



審計署
香港灣仔
告士打道七號
入境事務大樓
二十六樓

Audit Commission
26th Floor
Immigration Tower
7 Gloucester Road
Wanchai, Hong Kong

圖文傳真 Facsimile : 2583 9063

電話 Telephone : 2829 4219

本署檔號 Our Ref. : UB/PAC/ENG/43-3

1 February 2005

來函檔號 Your Ref. : CB(3)/PAC/R43

Clerk, Public Accounts Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central
Hong Kong
(Attn: Ms Miranda Hon)

Dear Ms Hon,

**The Director of Audit's Report on
the results of value for money audits (Report No. 43)
Chapter 6: Grant of land at Discovery Bay and Yi Long Wan**

Thank you for your letter of 26 January 2005 requesting for my comments on the Director of Lands' explanation in his letters dated 8 January 2005 and 25 January 2005 regarding paragraph 4.17 of the Audit Report, which stated that the Lands Department (Lands D) had not charged premium for the changes made in MLP 5.5 and earlier prior to 7 June 1994, and that the reasons for not assessing and/or charging premium for the changes in those Master Layout Plans (MLPs) were not documented. I set out my comments as follows:

- (a) *the reply to Question (j) on p.3 of the Acting Director of Lands' letter dated 8 January 2005 in which he stated that, "It was the normal practice not to charge premium for changes to MLPs which did not require a modification of the lease in 1970s and 80s as long as there was no increase in total gfa."*
- (i) *"Normal practice" not substantiated.* As far as could be ascertained from the Lands D's records, the acting Director of Lands' statement was not substantiated in either the Lands Administration Office Instructions or the Revenue Assessment Manual. Audit is not aware of any approval from the Executive Council (ExCo) for such "normal practice";
- (ii) *Increase in total GFA and change in user mix.* Audit would like to recapitulate the increase in total GFA and changes in user mix (mentioned in Note 3 in para. 2.8, para. 2.10 and Table 3 in para. 4.16 of the Audit Report), as follows:

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

Note 1: In April 1977, ExCo was informed of the GFA of the resort and hotel accommodation (para. 2.8 of the Audit Report refers).

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

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

- an increase in total GFA over that approved in MLP 3.5; and
- a significant change in user mix, particularly the deletion of the resort accommodation and the addition of 524,000 square metres housing accommodation GFA (para. 2.10 of the Audit Report refers).

The then New Territories District Planning Division of the Town Planning Office also commented in mid-October 1977 that there was a corresponding increase of residential areas (para. 2.11 of the Audit Report refers);

- (iii) it is also relevant to point out that, while the then Secretary for the New Territories was delegated with the authority to approve changes to MLPs (para. 2.9 of the Audit Report refers), Audit is not aware that he had been given any explicit authority of not charging premium if there was enhancement in value arising from changes in lease conditions;

(iv) **Changes to MLP.** According to the Director of Lands' statement in the Public Accounts Committee (PAC) hearing held on 13 December 2004, the MLPs and the lease conditions of the Discovery Bay site had equal standing and effect (line 36 on page 17, and lines 5 to 7 on page 71 of the PAC Verbatim Report dated 13 December 2004 refer). Therefore, any modification of the MLP (such as the increase in the total GFA and the significant change in user mix in MLP 4.0 over MLP 3.5) would in substance tantamount to a modification of the lease conditions;

(v) **Deletion of public golf course and cable car system constituted lease modifications.** The provision of the public golf course and the cable car system was a mandatory requirement stipulated in **Special Condition 5(b) of the lease** of the Discovery Bay development (paras. 3.2, 3.6 Note 17, 3.16 and 3.20 of the Audit Report refer). Moreover, because of the importance attached to the public golf course proposal, the developer's responsibility to maintain the public golf course was more particularly referred to in **Special Condition 54(c) of the lease** (para. 3.6 and Note 17 of the Audit Report refers). In the circumstances, the deletion of:

- the public golf course in MLP 5.0 in February 1982 (by the then Secretary for City and New Territories Administration — para. 3.7 of the Audit Report refers); and
- the cable car system in MLP 5.1 in February 1985 (by the Director of Lands — paras. 3.16 and 3.20 of the Audit Report refer)

constituted **modifications of the lease conditions.**

(vi) To conclude, as mentioned in para. 4.21 of the Audit Report, the Government might have suffered losses in revenue. The Lands D had not assessed the implications, financial or otherwise, of the deletion of the facilities, and the reasons for not assessing and/or charging premium for the changes in those MLPs were not documented (paras. 3.20 and 4.17 of the Audit Report refer);

(b) **the Director of Lands' letter dated 25 January 2005**

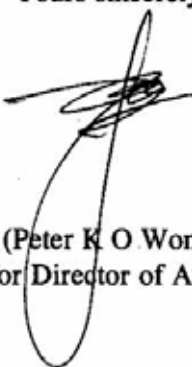
(i) According to Section 7 of Land Administration Policy on Modification and Administrative Fees (amended on 1 April 1984), as a general rule for lease modification, "Premium will normally be required representing the difference in value between the lot as formerly restricted and as modified..... The general principle relating to the assessment of modification premia is that the lessee must pay for any enhancement in the value of the lot deriving from the modification";

(ii) in other words, premium assessment should be done by comparing the current land values under the modified lease conditions (and/or MLP) and the original lease conditions;

- (iii) having regard to the general rule in (b)(i) above, the unit land cost (accommodation value) and the valuation benchmark (i.e. ground floor shop value) adopted at the date of execution of the lease conditions are not relevant to the premium assessment of a lease modification at a later date (para. 3 of the Director of Lands' letter dated 25 January 2005 refers);
- (iv) in view of this, Audit does not concur with the Director of Lands' views that "adopting the highest use value among the mix in calculating the land premium to be paid by the developer upfront for the grant... had obviated the need for further premium assessment when changes in the development mix were subsequently made to the MLP as long as the total permitted GFA was not exceeded."; and
- (v) furthermore, as explained in para. a(ii) above, there had been an increase in total GFA and changes in user mix since the change from MLP 3.5 to MLP 4.0. Audit therefore also does not concur with the Director of Lands' view quoted in (b)(iv) above and his conclusion that he does "not consider it appropriate to compute the premium for each of the changes made to the MLP prior to 7 June 1994."

A Chinese translation of this letter will be forwarded to you shortly.

Yours sincerely,



(Peter K. O. Wong)
for Director of Audit

c.c. Secretary for Housing, Planning and Lands
Secretary for Financial Services and the Treasury
(Attn: Mr Manfred Wong)
Director of Lands