

The Government of the Hong Kong Special Administrative Region

房屋及規劃地政局

香港花園道美利大廈

電話 Tel : 2848 2266

傳真 Fax : 2845 3489



Housing, Planning and Lands
Bureau

Murray Building,
Garden Road, Hong Kong

本局檔號 Our Ref.

HPLB(CR)(PL) 1-160/08 Pt. 2

來函檔號 Your Ref.

CB(3)/PAC/R43

11 December 2004

(6 pages)

(By Post and Fax: 2537 1204)

Ms Miranda HON
Clerk to Public Accounts Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Ms Hon,

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

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

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

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

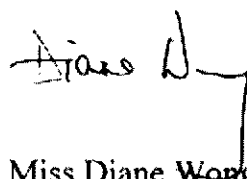
2. A Member cast doubt on the basis and authority of the land grant executed on 10 September 1976, on the ground that the development concept of Discovery Bay (DB) in 1976 already deviated from the concept plan approved by the Executive Council (ExCo) in 1973.

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

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

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

Yours sincerely,



(Miss Diane Wong)

for Secretary for Housing, Planning and Lands

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

Internal – AA/SHPL

GENERAL CONDITIONS

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

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

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

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

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

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

/6. The

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

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

- (i) the positions of the roads proposed to be made;
- (ii) the general location and nature of the buildings proposed to be erected on the lot;
- (iii) all breakwaters, piers or other marine structures which it is proposed to erect; and
- (iv) the stages or phases by which it is proposed to develop the lot.

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

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

7. Subject to the obligations and restrictions regarding development mentioned in Special Conditions Nos. 5 and 6 and subject also to Special Conditions Nos. 39, 54(a) and 56, the lot or any part thereof or any building or buildings erected or to be erected thereon shall not be used and the Grantee shall not permit or suffer the use thereof for any purpose other than for the purposes of the club houses, courses, leisure resort facilities and /the minimum....

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

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

- (i) assign, underlet, part with the possession of or otherwise dispose of the lot or any part thereof or any interest therein or any building or any part of any building thereon or enter into any agreement so to do, or
- (ii) mortgage or charge the lot or any part or parts thereof of any interest therein or any building or any part or parts of any building thereon except for the purpose of the development thereof and then only by way of a building mortgage or mortgages in such form and containing such provisions as the Secretary shall approve or require.

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

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

/the Secretary ...

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

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

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

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

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

/20.