



地政總署
LANDS DEPARTMENT

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8 January 2005

Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

(Attn : Ms Miranda HON)

Dear Ms Hon,

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

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

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

Public hearing on 8 December 2004

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

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

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

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

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

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

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

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

Public hearing on 13 December 2004

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

Letter dated 1.2.1983 is at App. III

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

Letter dated 25.11.1989 is at App. IV

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

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

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

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

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

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

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

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

Authority was not lacking.

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

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

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

The Administration cannot unilaterally amend the MLP.

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

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

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

Add to LAOI as follows :-

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

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

Add to LAOI as follows :-

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

- (c) *On approval of MLP changes, assess the premium implications of such changes and collect premium, if any and,*
- (e) *Clearly stipulate in the LAOI and RAM that the LandsD should charge premium and administrative fee, if any for approval of MLP changes.*

Revise LAOI and RAM as follows :-

“Approval


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

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

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

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

Yours sincerely,



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

Encl.

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

[D:\DiscoveryBay_Quest_080105]

Appendix I

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

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

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

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

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

Ferry Pier

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

Cable Car

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

Fire Station

6. No problems at present.

Fire Requirements

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

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

Port Works

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

Marine Department

10. Will be reply later.

Drainage Works

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

Agricultural & Fisheries

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

Police

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

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

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

Planning

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

Water Supplies

17. No Government water supply.

18. No question of extending catchwater area.

19. Is there enough water for all these people?

Building Ordinance

20. No comment at this stage.

General Summary

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

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

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

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

Distribution to :

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

DISRICT OFFICE, ISLANDS

19th October, 1977

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

Present :

Government Officials

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

Hong Kong Resort Co. Ltd.

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

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

- (a) Serious reservations on the number of units.
- (b) Does not like the fact the emphasis has changed from lettings of rooms etc. to sales of residential units.
- (c) The staging would seem to indicate that the 'Resort project' are being constructed later.

.... / (d)

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

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

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

- (a) There was concern over the general management concept of the scheme. If the scheme turned into a town, Government would be left with management problems.
- (b) In the original scheme there was to be an internal managed vehicle scheme. It is understood that it will now be a mini bus and taxi service.
- (c) In the holiday flat part of the scheme would the developer retain and let any of the units.
- (d) The coastal area on which garden houses were shown was not considered a good point and Government would prefer to see these areas left unspoilt.
- (e) Minor layout plans would be useful although it was agreed this would be subject to change.

5. The Developers made the following points:-

- (a) The main Government points as outlined on the notes in paragraph 3 were mainly points of detail.
- (b) The security, police and emergency problems were ones that of which the developers were fully aware and would want to solve in a 'public' way in order to satisfy potential buyers.
- (c) There would always be an administrative presence in the area as the communal projects would be retained by the Company. The presence would tend to diminish, however, as time went on. There was some interest from Hotel Groups to manage some of the flats.
- (d) The population estimate of 35,000 would seem to be excessive.

.... / (e)

- (e) There is a need to define what type of population. Day visitors, week-end stayers and permanent visitors. It was noted that the Government would consider the scheme a 'resort' success if there was a large influx of people over the week-end. There was a switch in emphasis from an international resort to a Hong Kong resort.
- (f) When the details of the scheme were published more swimming pools and minor recreational facilities would become more apparent.
- (g) The approval of the Master Plan was an essential first stage before details could be considered.
- (h) The need to get on with the scheme was emphasised and time was a costly commodity for the developers. The new scheme designed to be more financially viable than the old scheme.

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

Non Master Plan Points

- 7. All the Tai Pak Lots have been acquired.
- 8. All houses have now had their roofs removed.
- 9. Lot 365 in D.D. 352 - Nothing on Crown Land around the houses.
- 10. Graves - This matter was now in hand.
- 11. An extension to include the village area and other lots is now required and the developer is to apply in writing.
- 12. The next progress meeting was arranged for 2:30 p.m. on Tuesday, 1st November 1977.
- 13. Mr. Merricot asked if he could keep a copy of the notes on the meeting on 18th October 1977 and was informed he could on a 'confidential - without prejudice basis'.
- 14. The meeting closed at about 4.00 p.m.

DISTRICT OFFICE, ISLANDS

20th October 1977

Hong Kong Resort Co. Limited

(Incorporated in Hong Kong)

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

February 1, 1983

Lands Department Headquarters
Murray Building
Garden Road
Hong Kong

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

Dear Sir,

Discovery Bay - Conditions of Exchange

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

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

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

Hong Kong Resort Co. Limited

(Incorporated in Hong Kong)

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

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

Page 2

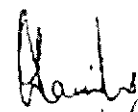
We would also like to place on record our understanding that:-

- (a) the Building Covenant (SC5(a)) will be deemed to have been completed, as regards both amounts and dates, once you are satisfied that we have spent not less than \$600 million. Thereafter we will still of course have to complete the full development within a reasonable period. The planned dates for the remaining stages will be indicated in our Phasing Plan which we will need to modify from time to time as circumstances change;
- (b) you see no need for the Conditions of Exchange to be formally amended to reflect the deletion of the non-membership golf course and the cable car system (already agreed), the refuse disposal plant (under consideration by government) and the hotel (apparently not yet agreed) from the minimum associated facilities in SC 5(b). Also you regard the lease plan as having been effectively superseded by Master Plan 5.0. We understand that, although our Conditions of Exchange were originally approved by the Executive Council, power to amend the Conditions has since been delegated to you.

With regard to (b) above, we would welcome from you in due course a formal letter confirming the amendments that have so far been agreed. We think this should be registered at the Land Office so that it can be inspected by any potential assignee who wishes to check on the position.

Reverting to the opening 3 paragraphs of this letter, it will inevitably take us a little time to assemble the necessary documents to submit to you before we can be free to assign under Special Condition 8(d). Since we are anxious to press ahead with all possible speed, we have asked Mr. William Kwan to submit to the Registrar General on our behalf an application under the Land Officer's Consent Scheme for the sale of Area 6B and a joint venture in respect of Area 6C.

Yours faithfully,
HONG KONG RESORT CO. LIMITED



Elaine Li

c.c. District Land Officer
Registrar General

EL/JCHM/mc

屋宇地政署總辦事處
香港花園道英利大廈



BUILDINGS AND LANDS DEPARTMENT
HEADQUARTERS
MURRAY BUILDING, GARDEN ROAD,
HONG KONG

Appendix IV

電話 Tel: 5-8482804

25 November 1989

本署接獲 Our Ref: (20) in BLD 2/1/IS/PL/82(MLP) III

來函編號 Your Ref: HKR/PR-7/L1631/89

Mr. Jeremy Marriott
Executive Director
Hong Kong Resort Company Limited
1st floor
Commercial Centre
Discovery Bay
Lantau
Hong Kong

Dear Mr. Marriott,

Lot 383 in D.D. 352
Discovery Bay, Lantau

Thank you for your letter dated 21 November 1989. I have noted your arguments which were the same points you raised at our last meeting. As a matter of fact, I have been taking up your points since the meeting and am now in a position to give you a definitive reply.

While you have been persistent in alleging that your revenue-earning gross floor area (GFA) should have been 613,155m² (6.6 million square feet), I have to hold to a different view.

There has been no conclusive evidence to show that your revenue-earning GFA ought to be 613,155m². In Tim Mills' letter of 14 April 1988 in reply to Roger Thompson's letter of 29 March 1988, the point about what should have been the agreed revenue-earning GFA at the outset has been made categorically clear. The Grantee agreed to pay a premium of \$61.5 million in return for an approved Master Plan 3.5 in which the GFA of 6.6 million square feet was shown to have included the GFA for Public Works, Fire and Police Station and the School. The net GFA permissible for housing, hotel and commercial (i.e. revenue-earning) was 6.38 million square feet. This was the deal which must have been struck after taken on board all pertinent considerations by both parties at the time. It would be inappropriate for me, nor for you, now to open up discussion and speculate how the deal had been agreed and why it should have been so agreed.

/2.....

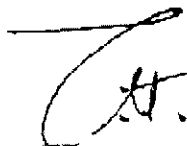
Although Master Plan 4.0 has showed an increase in revenue-earning GFA by the same amount originally set aside for the Public Works' GFA, the reason behind is still unclear. Whatever reasons one might attribute to the increase can only be conjectures. However, one thing is clearer on my records : this matter has been given a very detailed consideration and the Government stance is that 608,510m² should now be the permissible revenue-earning GFA for your Discovery Bay development and no more. Any attempt to increasing it, if justified and approved by Government, will attract additional premium.

You mentioned deduction of the estimated cost of building the police and fire stations from the original premium calculation. I confirm that this was the case. It proves, however, nothing but the fact that the land occupied by the buildings was intended to be non-revenue-earning. If it had been a revenue-earning site, the value of it should have been deducted from the premium as well, not just the cost of the building alone. The deduction therefore speaks for itself; that is, the intention was to reimburse you of the cost of the building which could have been considered more of the Government's obligation to provide such accommodation.

I have to dispute your statement that Government has set a precedent for adjusting the figures administratively in the case of MP 4.0, thereby giving you a stronger case to argue in favour of your recent application for inclusion of the school GFA into the revenue-earning GFA. As I said, the rationale behind such an adjustment is unknown and Government should not be bound by it for no convincing reasons. On the other hand, MP 4.0 has formed the basis by which you and Government have abided. MP 4.0 has now evolved to MP 5.4 and yet the revenue-earning GFA remains at 608,510m².

In short, your request for adjusting the present revenue-earning GFA to include the school GFA has to be rejected. I regret that I am unable to be of further assistance to you in this matter.

Yours faithfully,



(H.K. Ho)
for Director of Buildings & Lands

bcc DLO/Islands