李議員。

李華明議員：

剛才我就報告書第 2.25 段內的問題詢問規劃署署長。剛才地政總署署長的意思是否應該問地政總署？規劃署不應回答這些問題，是現在才這樣說？還是當時沒有這樣的理解？在 96 年，是否各自發揮，誰收到查詢就由誰回答？這是否當時的做法？還是你認為當時的做法不對才這樣說？

此外，最終得到 118 億元很高的賣價，政府收入很多。是否因為你們的 *silent*，給予更大的靈活性才達到這樣的結果？是不是你們刻意造成的，使發展商享有極大的靈活性，好讓你們能創造更高的賣價？是否有這個考慮？

主席：

對。剛才布培先生亦提及過，這樣做才能達至最好的賣價。我亦希望瞭解一下這個關鍵，Mr Pope.

D of L:

Basically yes, Mr Chairman.

Chairman:

So you are saying that if you specified the plot ratio at 6.5 and did not leave it flexibly so that people could imagine or could hope to achieve a much higher plot ratio - if you had specified that in the land auction, the price would not achieve the 11.8 billion.

D of L:

Exactly, Mr Chairman. On the first point, I remember raised, yes, at that time there were no policy guidelines to refer all questions to Lands Department. It was the practice at that time for individual departments maybe to answer questions, but just recently, because of the Director of Audit's recommendation contained in this report, all three directors have agreed that basically questions should be directed to Lands Department. But that is our current procedure, not the procedure at that time.

主席：

劉江華議員。

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劉江華議員：

主席。在地區地政會議中，當大家懷疑未必能夠達到 6.5 倍的地積比率時，便把條款刪除。剛才規劃署署長認為，對於那幅土地的分類，大家的共識仍然贊同屬甲類，在 97 年 3 月定下底價時，亦同意以此訂定底價。但在賣地後，一個月內，即 1997 年 4 月，當買家為該幅土地提出申請為丙類地盤時，卻立即得到同意。為何在一個月之內會出現如此大的變化呢？我希望請署長作出回應。

Chairman:

The question is to you, Mr Pope.

D of L:

Mr Chairman, it was not a matter of change. Under the lease conditions, we remained silent on the site classification. It was left to the developer to obtain whatever development he thought appropriate, so we did not specify a maximum floor area. When we assessed the reserve price initially, we took advice from our colleagues in other departments, and the consensus was that it was a Class A site, and therefore we valued it as a Class A site.

It subsequently transpired that he could indeed get a Class C site, because of different legal interpretations, different legal advice that he had obtained. I do not know whether my colleague Mr LEUNG can throw any more advice on that, but to say we immediately changed I do not think is fair, because I think the Buildings Department initially said "It is a Class A site". Then the developer appealed; he submitted legal advice; my colleague went to...

Chairman:

Mr Pope, when you said that the Lands Department said it was a Class A site ...

D of L:

No, never.

Chairman:

It was never really made public?

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D of L:

That is right.

Chairman:

Everything was internal?

D of L:

Yes.

Chairman:

As far as the outside people are concerned, there was never any classification of the site?

D of L:

No. That is quite correct. As I say, Mr LEUNG can add more, but it was not a matter of immediately changing. I think it took quite a lot of argument by the developer. Maybe Mr LEUNG can explain that. It was not an immediate change. It was quite a long argument that the developer went into.

主席：

我亦不希望梁展文先生再重覆報告書的內容，因報告書內已清楚地列明有關申請的程序和三番四次徵詢法律意見，然後作出決定。請梁先生撮要地作出補充。

屋宇署署長：

主席。我代布培先生說句話，賣地時是沒有列明地盤的分類，因此賣地後並不存在反對與否的問題。法律上也清楚列明，地盤是可以建設私家街的，但其面積是不能當作地盤。這一點地產商投地時都是知道的，可以做到是丙類的地盤分類。公平地說，投地的準買家均知道這一點，是可以將其變為丙類地盤的。

主席：

劉江華議員。

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劉江華議員：

我很明白賣地的時候沒有提及 6.5 倍的最高地積比率來考慮底價的標準，公眾是不知道的，只有你們內部知道。如果你們都估計投地時可以超過 6.5 倍，為何內部會以 6.5 倍作為一個標準？不高一點或低一點呢？審計署的批評就是這一點。在訂定底價時以 6.5 倍作為標準，卻認為發展商可超過 6.5 倍，這就是你們內部的錯誤了。梁署長，你是否同意這是你們的錯誤？如果你認為人人皆知可以超過 6.5 倍的話，那麼，屋宇署、規劃署和地政總署在會議上的共識便不應該是不超過 6.5 倍。

主席：

布培先生指的是在法律上是沒有錯誤。而劉江華議員現在所指的錯誤，似乎是一個判斷上的錯誤，是不是呢？

劉江華議員：

主席。我很清楚這個問題，無論是法律上的，還是判斷上的。梁署長提到，當投地時，發展商是知道可以超過 6.5 倍的，但你們為何以 6.5 倍作為標準？

主席：

梁署長。

屋宇署署長：

訂立賣地條款並不屬於我可以影響得到的範圍。以 6.5 倍作為標準，亦不是我可以評論的範圍。在投地時，在條款內沒有列明的情況下，在現行的《建築物條例》下，可以建設私家街使成為丙類地盤。至於條款內是否應以 6.5 倍作為底價的標準，就不是我權力的範圍。

主席：

劉議員並不是提問這個問題，而是你當時作出底價的判斷，提交地區地政會議時，認為最高地積比率為 6.5 倍，對於這個判斷，雖然布培先生表示並沒有違反任何的法規，但是否明顯地作出了一個錯誤的判斷？為何地產商有如此的能力、想像力、創意，想到更高的比率？賣地落價時，可能是以此作為比例。但在內部你們自己已經規範了自己，這就是問題的所在。梁署長。

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屋宇署署長：

主席。我希望作出澄清，在地區地政會議，屋宇署的同事負責的範圍只是在賣地條款內是否有違反《建築物條例》，至於規劃地積比率的多少，並不是由我們提供意見。我只可以說，有關地盤的分類問題，根據當時的情況是一個甲類的地盤。

主席：

如果不是你提供的意見，是否由馮署長那方提出意見呢？一定有人提出 6.5 倍的地積比率的。

屋宇署署長：

是由規劃署提供意見的。

主席：

馮署長。

規劃署署長：

6.5 倍這個地積比率是根據都會計劃的考慮而作出的，我在此解釋一下都會計劃和賣地條款的關係。都會計劃是一個策略性的指引，提到的是整個都會區，很難將都會計劃內提到的指引，要在個別地盤或土地買賣上完全依從。所以，現時的機制是會計劃一個指引，在賣地和規劃時，作為一個參考，但在個別的情況下，可以作出較彈性的調整。這是其中一個例子，開始時作為都會計劃的一個指引而定出 6.5 倍的標準，但部門在討論和考慮賣地章程時，認為定為 6.5 倍是缺乏彈性，所以希望提供更多的靈活性予發展商，因此得出此結論。而這個結論是經過地區地政會議討論之後所作出的集體決定。當然你可以說當時地區地政會議的決定是不理想，沒有考慮到地產商可以如此聰明，但當時是有這樣的決定。

主席：

即是在刪除該條款後，你們當時的判斷，是否仍然不相信準買家可以興建超過 6.5 倍的地積比率？

規劃署署長：

主席，我相信當時的地區地政會議成員，並未考慮到可以興建超過 6.5 倍地積比率的。

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主席：

劉江華議員。

劉江華議員：

主席。我真的感到十分奇怪，那麼多的政府部門和腦袋，卻不如發展商般聰明。根據報告書第 4.5 段及第 4.9 段，在約一個月的時間，地政總署的態度是有所改變，地政總署署長並未回答這問題。此外，梁展文署長回應時表示，屋宇署、規劃署和地政總署均有代表出席地區地政會議，屋宇署不能夠不理會賣地條款，因為屋宇署當時有參加會議，很清楚是不超過 6.5 倍這地積比率，不能說賣地的條款是與我無關。相反，地政總署署長卻說，賣地是由我負責的，賣地後怎樣批地，則是屋宇署負責的。兩個部門都在推卸責任，如果是集體決定則這次是集體的錯誤，兩位署長是否同意？

Chairman:

I think we should deal with the change of mind first.

D of L:

Mr Chairman, as I said before, we did not change our mind. The sale conditions remained silent on the site classification. It is a fact that the reserve price was assessed on a Class A site.

Chairman:

Internally?

D of L:

Internally. This was not made public. This is purely for internal purposes. Based on that, we started to set the reserve price at a certain figure. In fact, we got nearly double that, and that is good. What happened afterwards, as the Member says, once we have sold the land and we have remained silent on the site classification, is a matter between the developer and the Buildings Department. I think my colleague has explained how they arrived at the decision to classify it as a Class C site, how it took a lot of legal argument to convince them that that was correct.

Chairman:

You are really inclined that the developer or the purchaser has a right to make that application at any time?

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D of L:

Certainly.

Chairman:

Because you have not stipulated any sort of restriction.

D of L:

Certainly. That is quite correct.

Chairman:

So that in that sense there is no change of mind at all?

D of L:

Exactly, Mr Chairman.

Chairman:

Thank you.

劉江華議員：

主席。署長在定出底價時是以 6.5 倍地積比率作為標準，是不是你當時已心中有數，知道可以再高一點的？

主席：

我感到有點困難，到底 direct 給誰回答？

劉江華議員：

主席。請地政總署署長回答這項問題。

Chairman:

Okay. Mr Pope, I think he is asking you first.

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D of L:

Mr Chairman, all the questions seem to be directed to me today.

Chairman:

It is the land value at the end of the day, because you chair it, although you are under advice, of course, from the Director of Planning. That is why I have a bit of a problem with the questions.

D of L:

I was joking, Mr Chairman. I have just got to think of the question now.

Chairman:

Do you know actually that at March the developer could have built more than the plot ratio?

D of L:

No; the answer is: "No, we didn't know". At that time we thought it was a Class A site.

主席：

還有第二項問題尚沒回答。梁展文先生可能要澄清一下劉江華議員的問題。就是雖然你們內部定了是 6.5 倍地積比率，但當有代表提出時是你們部門改變主意的。劉江華議員想知道為什麼到後來會改變主意？梁署長。

屋宇署署長：

主席。我希望說清楚大家各有各的職責和負責的範圍，不等於互相推卸責任。規劃地積比率的多少，是由規劃署的同事定的。我們的同事在地區地政會議的職責是看看有沒有違犯《建築物條例》，不是由我們去評論應該有多少地積比率，這不是我們擔當的角色。我們是根據《建築物條例》和當時的資料提出意見的，我們同意該幅土地是甲類地盤。地產商提交圖則時，發展計劃的細節可能會使地盤的分類改變，這項是大家共同知道的事實。在規劃上不是我的同事說要多少的地積比率，而是根據資料向地政總署提供意見。

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主席：

劉江華議員。

劉江華議員：

主席。我可否理解為當開地區地政會議時，大家有一個共識就是這塊地不可以超過 6.5 倍的地積比率，而事後每個部門都可以在不同的時間內有不同的理解和看法。我可否有這樣的看法？

主席：

梁署長。

屋宇署署長：

主席。我希望各位留意一點，在政府賣地時，是買賣雙方的情況。但作為一個執法者，我是執行《建築物條例》，如果他在後來提出的計劃是根據條例去做時，我應該不考慮其他方面，只看法律，看看能否達到他的要求，這點很簡單。因較早時的資料與後來的資料是不同的，報告書已詳細說明，所以不在這裏再重覆。到了後來，買家提交發展樓積時，根據《建築物條例》可以得到甚麼時，屋宇署署長應該公正無私地作出判斷批准與否，不能夠因為未賣地前認為屬甲類的地盤，於是不批給他。作為一位執法者，買賣雙方的角色是不同的。希望劉議員明白此點，根據當時的資料同事是同意其為甲類地盤。後來資料情況轉變了，當時的屋宇署署長再作出判斷和執法，他是絕對沒錯的，沒有不一致和前後矛盾的情況，亦沒有推卸責任。

主席：

劉江華議員。

劉江華議員：

主席。這個可能會有不公平的情況出現，在賣地之前，根據報告書第 4.6 段，有其他準買家詢問過規劃署有關該幅土地的人口密度、地盤分類及最高建築樓面面積等料，規劃署若按當時的共識即 6.5 倍的地積比率或人口密度等回覆這些查詢，但是賣地之後的發展卻有所不同，對於曾經作出查詢的買家是否公道？

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主席：

我想請布培先生回答，似乎布培先生提過從來沒有公開 6.5 倍這個數字，劉江華議員提問得非常好，你們有否提供這樣的答案予準買家，現在已是無從稽考，一點記錄也沒有，到底這樣處理是否公道？布培先生。

D of L:

Obviously, I cannot answer what questions were answered by the Planning Department, but as far as the lease conditions are concerned, those are the only documents on which any purchaser of land should base their judgment. The lease conditions; the sale conditions at auction is a contract between the government and the purchaser; and really a developer should look at those lease conditions alone. He really should not be obtaining advice from other government departments. This is why the three directors have met and agreed now that that will not occur.

Basically, as I said, it is the sale conditions which govern the contract between the government and the purchaser; and it is up to a developer to make his own judgment based on those lease conditions.

劉江華議員：

主席。規劃署是否應該回答報告書第 4.6 段內有關查詢事宜？

主席：

是的。馮署長，因為很多查詢是由你們部門的人答覆，到底如何答覆及查詢的內容，則沒有記錄，很難證明到底是否公道。馮先生。

規劃署署長：

主席。我同意審計署建議將來有關賣地條款的諮詢，應集中由地政總署處理，我認為這項建議非常好。在這件事上規劃署的同事當時是沒有準則，所以在記錄上做的不夠完備，希望將來我們透過與屋宇署和地政總署，三個署一起磋商，並會訂出指引，日後會做得更好。

主席：

我相信劉議員很希望知道在這次事件上，是否有不公道的情況出現，因為剛才布培先生亦提到後來的投標價出現很大的差異。

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規劃署署長：

主席。同事們是有指引列明，如果發展商特別在判斷提出問題，我們是不會作答的，例如這塊地是否屬甲類地盤？這塊地是否要到達這樣的底價才賣？這些問題我們一定會轉到有關的部門去答。當日的諮詢我相信是側重於這地盤是否根據城規條例譬如第 16 條的申請等。不過我同意在記錄方面我們做得不夠好，我希望將來會作出改善。

主席：

現在連記錄也沒有。

規劃署署長：

有記錄。但是沒有記錄他們如何回答。

主席：

石禮謙議員。

Mr Abraham SHEK Lai-him:

Mr Chairman, thank you. I represent the construction and development industry. The point I want to bring up here is that if you look at figure 1; I will refer to figure 1 in the table.

Chairman:

Mr SHEK, I remind you that you are also representing the Public Accounts Committee today.

Mr Abraham SHEK Lai-him:

Yes, I do. That is why I want to bring out the facts. Okay? If you look at figure 1, the government at that time cannot assess anything but a Class A site. If a developer can change from a Class A site to a Class C site, they take a lot of risk in assuming that a lot of things would happen; that they could create roads. From the government's point of view - I will just bring out the facts - from the government's point of view, they have to take the most conservative routes, and on that basis they assess the Class A site. Is that true? This is the first question.

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Chairman:

To whom?

Mr Abraham SHEK Lai-him:

To Mr Pope.

Chairman:

Mr Pope.

D of L:

Thank you, Mr Chairman. I do not know whether to say “the most conservative”. Shall we say that was the information we had at that time? Maybe there was some question mark in members’ mind at that time, that possibly it could be a Class C site, and in that respect Mr SHEK is correct. I think we would not take the risk in assessing the reserve price. We would have assessed what we know to be a fact, and then leave the risk side of it to the developer.

Chairman:

Mr SHEK?

Mr Abraham SHEK Lai-him:

Second question is: on the basis of the metroplan guideline, this is not a statutory guideline, this is not a statutory requirement as such, particularly as the metroplan guideline has been violated many times in other auctions. This is the second question I would like to ask the Director of Planning.

Chairman:

馮先生。

Director of Planning (D of Plan):

It is correct that the metroplan is not a statutory guideline. It is only a conceptual strategy, setting out a number of directions for the metro area to follow in terms of planning and development; and when it comes to implementation, obviously we have to look towards the outline zoning plan, the land sale and other sorts of development studies to implement the proposal set out in the metroplan. So it is correct; it is not a statutory document.

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Mr Abraham SHEK Lai-him:

So by September 1996 had they not at that time decided that the 6.5 plot ratio guideline should not be applicable to this site?

Chairman:

馮先生。

D of Plan:

Mr Chairman, the starting point of 6.5 was used in the drafting of the draft sale conditions for this site, but as I said earlier on, because of the discussion at this District Lands Conference, which has looked at other aspects rather than just plot ratios, including the provision of emergency access, the need to provide a public transport interchange, and also the need to provide a big amount of public car-parking spaces, therefore it was felt by the District Lands Conference that there would be a lot of constraints facing the development of this site. Therefore the committee chose to allow developers a greater flexibility. I think that was the background to the change.

Mr Abraham SHEK Lai-him:

The point why I have asked these two questions is because it really reveals three aspects to development of a site: you have the building regulations which are based on site coverage and the site allocation on the number of streets. The second one is from the Lands Department. They have to get the maximum money for the site. The third one is based on the Planning Department, to get the best planning objectives.

Having the three into one, it creates a conflict. Now the conflict has come out in this particular site: how to achieve the best for each department. In this case, it was agreed that the Class A site was a correct one, and the risk involved that it possibly could not materialize if a developer bought it. Is that true, Director of Lands?

Chairman:

You are the star of the day, Mr Pope.

D of L:

Thank you, Mr Chairman. I am just trying to think of the actual question.

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Chairman:

I think there is a conflict from the planning aspect, from the building regulations and safety aspect; and then from your aspect, the maximum money you would get. Which one is more dominant if there is a conflict?

D of L:

Basically, at the end of the day, the Lands Department is the land authority. So we take advice from other government departments, but when we issue conditions of sale, that is the document. In a way, how we obtained advice on those conditions of sale is of nobody's interest; it is the conditions of sale. As the land authority, when I set out conditions of sale, then those are the contractual agreements between the government and any purchaser.

Whether they can get site C is entirely left to the developer – the class C site. That is entirely up to the developer. Under the sale conditions, all we said was: “Submit to the building regulations”.

Chairman:

Mr Shek.

Mr Abraham SHEK Lai-him:

So my last question, Chairman, is: why, at the time in September, did they not specify a maximum plot ratio based on the Class C site? If you put it into the conditions of sale that it is subject to the achievement of maximum plot ratio, subject to building regulations, even if you use a Class A site for a maximum potential to Class C, so you have the benefit of Class A and Class C, subject to building regulations, why did they not put this in the draft conditions of sale?

D of L:

Mr Chairman, we leave it open for the developer to obtain whatever classification he can obtain from the Buildings Department. It just depends on any individual scheme that a developer produces. From the department's point of view, we do not specify. We never specify what classification of site a developer can achieve. We never do that; we have never done it. It is entirely up to the developer to get whatever site classification he can, through his own skilful architecture or whatever.

Chairman:

Yes.

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Mr Abraham SHEK Lai-him:

Mr Chairman, my question is rather simple, if I may just explain a little bit further. You put into the conditions of sale for fairness to other developers, or bidders, or tenderers, the maximum GFA, subject to building conditions, so you are not putting any sort of restriction or anything. If you use a Class A site as an assessment and you can go up to Class C, it is up to the developers or the bidders to decide whether they want to take the risk or not. They are subject to a lot of regulations: A, B, C, D.

Chairman:

In reality, you are really asking the developer to take a sporting chance, particularly with the regulation or the legal interpretation of it.

Mr Abraham SHEK Lai-him:

Yes.

Chairman:

The bidding is going to be associated with a lot of risks, and I do not know what it is going to do with the price. I will ask the question anyway, later, because I think in a number of paragraphs, 2.29(b) and also paragraph 4.35 and 4.38(a), there are three phrases where I understand government is going to consult the industry, before they come up with the reasons.

I am sorry to steal your question, but I want to make it quite clear and add it to my question as well. I think the whole system – Mr SHEK used “conservative” – is one where I would use the word “defensive” on the part of the government. If the government becomes defensive I think it is going to pose a lot of risks to the bidding process. I am not sure whether the industry will view it as a good thing or not a good thing.

Probably it will allow the government to get the maximum price at the end of the day, but the risk is transferred, I think, to the private sector, and it also raises the question of fairness, if they are asked to give it a sporting chance. Everyone will have a go at Mr LEUNG, after they bid the land, to get Class C. He is going to spend a lot of money hiring lawyers, defending his position. I think that is likely to be the scenario. Mr SHEK, you know the business a lot better than I do.

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Mr Abraham SHEK Lai-him:

Mr Chairman, if you look at figure 1, you cannot do anything from the government's point of view, except to see this from Mr LEUNG's point of view. If the government could have made a road, to make it a C site, they could have more money; but they have not done that. If they have not done that, Mr LEUNG has to use this as an A or B site.

Chairman:

In a way, Mr SHEK, are you really implying that we should draw a sort of sensible balance?

Mr Abraham SHEK Lai-him:

Exactly.

Chairman:

Between getting the maximum price and maintaining some fairness and clarity in the process? I think that is what you are trying to get. Mr Pope?

D of L:

Mr Chairman, your question of "defensive" maybe is a choice of words, but maybe you are quite correct, because we do not think it appropriate that government should assume it is a Class C site, because if it is not, if it does not obtain Class C site classification, then the government could well be sued for giving the impression that we are selling a Class C site. Vice versa applies: if we assume it is a Class A and put a maximum floor area, we have potentially lost money because it transpires that they can get a Class C site. So this is why we choose to remain silent.

Chairman:

That is what I always suspected to be the truth. You did not want to specify 6.5, because you do not think that it would get 6.5?

D of L:

That was the original.

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Chairman:

Thank you. But the whole process - has it achieved the right sort of balance? Are you going to transfer a lot of problems or work to Mr LEUNG? He has got to hold the final line of defence with the developers arming themselves with teams of lawyers, having a go at him, to try to get the maximum plot ratio. We are talking about big money here – billions of dollars in money.

D of L:

Mr Chairman, can I basically say that Mr LEUNG gets this problem every day? Not every site is sold by government. There is a lot of land which is held privately already, and there are lots of arguments about site classification all the time. I am sure this is not the only case he has obtained legal advice on; so this is the job of the Building Authority. He is always being asked these sorts of questions and maybe making decisions and maybe having to change his decisions.

Director of Buildings (DB):

I am not complaining.

Chairman:

Well, you are not going to make his life any easier.

D of L:

I do not think so, Mr Chairman.

Chairman:

Mr LEUNG, does anyone of you want to say anything?

D B:

I do not think so, thank you.

主席：

我知道張宇人議員希望就此問題提問，劉慧卿議員亦希望就此問題提問，就由她先提問，好嗎？劉慧卿議員。

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Miss Emily LAU Wai-hing:

Chairman, I really regret to hear what the Director of Lands has to say about his colleague. I think he has a tough job already and you do not need to compound his problems. I think the hearing this morning is to try to sort it out and, in fact, I would like to ask the Secretary to say something after hearing all this because obviously, to some of us, the current arrangement is very unsatisfactory - for the developers to guess what is possible.

Chairman, I also want to ask the Director – because earlier he did say he did not think it was right to specify the plot ratio and it is better to let the developer work it out but, in paragraph 4.39, he said he agreed with Audit that prior to the auction of the site he will seek clarification from the Building Authority on the classification of the site to be sold for the purpose of assessing the reserve price. I guess if you get the classification, then you will get the plot ratio, isn't it? I do not know why you say you do not think it should be specified but you agree here on 4.39 and I really want the Secretary to give us a comment on this; whether it is really fair to have this thing up in the air in a way and let the Buildings Department sort it out afterwards.

Chairman:

I am really letting Mr TSANG think about it. I think I am going to ask him that question right at the end after hearing everything.

Miss Emily LAU Wai-hing:

Right at the end, alright.

Chairman:

If I ask him to check, he might not have the full picture.

Miss Emily LAU Wai-hing:

Okay. Maybe I will ask the Director that.

Chairman:

In fact, I will also ask – there are a number of issues they can consult on as well. I think maybe if he cannot give the answer now – I would like to know about the consultation process. The industry probably does not know all this. They have probably not been consulted on all this and whether it is going to come out in the most logical balance, I think, as Mr SHEK quite rightly pointed out, it is a point of concern. I am not sure how far the consultation process has gone through but there are two questions. My

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original question has not been answered and also Miss Emily LAU's question: Why are you fixing or obtaining advice on the reserve price but not seemingly using it for your contract, but using it for fixing the reserve price only? Mr Pope?

D of L:

Mr Chairman, in paragraph 4.39 we did seek clarification from the Building Authority on the classification of the site and this was used for the purpose of assessing the reserve price. The reserve price is the price below which we will not sell. As I said, in this case it was much, much higher than that.

Chairman:

The reserve price is only made known at the auction, isn't it?

D of L :

That is right. That is basically the starting price.

Chairman:

So nobody knew about it?

D of L:

No, nobody knew about it and the price obtained was far, far higher than that reserve price. There was no harm done because, although maybe other members of BD at that time thought that maybe Class C was possible – maybe. I do not know – we have to have a conservative view about the development potential of the site because if we assumed it was Class C and we set the price higher, perhaps we would not have sold it because maybe the developer says, “No. I can't get Class C classification. I'm not going to bid that price”, so we have to be a little bit wary. It is only after a lot of legal argument that the Building Authority was persuaded that it could be Class C.

Chairman:

I have always wanted to ask the billion-dollar question. Perhaps I can do it on the reverse. If you had followed everything that the Director of Audit had recommended to you, did everything in the books, it seems that the final outcome is likely that you would have set the reserve price higher because if you had followed all the recommendations, the reserve price would probably be a little higher.

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D of L:

No, not necessarily. I think, as far as procedures are concerned, we have done everything correctly. Really, in many respects, there is no change now. With hindsight, the advice we obtained was not correct. That is with hindsight but at the time, to the best of our knowledge, it was a Class A site.

Chairman:

Okay. So if you had done everything as recommended by the Director of Audit, you are not really sure if the reserve price could have been fixed higher, would it change the auction price either?

D of L:

No, I do not believe so.

Chairman:

So even if you had done everything in the book, the outcome would be exactly the same.

D of L:

I believe so, yes.

Chairman:

Can I ask the Director of Audit, in their judgment – is that really the case?

Mr Johnsman AU Chung-man, Acting Director of Audit:

Mr Chairman, thank you for the question. It is not for us to speculate at this point in time what would have been the auction price if the reserve price had been changed at that time or revised at that time. It is not for us to speculate what would have been the auction price, if I understand your question correctly.

Chairman:

There are two doubts in my mind: one is that if the reserve price started at 7.3 billion and then finally ended at 11 point something - -

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Miss Emily LAU Wai-hing:

Mr Chairman, I think we are all guessing but any reasonable person would say if the reserve price is higher, then the ultimate price is also higher.

D of L:

I do not think so.

Chairman:

I do not think so. I do not think you can draw that conclusion.

Mr Abraham SHEK Lai-him:

There is no reason in auction – it is an involvement of risk-taking and, secondly, they cannot go higher than – the site is stipulated as a Class A site so the reserve price is based on a Class A site and on that basis – that is the rules of the game. You cannot ask government officials to change the rules of the day, to move the goalposts from point to point.

Chairman:

Let us not debate internally.

Miss Emily LAU Wai-hing:

We are not asking them to move the goalposts. We are asking them to follow their own instructions and rules so that there will be transparency and accountability. I do not think we are asking them to move the goalposts. We ask for transparency so that everybody will know there is a level playing field. I think that is what we are asking.

Mr Abraham SHEK Lai-him:

It is what I agree with you.

Chairman:

I think Mr SHEK agrees on that. I think that is why he has asked – I think that Mr Pope will try to answer later where is the sensible balance and transparency, fairness and also at the same time try to get the maximum price possible. If the developer overbids, not thinking it is a Class A site, then he will try like hell to get the Director of Buildings to change his classification; otherwise, he is going to make a severe loss. I think that would be the outcome.

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Miss Emily LAU Wai-hing:

Mr Chairman, can I also ask the Director, Mr Pope, if he does not think he should specify the plot ratio, then how do you achieve the planning objective, especially in terms of population density.

Chairman:

Mr Pope.

D of L:

Mr Chairman, as I said before, the planning objectives are obtained via the outline zoning plans. We have said in previous Public Accounts Committee, we will only impose basically plot ratio restrictions where these are contained within the outline zoning plans and I think in previous Public Accounts Committee the Director of Planning has even said that where the metroplan guidelines are to be followed, these will be incorporated in outline zoning plans. So the reverse applies. Where they are not stated in outline zoning plans they will not be put in these conditions because there is no authority for me then to impose a limit because by imposing that limit I am restricting the income and, whilst my role is to get the best planning that we can for Hong Kong, my role is to obtain the best price I can for land for the benefit of the general public.

Chairman:

I think it really goes back to Mr SHEK's original question.

Miss Emily LAU Wai-hing:

I hope the Secretary will deal with my question when he gives the final answer, how do we achieve those objectives. Thank you.

Chairman:

There are two more members waiting, so 張宇人議員先提問，然後劉江華議員。

Mr Tommy CHEUNG Yu-yan:

Thank you, Mr Chairman. Mr Pope, you have actually said previously you have never stated the classification, whether it be A, B or C, but is it not that in most cases you would specify a maximum or minimum floor area? In this particular case it was not specified. Is there a particular reason why you do not specify the maximum or minimum floor area and is that not related to Class A, B or C anyway?

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D of L:

Mr Chairman, in these sorts of development we do not specify the maximum floor area. The maximum floor area would only be specified where there is a restriction on plot ratio in an outline zoning plan which covers an area. Hong Kong is covered by many outline zoning plans and plot ratio. South of the island, etcetera, is obviously very much lower than other areas on the north side of the island. It was decided that there was no need to impose a maximum floor area.

If we had assumed it was a Class C site in a way there is no need because that is the maximum plot ratio you can achieve under the law, anyway, and it would give the wrong impression. It would give a purchaser the impression that he could get that maximum floor area which I think government is then really – it could be said to be misleading the purchaser. We do not want to do that. If we just state that it is subject to the laws of Hong Kong, the building plans and regulations, it is entirely up to the developer to obtain whatever plot ratio he thinks he can get on the site and we believe that is the fairest, most transparent way to obtain a development.

主席：

張議員。

Mr Tommy CHEUNG Yu-yan:

My second question would be: is it unusual to accept after a land auction the successful bidder's application to add two additional roads so as to change the classification of a site from A to C, resulting in an increased plot ratio and yet, with this particular site, ultimately only one additional road was built and was accepted by government and why?

主席：

梁展文先生。

DB:

Yes, Mr Chairman. Is it a usual practice? It is really up to the developer who has bought the site. Under Buildings Ordinance, a street includes public streets and private streets, if a developer comes up with a development scheme proposing to carve out private streets, they will be treated as streets if they meet the requirements of the street.

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主席：

張宇人議員，為使你的問題更加清楚，可否請梁先生提供資料，由 1995 年至 1998 年三年之內，到底有多少個獲批准改變地積比率的申請，看看有多少個案牽涉到內街問題。對於內街的定義仍不清楚，這是否唯一的申請？是屬於例外還是經常有的申請？希望梁先生和張先生可以提供協助。

DB:

Mr Chairman. Yes, certainly we can try to find out the information.

主席：

我們可根據統計數字，知悉這是屬於例外還是經常有的申請？

DB:

Mr Chairman, but I should point out, of course, in carving out private streets, the developer will be losing the site area. In some cases we require the developer to carve out private streets to provide access for a huge development like Whampoa Garden or Taikoo Shing, we require the developer to provide access roads. So it will depend on the circumstances of individual cases.

主席：

就張議員的問題，我們會以書面要求你們提供資料。如果有任何問題或須要澄清，都可能透過書面形式作出回答。劉江華議員。

劉江華議員：

主席。地政總署署長提到，如果在賣地條款內列入建築比例或規劃意向，似乎是可有可無的，對發展商的想法可能會有影響。但是署長是否記得曾經答應政府帳目委員會，將這些條款列入賣地條款內？

Chairman:

Mr Pope.

D of L:

I am sorry. I am not 100 per cent sure of the actual question. We try to get the conditions of sale absolutely correct.

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Chairman:

Not plot ratio, I think.

D of L:

Correct. Whether we put plot ratio in or not – as I said, if the plot ratio is defined or set down in the outline zoning plan, those will go in the lease. If it is not contained in the outline zoning plan, they will not go in the lease.

Chairman:

I think Mr LAU is under the impression you have somehow given an undertaking to the Public Accounts Committee before. I think you had better put under the references.

劉江華議員：

主席。我認為最主要的一點是要列明規劃意圖。記得在 1993 年 10 月的核數署署長報告書內提到有關花園道與麥當勞道交界，原本的設計意圖是興建 6 至 7 層。但因為地政賣地條款內有漏洞，所以增高至 31 層，這件事仍歷歷在目。當時審計署提出建議：“政府的規劃目的應準確反映在賣地條款內。”而當時的地政總署署長，於 1994 年政府帳目委員會報告書亦有清楚提到，我用英文讀出：“He accepted that the government’s planning intention should always be clearly reflected in conditions of sale”。就是說在賣地條款中須清晰地表明規劃意圖，避免再會發生原本只興建 6、7 層樓宇，卻增加到 31 層的現象。

主席。以現時小西灣用地的個案，1996 年 9 月 27 日的會議上，居然可以刪除規劃意圖。署長，就這方面是否違反了承諾？

Chairman:

Mr Pope.

D of L:

Mr Chairman, in that case – which I am very much aware of; I was involved myself – we accepted that the loophole would not have arisen if the planning intention for a low-rise commercial building had been specified in the outline zoning plan and the common practice of not stipulating plot ratio height restrictions in outline zoning plans was insufficient. Government has subsequently taken steps to change the system so that plot ratio restrictions are more commonly written into outline zoning plans. That is what I said

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before. The Administration has now said that if there is a plot ratio restriction they should go in outline zoning plans.

Chairman:

Mr Pope, maybe you could explain a bit more to the layman what is the difference between an outline zoning plan and a plot like 小西灣?

劉江華議員：

主席。署長剛才提及的是計劃大綱草圖，而我提出的是賣地條款有詳細規定，為何在這次會議上刪除規劃意圖？賣地條款未能反映有關情況？

Chairman:

Mr Pope, I think you should answer this.

D of L:

Because planning intention should be stipulated in outline zoning plans. If it is not stated in an outline zoning plan, it is not, in my way of thinking, planning policy. It may be a planning intention. It may be a planning view but it is not within the statutory plan. We have agreed in the Coda Plaza case we would not impose those in the sale conditions.

劉江華議員：

主席。他仍在轉移至大綱草圖，但在 1994 年應承當時的立法局，並非指計劃大綱草圖，而是要“reflected in conditions of sale”，你是如何理解這句話？

Chairman:

Mr Pope.

D of L:

Only when it is in the outline zoning plan. Sorry, Mr Chairman. That is the situation. That is my understanding of what happens in Coda Plaza.

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主席：

劉江華議員。我認為應該問馮署長，為何當時不列入大綱草圖內，因為法律規定：如果列入 zoning plan，地政總署署長一定要在文件內列明，因為這一次沒有列入 zoning plan，所以應該問他為何不列入 zoning plan，這樣才可以回答你提出的問題。如果列入 zoning plan，布培先生就一定要列入 conditions of sale，這就是當時對帳目委員會的承諾，否則，他便有理由不將其列入。馮先生。

規劃署署長：

我想就香港發展管制的工具簡單解釋。主要有三大類：第一是規劃圖，即分區計劃大綱圖、第二是地政土地條款、第三是屋宇署的審批。

在何種情況下我們會或不會將一些建築比率列入規劃圖，我們要考慮其實際的情況。如果我們認為發展可以按照建築條例去做，就不需要列入規劃圖中再次公開展示，但如果建築條例所容許的建築比率高於規劃上或是社會上可以接受的話，我們通常會展示在規劃圖內。多年來，我們都有列入規劃圖內，如果各位留意已公佈或展示的規劃圖，可以發現很多地盤的建築比率和樓宇高度均有列入。如果沒有列入，通常是代表可以根據建築條例去考慮，而無須在規劃條例內再重覆一次。

至於小西灣這幅用地，在我們的分區計劃大綱圖的說明書內亦有解釋，我們希望根據地契條款來處理這個案，因為這是一個新的土地批租，所以，在發展管制上是可以透過土地契約去處理的，所以就這個個案，我們是沒有列入規劃圖內。不過經一事長一智，過去幾年，在規劃圖內，我們盡量將認為需要低於建築條例地積比率的個案，都在規劃圖中列明。

主席：

我希望再問清楚一點。如果真的列入土地契約內，而發展商又認為可以再建高一點，並成功說服你們的話，到時是否讓他建高一點？是否有補收地價的可能性？這才是真正的損失，是否有這樣的程序？應該問你抑或布培先生的意見。

規劃署署長：

主席。或許我再解釋一下，如果在規劃大綱圖公佈了建築比率或是樓面面積，而發展商的發展超過規劃圖的指示，就需要修改圖則，所以便沒有地契的靈活性那麼大，只要滿足地政總署署長的要求就可以。但若在分區計劃大綱圖內列入樓宇面積的話，若是要修改.....

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主席：

我想布培先生作答會較好，比如你認為是甲類地盤，但後來地產發展商成功說服了你以丙類地盤的條件賣出時，當時投標價是甲類地盤的條件，投價後讓他升到丙類地盤的條件，是否需補地價給你呢？布培先生。

D of L:

Mr Chairman, we do not necessarily take a view as far as the sale conditions are concerned whether it is Class A, B or C. We merely say “subject to the Building (Planning) Regulations”.

Chairman:

I said, “if it had been in the conditions of sale”.

D of L:

No, we do not. Generally, it is our policy not to change conditions of sale, not to make fundamental changes to the conditions of sale within 5 years of a sale, anything fundamental. We would believe that change of gross floor area would be a fundamental change.

主席：

劉江華議員。

劉江華議員：

主席。我們收到的訊息是在賣地條款內要寫清楚規劃意圖。規劃署的想法是在地契內寫清楚，地契是在賣地後的過程，我希望澄清這件事，地契是什麼意思呢？

主席：

馮署長。

規劃署署長：

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劉江華議員：

是指賣地的條款嗎？那麼，現時沒有寫在賣地條款內，這是否違反了當時的承諾？

主席：

馮署長。

規劃署署長：

主席。就小西灣這個案，最初規劃署是要求在賣地條款中加入 6.5 倍地積比率的，不過在地區地政會議經過集體討論後，決定給發展商更大靈活性，於是在賣地條款內將之刪除，所以最初我們是有此意向，只是最後決定不是如此。

劉江華議員：

那麼這個集體的決定是否違反當年承諾？

規劃署署長：

主席。我不可以說是違反承諾，起碼我們做了第一步，但是每件事都要視乎個別情況考慮，在這個情況下是一個集體的決定。

主席：

我想最後給局長嘗試回應，幾位署長均與你的政策局有關，各個署有自身不同功能及要求，最後如何平衡可能要靠局長作一個明智決斷給委員會。曾局長。

Mr John TSANG Chun-wah, Secretary for Planning and Lands:

Thank you very much. I am glad to have an opportunity to say my piece before the meeting is over. I have been following this conversation with quite a lot of interest. Basically, we have two issues; one on site classification and the other one on planning policy. I think on site classification Mr LEUNG has pointed out quite clearly that there is quite a bit of legal issues involved in that. In fact, in theory, with any piece of land, if the developer is willing to give up a certain area for streets, any classification is possible. I think that is what is in theory.

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However, in terms of planning policy, I note that a Member has mentioned that there are conflicts between the three departments and they do have competing objectives and I think that is fine in all the different departments. What we need to do is to seek some type of optimisation of the different competing objectives in order to maximize the income for government, to maximize clarity in the process, to maximize development potential and so forth, but I do agree that there needs to be a lot more clarity, a lot more transparency; and to give people a sense that this is a level playing field that everybody is getting an equal amount of information. I think that is very important. I think Mr SHEK has pointed out that there is a lot of risk for the developer, but they are the people who will be making the profits so I think that is also quite proper.

Then there also appears to be quite a bit of confusion as to the exact planning intention and I have actually got the three directors together and we have agreed that in future density control could be achieved by one of the three following measures. Number 1 is that if there is a policy to cap the gross floor area below the limit set out in the Building (Planning) Regulations, and if this cap is already set out in the outline zoning plan, then reference to this cap would have to be made in the conditions of sale. That is number 1.

Number 2 is, if there is a policy to cap the gross floor area below the limit set out in the Building (Planning) Regulations and if this cap is not set out in the outline zoning plan, now it is the policy that it will have to be specified in the conditions of sale.

Lastly, if none of the previous two conditions are set, then the maximum level of the gross floor area or the plot ratio permitted as stipulated in the Building (Planning) Regulations will apply. As you know, the Building (Planning) Regulations do set out the GFA for the different areas in Hong Kong so that would be the safety net. If we do not have a clear planning intention and if there is no policy, the planning intention in such a way, the B(P)R would apply.

Thank you.

主席：

李華明議員。

李華明議員：

剛才布培署長回答得很清楚，靈活性和隱晦不提的目的是希望提高投標價。作為政策局局長，是否同意這種做法？

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主席：

不錯，如果你說清楚所有事情，列明 plot ratio，可否達至現時的投標價？布培先生認為不會，局長，你有什麼看法？

規劃地政局局長：

剛才我提到三個部門盡量達到應該達到的目的，可能沒有一個部門會達到他們最想要的目的，但如果三個部門合在一起，我們需要找一個適當的平衡。

李華明議員：

最重要的目的就是要多賺錢？

主席：

錢是不是最重要的考慮因素？

規劃地政局局長：

賺多一點錢並不是我們最重要的目的，我們最重要的目的是如何適當地運用這些土地。

主席：

劉慧卿議員。

劉慧卿議員：

主席。請問局長，剛才梁展文署長提到某些程序是發展商可以進行的，就是如何跟著法律去演繹，依照你剛才所說的三點去做，仍不能排除以後還會有人抓著條款給梁署長法律意見，還是你覺得這樣做以後將會很清晰，賣地後根據方程式建造就不會有爭拗？

主席：

局長。

公開拍賣土地的管理工作

The administration of sale of land by public auction

規劃地政局局長：

主席。這是控制香港密度的做法，但亦不可以排除有發展商在賣地後與屋宇署討論如何用盡土地。屋宇署署長剛才提到，每一塊地都有可能轉做丙類地盤，這要看他是否願意放棄某些地方來建設街道，這方面應該由發展商跟梁署長繼續討論，這亦是發展商的風險。

主席：

劉慧卿議員。

劉慧卿議員：

主席。我明白制度是容許接受挑戰的。但這樣如何達到控制人口密度的目標呢？如果他在爭取後可以多建幾層樓的話，那麼，審計署署長報告書內其中一項很重要的目標就是控制人口密度，就做不到了。梁署長似乎希望作出補充。

主席：

我正考慮請曾局長先作出回應，然後梁署長再作補充。

規劃地政局局長：

以我的理解，如果有政策是關於樓面面積是限於這個指標的，並在分區計劃大綱內列出來的話，是不可能超越的。

主席：

梁署長。

屋宇署署長：

我想補充，如果賣地條款已規定了最高地積比率的話，其實是可到屋宇署要求在法律上給予較高的地積比率。我們會根據法律和公正無私地審批，但在地契內的地積比率高了，並不等於布培先生會批准的。剛才布培先生提及過：賣方可以不接納買方改契，換言之，規劃意圖仍然可以落實。如果這方面在地契內沒有清楚列明的話，純粹看《建築物條例》內應得的是甚麼，由大家去判斷。有些買家認為是甲類地盤，而有些則認為只能是丙類地盤。對此，需要自己詮釋“建築物條例”，如此就會清晰很多。劉議員提及的情況是不應該出現的。

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主席：

我剛才提出的問題已問了兩次，但仍未有答案，請局長作出回應。在報告書第 2.28 段，你們看來已有共識，將來對地契的任何查詢，由地政總署署長獨力回應，但地政署署長不會對有關章程重大歧義作出任何演繹。就此你們會諮詢業界。

另外需諮詢業界的問題是在報告書第 4.38 段內提及，在《認可人士作業備考》內，就內街的定義諮詢業界，究竟這兩個徵詢進行了沒有？如果你們做了，業界有否提出一些你們意想不到的問題，令你們改變主意？

D of L:

On the first part, Mr Chairman, we have consulted the industry and they do agree that all inquiries should be directed to the Lands Department. We have also advised them that we will not interpret land sales conditions and they have accepted and agreed that.

Chairman:

How about the definition of “streets” and interpretation of “streets”?

屋宇署署長：

屋宇署已諮詢了業界的意見，作出了作業備考和有清楚的指引。就這個案關於街道的解釋，其實以往亦有先例。以這個案來說，我們將此解釋在作業備考內說清楚。在下一次向立法會提交屋宇署的法案時，會包括街道定義的修改，澄清街道的解釋。此工作我們已完成，已徵詢業界和已有共識。

主席：

這條是甚麼法例？

屋宇署署長：

是剛才提及的規劃規例，B(P)R。

主席：

我們會留意這條規例的。

各位同事的問題已提問完畢，聆訊到此結束，多謝各位證人出席協助我們澄清問題。

