Chapter 5

Grant of land at Discovery Bay and Yi Long Wan

The Audit Commission (Audit) carried out a review of the holiday resort and residential developments at Discovery Bay (DB) and Yi Long Wan of Lantau Island. The review focused on the following aspects:

- change in concept of the DB development;
- provision of facilities in the DB development;
- changes in Master Layout Plans (MLPs) and premium implications of the DB development; and
- site boundaries of the DB and Yi Long Wan developments.

2. The Committee held four public hearings on 8, 13 and 16 December 2004 and 12 January 2005 to receive evidence on the findings and observations of the Director of Audit's Report (the Audit Report). Representatives of the Administration attended all the four hearings. At the invitation of the Committee, Sir David Akers-Jones, former Chief Secretary (CS), attended the hearing on 12 January 2005.

Evidence obtained at the public hearings on 8, 13 and 16 December 2004

Change in concept of the Discovery Bay development

3. According to paragraphs 2.5 to 2.7 of the Audit Report, in December 1973, the Executive Council (ExCo) was informed that the basic concept of the DB development was to create a self-contained recreation and leisure community with a wide variety of recreational facilities. On 6 July 1976, the ExCo was informed that the user condition restricted the use of the land to the purposes of a holiday resort with limited residential and commercial purposes. Having considered the lease conditions, the ExCo advised and the then Governor ordered that the land at DB should be granted to a developer (Developer A) for a holiday resort and residential/commercial development at a premium of $61.5 million.

4. The Committee also noted from paragraph 2.3 of the Audit Report that the original concept of the DB development envisaged local families coming on day trips or purchasing holiday homes, and international tourists staying at budget or luxury class hotels, making use of the non-membership (i.e. public) and membership golf courses, tennis courts, swimming pools and other facilities. However, as it transpired, no public golf course or hotel was built in the DB.

5. It appeared to the Committee that there had been a fundamental change in the concept of the DB development. The Committee questioned whether the change was against the ExCo's decision of 6 July 1976 and went against public interest as some facilities that were supposed to be made available to the public were eventually not provided.

6. **Mr Michael SUEN Ming-yeung, Secretary for Housing, Planning and Lands**, responded that:

- the overall concept of the DB development came into place in 1973. At that time, Lantau Island was a barren piece of land and going there was a difficult trip. The development concept of the DB site was more like a dream which the developer would like to realise. As the development was a huge investment project, the developer should be given some flexibility in the implementation process to take account of commercial considerations and other relevant factors, like the demands of the public, and be allowed to amend the development concept accordingly;

- as he was not responsible for the project, he could only rely on the documents available to understand the situation at that time. He understood that the developer considered that the original facilities were no longer timely and proposed other replacement facilities, such as a promenade and a beach. The change was approved by the then Secretary for the New Territories (SNT); and

- according to the lease conditions of the DB site, the whole site should be developed in conformity and in accordance with the MLP to be approved by the SNT. Hence, the SNT was empowered to approve changes to the facilities.

7. In response to the Committee's request, the **Secretary for Housing, Planning and Lands** provided, in his letter of 11 December 2004 in ***Appendix 38***, the relevant extracts from the lease conditions of the DB site which authorised the SNT to approve subsequent changes to the development. He also said that 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 MLP rested with the SNT.

8. The Committee asked the Secretary for Housing, Planning and Lands whether he would report back to the ExCo, if he were the SNT at that time authorised by the ExCo to implement its decisions and if he were to make decisions that did not comply with the ExCo's authorisation.

9. The **Secretary for Housing, Planning and Lands** replied in the affirmative. He said that, regarding the public golf course, as replacement recreational facilities had been proposed by the developer, the SNT was empowered to approve its deletion. However, he had doubts about not reporting to the ExCo on the deletion of the hotels, as this was a fundamental change.

10. In view of the Secretary for Housing, Planning and Lands' reply, the Committee asked whether, in his opinion, the SNT had hidden facts from the ExCo and, if so, the kind of rules that the SNT had violated.

11. The **Secretary for Housing, Planning and Lands** said that:

- his understanding of the situation was based on the available documents and minutes of meetings. While he considered that it was inappropriate that the changes in the DB development had not been brought back to the ExCo, he might come to another conclusion if he knew the actual situation and all the relevant information at that time. Thus, it would not be fair for him to criticise the SNT; and

- as mentioned in the Audit Report, the officers concerned had held meetings and discussed the matter thoroughly before deciding not to report to the ExCo. They considered that the changes were still within the scope of the original ExCo approval.

12. The Committee understood from paragraph 2.6 of the Audit Report that the ExCo's permission in December 1973 for the DB development to proceed was given subject to satisfactory safeguards being included in the lease to ensure that the development would take place in accordance with Developer A's undertakings. Paragraph 2.8 further stated that on 10 September 1976, the SNT executed the lease for the DB development. However, the lease conditions did not specify the maximum and minimum gross floor area (GFA), and the gross site area of the facilities (such as the resort accommodation) to be provided by Developer A. In addition, the lease conditions did not restrict the owners to using their flats as holiday homes only.

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13. As the ExCo decided in July 1976 that the land at DB should be granted for the purpose of a holiday resort, but the lease conditions drawn up in September 1976 did not include such a restriction, the Committee asked:

- whether the Administration agreed that the lease conditions went against the ExCo's decision and, if so, why this had happened; and

- who drew up the lease conditions.

14. The **Secretary for Housing, Planning and Lands** said that, as described in paragraph 2.8 of the Audit Report, the ExCo was aware that the lease conditions did not restrict the owners to using their flats as holiday homes only. He did not know why it had happened.

15. In his letter of 8 January 2005 in ***Appendix 39***, the **Acting Director of Lands** stated that the Lands Department (Lands D) had no record of how the lease conditions were drawn up or by whom.

16. As the development concept of the DB in 1976, as reflected in the lease conditions, already deviated from the concept plan approved by the ExCo in 1973, the Committee wondered whether the land grant executed by the SNT on 10 September 1976 was legal.

17. In his letter of 11 December 2004, the **Secretary for Housing, Planning and Lands** clarified that:

- the ExCo Memorandum in December 1973 intended to seek approval-in-principle for the DB development project to proceed. In crystallising the concept into a concrete proposal, the whole package was submitted to the 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 SNT and the developer on 10 September 1976; and

- the ExCo noted the deviation from the 1973 concept, the safeguards in response to the requirement of the ExCo in 1973, and most importantly the terms and conditions of the Conditions of Exchange. In brief, the ExCo took the decision in July 1976 on an informed basis. Therefore, the land grant was made by the SNT in September 1976 with full authority conferred by the ExCo.

18. According to paragraph 2.24 of the Audit Report, the Secretary for Housing, Planning and Lands had said that when the ExCo approved the DB Outline Zoning Plan (OZP) on 11 March 2003, it was aware of the planning intention for DB and he did not consider it necessary to seek the ExCo's endorsement of the development concept of DB.

19. As there had been significant changes to the development concept of DB in the past 30 years and such changes were effected by amendments to a number of MLPs rather than through a proper procedure, the Committee queried why the Secretary for Housing, Planning and Lands considered that it was not necessary to seek the ExCo's specific endorsement of the change in the concept of the DB development.

20. The **Secretary for Housing, Planning and Lands** explained that:

- during the 30 years from 1973 to 2003, a lot of developments had taken place at DB and such developments were witnessed by the public. Everyone knew what its community was like nowadays. There was no question of the development concept not being clear. On the other hand, there had not been any OZP for the DB area in the past 30 years. Therefore, in 2003, the Administration sought the ExCo's approval for an OZP for the DB area which specified the zones that should be used for residential, open space or other purposes;

- he shared the concern that there was a risk of abuse of power when land use control was achieved by the MLPs and one or two officers could make decisions without being monitored. But the situation had changed significantly since then. There was now an OZP for DB. The level of control imposed by an OZP was much more stringent than that by an MLP. The OZP contained all the details as to what was allowed or not allowed. If necessary, notes could be added to an OZP to the effect that certain extra procedures would have to be gone through if changes were to be made;

- if the land use specified in an OZP was to be changed, an application had to be made to the Town Planning Board (TPB) according to the Town Planning Ordinance. The TPB had to gazette the application and the public could lodge an objection in accordance with the Ordinance. If objections were received, the TPB had to hold hearings and go through other statutory procedures. Ultimately, approval had to be sought from the Chief Executive-in-Council. In other words, the whole process was open and statutory and the public were allowed to play a part in it; and

- the current procedure ensured that government officers could not circumvent the proper procedure or make decisions without seeking prior approval from the relevant authorities. As the purpose of going back to the ExCo had been served, there was no need to report to the ExCo again.

21. The Committee referred to paragraph 2.19 of the Audit Report in which the then Deputy Secretary for Lands and Works had said that "as flat owners were free to use their flats either as first or holiday homes, the original resort concept could not be enforced". The then Principal Assistant Financial Secretary (PAFS) had said that as the change had been taking place, there was no point in formally approving the change in concept. The Committee asked the Secretary for Housing, Planning and Lands whether, in his opinion, the PAFS was wrong in concluding that there was no need to seek approval from the ExCo regarding the change in concept because the change had been taking place.

22. The **Secretary for Housing, Planning and Lands** responded that:

- he personally was not clear about the original resort concept. If the original concept envisaged local people buying condominium units and staying there only during the weekend but not on the weekdays, he could not understand. When people bought a condominium unit, they would just move in and it became a residential unit. This was in fact what had happened. The households in DB all lived there. From this angle, he accepted and considered it not unreasonable to say that the original resort concept could not be enforced;

- while he accepted the rationale behind that statement, he did not accept the conclusion reached by the officers. As described in paragraph 2.20(b) and (c) of the Audit Report, the then Development Progress Committee (DPC) agreed that the requirement to build one or more hotels could be made optional rather than obligatory, and the proposal to change the overall concept of the development would not require formal approval. He did not accept that

hotels could be changed to residential units. The officers should have brought the case back to the ExCo; and

- he also considered that there were problems with the then CS's view that "there was no need to go to ExCo or the Land Development Policy Committee as the …… development followed on from the development so far approved and did not represent a major change in principle" (as mentioned in paragraph 2.21 of the Audit Report). There had indeed been a major change in the development concept.

23. As the Secretary for Housing, Planning and Lands also considered that there were problems with the decision of not reporting to the ExCo, the Committee questioned why he did not rectify the mistakes but allowed their perpetuation. It appeared to the Committee that by seeking the ExCo's endorsement of the OZP for DB, the Administration had tried to impose control on something wrong instead of putting it right.

24. The **Secretary for Housing, Planning and Lands** responded that:

- the Administration had already rectified the situation. The MLP, which was a loose form of control, had been upgraded to statutory control under the Town Planning Ordinance; and

- DB was already a community. It had existed for a long time and people were living there. It was impossible to start from scratch again. It was most important to understand what the problem actually was and solve it. The Administration had reported the development concept of DB to the ExCo. The ExCo knew the situation and approved the OZP.

25. The Committee further asked whether the Administration, in seeking the ExCo's approval of the OZP, had informed the ExCo of the history of the DB development and all the changes and omissions that had occurred since 1973, or whether it had only informed the ExCo of the latest situation of DB.

26. The **Secretary for Housing, Planning and Lands** replied that the subject of the paper to the ExCo was the OZP, not the DB development. It did not contain the same amount of details as the Audit Report. The Administration's intention was to inform the ExCo of DB's latest development. Given the Committee's view, he would consider making a separate report to the ExCo on the matter if necessary.

27. Subsequently, the **Secretary for Housing Planning and Lands** informed the Committee that after consideration, in order to put the matter beyond doubt, he decided that he would go back to the ExCo to seek its endorsement of the development concept of DB.

28. According to paragraphs 2.11 and 2.14 of the Audit Report, MLP 4.0, which changed the character of the development from a holiday resort to a garden estate, was approved by the SNT. As mentioned in paragraph 2.21, it was the CS who decided that there was no need to seek the ExCo's approval. Noting that the Secretary for Housing, Planning and Lands had mentioned the risk of abuse of power, the Committee asked whether the decisions as described in these two paragraphs were cases of abuse of power, given that the SNT and the CS were the same person, Sir David Akers-Jones.

29. The **Secretary for Housing, Planning and Lands** responded that when he mentioned the risk of abuse of power, he was referring to the possibility of such a loophole in the system. He did not mean that any officer had abused his power. Abuse of power was a very serious accusation and it had a high legal threshold. With the information he had in hand, he could not make a judgement that someone had abused his power.

30. As requested by the Committee, the **Acting Director of Lands**, in his letter of 8 January 2005 in ***Appendix 39***, provided the minutes/notes of the meetings held on 18 October 1977 and 19 October 1977 relating to the consideration of MLP 4.0 by the Administration. The **Secretary for Housing, Planning and Lands**, in his letter of 10 January 2005 in ***Appendix 40***, provided the minutes of the DPC meetings held on 10 October 1985 and 14 November 1985 concerning the Administration's decision at that time that there was no need to report to the ExCo regarding the change in the concept of the DB development.

31. To ascertain whether it was common in the past for the Government to accept changes in the development concept of a project, the Committee asked:

- whether, in the 1970s and 1980s, there was any project which, similar to the DB development, had undergone a change in development concept from a holiday resort with recreational and leisure facilities to a first-home community; and

- whether there was any project the development concept of which was not allowed to be changed.

32. The **Secretary for Housing, Planning and Lands**, in his letter of 10 January 2005, advised that there was no other project for recreational and leisure facilities similar to that of the DB granted in 1970s and 1980s. Therefore, the question of whether changes in development concept of such development had been approved or rejected did not arise.

33. The Committee noted from paragraph 2.14(a) of the Audit Report that one of the reasons for the SNT to approve MLP 4.0 was that "the basic concept of building a resort was continued". The Committee asked whether, in the Lands D's opinion, the changes proposed in MLP 4.0 were changes to the basic concept of the DB development.

34. In his letter of 8 January 2005 in ***Appendix 39***, the **Acting Director of Lands** stated that the resort concept was still a substantial element in MLP 4.0, but the introduction of "garden houses" appeared to have introduced the likelihood of permanent residence in a significant amount of the GFA. Although this did not conflict with the conditions of grant, there was a change.

35. According to paragraph 2.26 of the Audit Report, the Director of Lands agreed with Audit's recommendation that he should, for a land grant for a development involving a particular concept, incorporate effective provisions into the lease conditions or other contract documents so that the provisions would be enforceable for implementing the concept. The Committee asked how the Lands D would implement the recommendation.

36. **Mr Patrick LAU Lai-chiu, Director of Lands** explained that when there were special development projects, the Lands D issued project agreements which stated the development concepts and how they could be realised. The project agreements and the lease conditions were back to back.

Provision of facilities in the Discovery Bay development

37. According to the lease conditions of the DB site, the grantee should erect, maintain and keep in use on the site a leisure resort and certain "minimum associated facilities", which should include a public golf course and a cable car system. However, Developer A subsequently applied for the deletion of the public golf course and the cable car system. In February 1982, the then Secretary for City and New Territories Administration (SCNTA) approved MLP 5.0, by which the public golf course was deleted. In February 1985, the Director of Lands approved the deletion of the cable car system upon the approval of MLP 5.1.

38. Against this background, the Committee queried why:

- as the public golf course and the cable car system were approved by the ExCo and specified in the lease conditions, the SCNTA alone could decide that the facilities could be deleted; and

- the Lands D at that time had not acted in accordance with the lease conditions but approved the deletion of the facilities.

39. The Committee also referred to paragraph 3.6 of the Audit Report in which the then Principal Government Land Agent (PGLA) said that because of the importance attached to the golf course proposal, the public golf course requirement was more particularly referred to in a special lease condition. The Committee questioned why, as mentioned in paragraph 3.9, the City and New Territories Administration (CNTA) had not carried out a research on the demand for golf facilities before it approved the deletion of the public golf course which was a special facility in the entire development.

40. The **Secretary for Housing, Planning and Lands** responded that:

- as described in paragraph 3.8 of the Audit Report, there had actually been discussions within the Government regarding whether a modification of the lease conditions was required to reflect the deletion of the public golf course. The then Recreation and Culture Department (R&CD), which was responsible for the policy on recreational facilities, had been consulted and it welcomed the proposal that other recreational facilities would be provided in place of the public golf course. On the other hand, the Highways Department representative objected to the deletion. Paragraph 3.10 further mentioned the view of the Registrar General's Department that there was no need to modify the lease conditions; and

- all these reflected that discussions had been held among the relevant departments and the responsible officers had gone through certain procedures. The decisions were not made by one single person. However, he did not have any information to show why such decisions were made or the basis for the decisions.

41. The **Director of Lands** responded that:

- a lease usually contained many terms and provisions which were not laid down by the Lands D alone. Nowadays, when the Lands D received a request for lease modification, it would look at the terms that needed to be modified and consult the relevant policy bureau or department. If necessary, it would convene an inter-departmental meeting to consider the request. In other words, the decision would not be made by a single department. However, there had to be a department to formally approve the lease and the Director of Lands was responsible for formally signing the lease;

- the same mechanism should be applicable at that time. That was why the then Lands D did consult the R&CD. The R&CD welcomed the proposal. The Lands D had not overruled the recommendation of the R&CD because the latter was the expert department on whether a public golf course was required. He believed that the then Director of Lands had made the decision at the time, on behalf of the Government, upon the advice of the R&CD. It was not that the Lands D had made a decision unilaterally to delete those items; and

- as the R&CD had stated that it welcomed the proposal, a research on the demand for golf facilities were not necessary. As a matter of fact, the decision to delete the public golf course was made in February 1982. The suggestion of a research was put up after the decision had been made.

42. According to paragraphs 3.7 and 3.8 of the Audit Report, inter-departmental discussions were held in mid-1982 after the SCNTA had approved MLP 5.0 which removed the requirement for the provision of the public golf course. The Committee asked whether there were records showing that there had been inter-departmental discussions on the matter before MLP 5.0 was approved.

43. In his letter of 8 January 2005, in ***Appendix 39***, the **Acting Director of Lands** stated that there were no records of any inter-departmental discussions on the deletion of the public golf course prior to the approval of MLP 5.0 in February 1982. There were also no documents showing why the then Commissioner for Recreation and Culture welcomed the proposal that other recreational facilities would be provided in place of the public golf course.

44. Given that the public golf course was specified in a special lease condition, the Committee enquired whether the Administration agreed that the lease conditions should have been modified before deleting the requirement to provide the golf course.

45. The **Director of Lands** stated that:

- according to the memorandum issued by the then Registrar General (Land Officer) to the then Government Land Agent (Disposal) on 3 March 1983 (in ***Appendix 41***), it was the former's view that there was no need to modify the lease conditions; and

- the arrangement for control of land use at that time was very different from that of today. When the land at DB was granted, it was stated clearly in the lease conditions that the scale of development of DB and other restrictions were to be controlled by the MLPs in addition to the lease conditions. In other words, the MLPs and the lease conditions of the DB site had equal standing and effect. Hence, the MLPs could be amended without modifying the lease conditions. However, this might not be the arrangement nowadays.

46. As the public golf course was proposed by the developer and later removed upon the developer's application, the Committee questioned why the Government seemed to have allowed the developer to have his way every time.

47. The Committee further referred to paragraph 3.16 of the Audit Report which mentioned that the provision of the cable car system was mandatory under the lease. However, in September 1982, Developer A said that the popularity, safety factor and the financial viability for this system were open to question. The system was no longer necessary as all the major roads in DB had been built. In January 1983, the Government agreed to the deletion of the system. The Committee noted that cable car was not a new invention. The tram system had been in use in the urban area for a long time. Back in the 1980s, there was already a cable car system in the Ocean Park. The Committee asked why the Government had accepted the reasons put forward by the developer.

48. The Committee was also aware that there had been recent media reports which related the whole issue to political decisions. It was reported that the colonial government had accepted changes to the MLPs out of the fear that, if the DB project failed, it could be taken over by a bank tied to the former Soviet Union. The Committee asked whether the Administration had any information pointing to a political transaction.

49. The **Secretary for Housing, Planning and Lands** and the **Director of Lands** stated that:

- the project was massive and the development period was very long. Initially, the developer came up with a concept. However, during the implementation, a lot of changes took place in society and things kept evolving. Thus, the Government had to accept some changes. Actually, the SNT, and later the SCNTA, was empowered by Special Condition 6(b) of the lease conditions to approve amendments to the MLPs;

- the developer allowed non-members to play in the existing private golf course in DB on Mondays, Tuesdays and Fridays by prior arrangement. Perhaps the responsible officers decided to remove the requirement for the provision of the public golf course because of the lower demand for such facility at that time. While a lot of people were interested in playing golf nowadays, people might not be as enthusiastic back in the 1980s;

- regarding the cable car system, it seemed that the Government accepted the views of the developer at that time. But the reason behind the decision was not known; and

- the file records that they had gone through did not contain any information concerning political consideration.

50. The Committee noted that while the public golf course and the cable car system had been deleted in the MLPs, they were still provided in the lease conditions for the DB site. It asked whether the Administration might now amend the MLP again to include these facilities in the MLP.

51. The **Director of Lands** said that the MLPs and the lease conditions of the DB site had the same status and were equally binding. When a certain item was deleted in the MLP, the item could be regarded as having been deleted from the lease. In his letter of 8 January 2005, in ***Appendix 39***, the **Acting Director of Lands** added that the Administration could not unilaterally amend the MLP.

Changes in Master Layout Plans and premium implications

52. According to paragraphs 4.2 to 4.7 of the Audit Report, in 1979, Developer A agreed to replace the public golf course by some active public recreational facilities in the same area or elsewhere within the DB site. However, as far as could be ascertained from the Lands D's records, Audit could not find a list of the specific replacement public recreational facilities, showing the site area and locations, which Developer A should provide. There was also no verification of the specific as-built facilities with those agreed with Developer A to ensure that they had in fact been built. The Committee asked why the Administration had not been serious in dealing with the matter.

53. The **Secretary for Housing, Planning and Lands** responded that the incidents were not acceptable and should not have happened. No matter whether it was land matters or other government activities, there was always a need to record the things to be done clearly because the Administration had to make sure that the relevant objectives were met at the end of the day.

54. According to paragraphs 4.17 and 4.21 of the Audit Report, the Lands D had only charged premium for the changes made in MLPs 5.6, 5.7 and 6.0E1. It had not charged premium for the changes made in the MLPs after the land grant and prior to 7 June 1994 (i.e. MLPs 3.5, 4.0, 5.0, 5.1, 5.2, 5.3, 5.4 and 5.5). The Government might have suffered loss in revenue. In addition, the Lands D had not documented the reasons for not assessing and/or charging premium for those MLP changes. The Committee asked whether the Administration considered this acceptable.

55. The **Director of Lands** responded that, having constructed the situation at that time according to the file records, he had the following understanding:

- a Land Policy meeting was held on 25 May 1987 to consider, inter alia, the Land Policy Meeting Paper LPM 3/87 (the paper and minutes of the meeting are in ***Appendices 42 and 43*** respectively). The paper stated that MLP 3.5 permitted a total of 592,716 m^2 of GFA to be used for residential, commercial and hotel uses which, from land perspective, was called revenue-generating GFA. When MLP 3.5 was approved as MLP 4.0, the GFA had to be converted from the imperial system to the metric system. In the process, the total permitted revenue-generating GFA was wrongly converted to 607,000 m^2. The correct figure should have been 608,510 m^2. So, in MLP 4.0, there was a shortage of 1,510 m^2. The mistake was not discovered in the subsequent amendments to the MLPs, including MLPs 5.0, 5.1, 5.2, until the relevant government departments considered MLP 5.3;

- after lengthy discussion, the Lands Policy meeting decided that from then onwards, the figure 608,510 m^2 would be used as the basis for future negotiations over any premium to be charged for increases in GFA in future;

- he deduced that the position at the time was that if the revenue-generating GFA of DB exceeded 608,510 m^2, then a premium would be charged. However, if there was an increase in GFA but the total permitted GFA of 608,510 m^2 was not exceeded, premium would not be charged. His deduction was supported by a letter dated 25 November 1989 from the then Director of Buildings and Lands to Developer A (in Appendix IV to the Acting Director of Lands' letter of 8 January 2005 in ***Appendix 39***);

- no premium had been charged for the changes made in MLPs 5.3, 5.4 and 5.5 because the total revenue-generating GFA did not exceed 608,510 m^2. When it came to MLPs 5.6, 5.7 and 6.0E1, the Lands D had charged a premium because that figure was exceeded; and

- as regards why the Lands D had not charged any premium although there was a change in land use, thereby bringing about a change in value, the file records did not mention whether there were any guidelines at that time stating that an increase in land value due to a change in land use was a consideration for charging a premium.

56. The Committee noted from paragraph 4.15 of the Audit Report that in October 1985, when the proposal to delete the public golf course and the cable car system was discussed by the DPC, it was stated in the DPC discussion paper that modification of Special Condition 5(b) of the lease conditions would be required. The paper also mentioned that a formal modification of the lease conditions subject to consideration of a premium and administrative fee should be made for the changes. The Committee queried why, despite the DPC's view, the Lands D had not assessed the premium implications of the changes in the MLPs.

57. The **Director of Lands** responded that the matter considered by the DPC was whether a premium should be charged if there was a modification of lease conditions. In fact, the public golf course and the cable car system had been deleted from the MLP, not from the lease conditions. The lease conditions had not been changed on the advice of the Registrar General. As mentioned in the Audit Report, the DPC had not expressed any opinion on the modification of the lease conditions when it agreed with the changes made in MLP 5.1. Perhaps that was why premium was not discussed.

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58. According to Table 3 in paragraph 4.16 of the Audit Report, some of the changes in the MLPs involved change in land use and increase in the GFA of housing accommodation. The Committee wondered why the Administration had not charged premium for the change in land use and the resulting enhancement in land value. The Committee further asked whether the Administration had the determination to recover the premium from Developer A according to the existing policy.

59. The **Director of Lands** responded that according to legal advice, the Government had given approval for changing the MLPs and a premium was not charged at that time. There would be great difficulties if the Government was to ask the developer to pay a premium after more than 20 years. This would violate the estoppel principle.

60. The **Secretary for Housing, Planning and Lands** responded that he had strong determination in going through all relevant information to see if the Administration had omitted to charge any premium that should have been charged. However, the Administration would take the matter forward only after this first stage was completed and if there was evidence showing that there was such a problem. The Administration could not recover something that was not substantiated.

61. To understand the policy in the 1970s and 1980s on the charging of premium when approving change in land use, the Committee asked:

- whether the relevant land authorities at that time were empowered to charge premium when approving changes in MLPs;

- whether the policy at that time allowed the relevant authorities not to charge premium on change in land use when approving changes in MLPs;

- whether there were cases in the 1980s in which premium was not charged on similar change in land use; and

- whether it was normal practice in the 1970s and 1980s that premium would not be charged as long as the GFA of a site did not exceed a certain limit even though there was a change in land use.

62. In his letter of 8 January 2005, in ***Appendix 39***, the **Acting Director of Lands** informed the Committee that:

- the authority to charge premium was not lacking;

- the policy on changes of use requiring lease modifications had remained constant, in that where such a lease modification would bring about an increase in value, a premium was charged. In respect of changes in use involving only a change in MLP, however, it was apparent that in the 1970s and 1980s 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;

- the Lands D had no record of premium being charged for an MLP change not involving a lease modification in the 1980s; and

- in the 1970s and 1980s, it was the normal practice not to charge premium for changes to MLPs which did not require a modification of the lease as long as there was no increase in total GFA.

63. The Committee invited Audit's comments on the Acting Director of Lands' reply that it was the normal practice in the 1970s and 1980s not to charge premium for changes to MLPs which did not require a modification of the lease as long as there was no increase in total GFA. In his letter of 1 February 2005, in ***Appendix 44***, the **Director of Audit** advised that:

- *"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 (LAOI) or the Revenue Assessment Manual (RAM). Audit was not aware of any approval from the ExCo for such "normal practice";

- *Increase in total GFA and change in user mix:* The increase in total GFA and changes in user mix (mentioned in Note 3 in paragraph 2.8, paragraph 2.10 and Table 3 in paragraph 4.16 of the Audit Report), were as follows:

User	MLP 3.5 GFA (m^2)	MLP 4.0 GFA (m^2)	MLP 4.0 increase/ (decrease) over MLP 3.5 GFA (m^2)	
(a) Housing accommodation	**–**	**524,000**	**524,000**	
(b) Resort accommodation	**401,342**	**–**	**(401,342)**	} (Note 1)
(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)			1,510	
Increase in total GFA			9,046	

Note 1: In April 1977, the ExCo was informed of the GFA of the resort and hotel accommodation.

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:

  (a) an increase in total GFA over that approved in MLP 3.5; and

  (b) a significant change in user mix, particularly the deletion of the resort accommodation and the addition of 524,000 m^2 housing accommodation GFA.

  The then New Territories District Planning Division of the Town Planning Office had also commented in mid-October 1977 that there was a corresponding increase of residential areas;

- while the then SNT was delegated the authority to approve changes to MLPs, Audit was not aware that he had been given any explicit authority to not charge premium if there was enhancement in value arising from changes in lease conditions;

- *Changes to MLP:* the Director of Lands had stated that the MLPs and the lease conditions of the DB site had equal standing and effect. 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;

- *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 DB development. 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. In the circumstances, the deletion of the public golf course in MLP 5.0 in February 1982 and the cable car system in MLP 5.1 in February 1985, constituted modifications of the lease conditions; and

- to conclude, Audit maintained its view that 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.

64. In order to ascertain whether the Government had suffered losses in revenue, the Committee asked:

- about the total revenue generated by the entire DB development in the past 30 years; and

- for an estimation of the premium involved in each of the changes made in the MLPs prior to 7 June 1994 based on the market conditions at the time when the changes were made.

65. In his letter of 10 January 2005, the **Secretary for Housing, Planning and Lands** advised that as far as the Lands D was concerned, a total of some $2.09 billion had been collected in respect of the DB development. This figure comprised land premium, government rent up to 1996-97 (government rent was collected by the Rating and Valuation Department after 1997), premium charges for changes to the MLP, waiver fees and rental for short term tenancy (STT) and administrative fees.

66. On the question of premium, the **Director of Lands**, in his letter of 25 January 2005 in ***Appendix 45***, stated that:

- on the basis of file records, the original premium of $61.5 million charged for the DB development land exchange was based on an estimated sale price of $300/ft^2 which was applied to the total GFA for all the uses permitted (i.e. without distinguishing between commercial, residential and hotel);

- this valuation was supported by the analysis of the two public land auctions in Mui Wo conducted in 1973. These land auctions produced a ground floor shop value at about $300/ft^2 and upper floor residential flat value at about $200/ft^2 which the Lands D believed were adopted as the benchmark for valuing the DB at that time. Moreover, the unit land cost (commonly known as accommodation value) derived from the estimated sale price also compared favourably with that of two land exchanges in Mui Wo and Cheung Chau for hotel development in the early 1970s; and

- the application of $300/ft^2 to the total GFA permitted under the approved MLP meant that the enhancement, if any, in subsequent changes to the MLP had already been captured in the approval of the first MLP by adopting the highest use value among the mix in calculating the land premium to be paid by the developer upfront for the grant. This 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. That being the case, the Lands D did not consider it appropriate to compute the premium for each of the changes made to the MLP prior to 7 June 1994.

67. In response to the Committee's request, the **Director of Audit**, in his letter of 1 February 2005, commented that:

- according to Section 7 of the 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". 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;

- having regard to the above general rule, 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 were not relevant to the premium assessment of a lease modification at a later date; and

- in view of the above, Audit did 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.". Furthermore, 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 did not concur with the Director of Lands' conclusion that he did "not consider it appropriate to compute the premium for each of the changes made to the MLP prior to 7 June 1994".

68. In his letter of 16 February 2005, in ***Appendix 46***, the **Director of Lands** responded to the Director of Audit's comments on the charging of premium in the present case contained in his letter of 1 February 2005, as follows:

- the basic considerations underlying the handling of the DB case in the 1970s and 1980s were:

  (a) since the subject land grant contained an MLP clause to enable the Administration to exercise detailed control over the implementation of the development within the approved parameters stipulated in the lease conditions, premium would not be charged on each and every occasion when amendments to the MLP were made, unless such changes would require lease modification and/or there was an increase in the total permitted GFA (for revenue generating purposes). This practice adopted for cases under similar situations in that period was also adopted in this case;

  (b) the premium for the land transaction concerned was calculated according to the highest land use value among any of the permissible mix as specified in the MLP. This meant that Government was able to capture the highest revenue income at the outset without any downside risk due to fluctuations in the property market. On the part of the developer, the certainty in its financial commitment under the land transaction plus the flexibility of being able to make more timely decisions in response to

changes in market conditions would arguably be essential for a project of this magnitude and nature; and

(c) on the above basis, the manner that the original premium was calculated 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 (revenue-generating) GFA was not exceeded;

- regarding Audit's comments on the "normal practice" in the 1970s and 1980s, the Lands D's response, as provided in the letter of 8 January 2005, was factual to the best of its knowledge. Most land administrative practices evolved over time in the light of experience and changes in circumstances and the Lands D did not come into existence until 1982. The Lands D's understanding of the practice prevailing two to three decades ago should not be negated simply by the Director of Audit being unable to locate any written material to substantiate its statement;

- regarding Audit's comments on "increase in total GFA and change in user mix", it had to be stressed that, despite the changes to the GFA in various MLPs up to MLP 5.5, the revenue-generating GFA did not exceed the permitted maximum of 608,510 m^2 as determined by the Land Policy meeting held on 25 May 1987;

- Section 7 of the Land Administration Policy on Modification and Administrative Fees remained a valid rule for general application for assessing premium arising from lease modifications. The case in question was not inconsistent with this section; and

- in conclusion, the Lands D strongly disagreed with the views held by the Director of Audit in his letter of 1 February 2005, especially that "the Government might have suffered losses in revenue", having regard to the manner that the original premium was calculated. The Director of Audit's suggestion that a series of further premiums should have been collected for changes in the development mix up to 608,510 m^2 (revenue-generating GFA) would constitute double charging since the facts established indicated that the developer, at the time of the original grant, had already paid for the flexibility of varying the development mix subsequently reflected in successive MLPs.

69. The Committee asked whether the CS, who decided that there was no need to seek the ExCo's approval for the change in concept, was behind the decision of not charging premium for the changes in the MLPs.

70. The **Secretary for Housing, Planning and Lands** and the **Director of Lands** responded that:

- as mentioned in the Audit Report, the DPC had a meeting in October 1985. The chairman of the DPC was the then Secretary for Lands and Works, Mr Todd, and the meeting was attended by representatives of various government departments. The DPC agreed on a number of things collectively. But there was no decision on lease modification or premium payment; and

- there was no record of any person specifically approaching the CS for an instruction as to whether a premium should be charged. Therefore, it could not be concluded that the CS should be held responsible for the decision made at that time.

71. According to paragraph 4.18 of the Audit Report, the Lands D's RAM stated that "When giving approval to Master Layout Plan, which leads to giving consent/variations of restrictions under certain conditions, the Director may impose conditions (including payment of fee and appropriate admin. fee) as he considers appropriate …... ". However, Audit noted that the RAM did not provide a definition of "certain conditions", and the word "may" implies that the charging of fee was discretionary. It was not clear under what conditions, and how, such discretion would be exercised. The LAOI also did not stipulate clearly that the Lands D should charge MLP approval fee.

72. The Committee asked whether:

- some government official had exercised discretion over the charging of premium in the case of DB, resulting in losses in government revenue; and

- the word "may" in the RAM should be changed to "shall" so that the charging of fee was mandatory rather than discretionary.

73. The **Director of Lands** clarified that:

- according to legal advice, "certain conditions" referred to certain lease conditions, not certain circumstances. The whole sentence in the RAM meant giving approval to MLP under certain provisions of the lease, not in a certain situation for discretionary power to be exercised. Thus, there was no question of the Director of Lands being given too much discretionary power; and

- the Director of Lands did need some flexibility in discharging his duty as it was hard to foresee all factors relevant to land matters. While the Director of Lands was given some discretionary power, it was not exercised casually. The exercise of such flexibility was not subject to personal preference and was properly recorded. Moreover, there were monitoring mechanisms in place nowadays, such as the Independent Commission Against Corruption, Audit, the Ombudsman, etc.

74. The Committee asked how the Lands D would amend the RAM and LAOI in response to Audit's recommendations in paragraph 4.23 of the Audit Report. The **Acting Director of Lands** provided the wording of the amendments to the RAM and LAOI in his letter of 8 January 2005 in ***Appendix 39***.

Site boundaries of Discovery Bay and Yi Long Wan developments

Setting out of site boundaries

75. According to paragraph 5.5 of the Audit Report, in September 1976, the Government granted the DB site to Developer A. However, up to July 2004, i.e. after a lapse of 28 years after the land grant, the Lands D had not yet set out the site boundaries of the DB development. The Committee questioned the Lands D's reason for not setting out the site boundaries.

76. The **Director of Lands** and **Mr AU YEUNG Ping-kwong, Deputy Director of Lands/Survey and Mapping**, stated that:

- the then Public Works Department was responsible for setting out the site boundaries. After some boundaries had been set out, the work was suspended in 1977 for more than half a year due to an industrial action of the surveying staff; and

- it was not the case that there were no boundaries of the site. Actually, the boundaries were shown on the plan relating to the land grant. However, as the site was very big, the surveying staff had not yet put boundary marks on ground in order to avoid possible abortive work.

77. On the reason for the long delay in completing the work, the **Director of Lands** said that:

- in a letter of 16 March 1983 from the then Director of Lands, Mr Todd, to Developer A (in Annex F of Appendix II to the Acting Director of Lands' letter of 8 January 2005 in ***Appendix 47***), it was stated that " …… the present MLP No. 5 is not subject to Government survey and can only be a guide to your Company's present and future intentions. In other words neither plan at this stage is really satisfactory. It may therefore be more appropriate to await the issue of the Crown Lease at the end of the whole development whereupon Government will carry out a survey of the lot boundaries.". It appeared that it was the Government's position in 1983 that as the DB project was still going on, the Government should resolve all the discrepancies upon the completion of the whole project. At that time, the Government thought that the development would be completed in the not too distant future. When a Crown Lease was produced, the matter would also be dealt with;

- as it transpired, the development was still going on and the pegging had not yet been done. However, in 2002, there was a complaint about the occupation of government land by the DB golf course. Despite the fact that the development was still in progress, the Lands D considered that it should set out the boundaries. It would complete the dimension plan by mid-January 2005. Lands D staff would then place the boundary marks on the site accordingly, thus setting out the site boundaries; and

- there was no record to show why no one had raised the need to set out the site boundaries during 1983 and 2002. Perhaps the Lands D staff had relied on the 1983 letter and wanted to set out the boundaries upon the completion of the entire project.

78. In his letter of 24 January 2005, in ***Appendix 48***, the **Director of Lands** informed the Committee that the dimension plan survey for the DB development boundary had been completed by the District Survey Office/Islands, and the setting out work would be completed by the end of March 2005.

79. The Committee further asked:

- whether the Lands D considered that it was wrong not to set out the boundaries in the past three decades as this might have resulted in encroachment on government land; and

- when the Lands D would complete the setting out of boundaries for sites granted but the boundaries of which had not yet been set out.

80. The **Director of Lands** responded that:

- he did not know the actual thinking of the responsible officials at that time. As time had advanced and land was very precious in Hong Kong, he agreed that the practice today should be different. The Lands D considered that for a developing project with a long period of development, it should not wait until the development was completed before carrying out its work. If the project was divided into several stages, the Lands D could carry out certain work at each stage, thereby reducing the possibility of encroachment on government land; and

- the Lands D planned to complete the setting out of boundaries for sites granted in eight months.

81. Regarding the measures taken by the Lands D to set out the boundaries of a government site before disposal of the site, the **Director of Lands**, in his letter of 8 January 2005 in ***Appendix 47***, stated that:

- sites for public auction or tender were normally fenced and their boundaries would be set out before sale; and

- for sites granted by private treaty grant and extension, the plans in question included boundary dimensions and bearings, and the site area to facilitate the design of the development. The site boundaries would be set out on ground in advance or within three months after the completion of the land transaction so that the positions of the boundary marks could be shown to the landowner or his/her representative. Thereafter, it was the landowner's responsibility to protect the boundary marks placed on ground.

Encroachments on government land at Discovery Bay and Yi Long Wan

82. According to paragraphs 5.14 to 5.16 of the Audit Report, the Lands D had been aware of encroachments on government land at the DB golf course since early 1980s. The Committee questioned why the Lands D had not taken timely actions to rectify the encroachments.

83. The **Director of Lands** responded that:

- Developer A had applied to the Government in 1981 and 1996 for renting a piece of government land at Wong Chuk Long, on an STT basis, for accommodating the fourth and fifth holes of the golf course at DB. The application in 1981 was not processed as the Government thought at the time that it would be more appropriate to deal with the problem when the Government Lease was issued after the whole DB development was completed. This was reflected in the then Director of Lands' letter of 16 March 1983. The application in 1996 was rejected as the land fell within the proposed extension of the Lantau North Country Park; and

- in 1998, the Lands D required Developer A to reinstate the land concerned. In 2002, the developer applied for an STT for the third time. At that time, the Government had decided that the land concerned would not be included in the Lantau North Country Park area. Because of this factor and other practical considerations, in July 2002, the Lands D approved the STT for the land concerned to be used as part of the golf course.

84. The Committee enquired whether the exclusion of the encroached government land from the boundary of Lantau North (Extension) Country Park was partly due to the fact that Developer A had repeatedly applied for an STT for the land.

85. In his letter of 24 January 2005, the **Director of Lands** stated that:

- the boundary of Lantau North (Extension) Country Park originally proposed in 1996 on the one hand included part of the golf course area on the encroached government land but on the other hand excluded another part on the encroached government land. Following consultation among concerned government departments, the Director of Agriculture, Fisheries and Conservation excluded the entire encroached area from the proposed boundary of Lantau North (Extension) Country Park in 1999. This was reflected in the draft map for the Lantau North (Extension) Country Park gazetted in July 2001 and the DB OZP gazetted in September 2001; and

- there was no information on record that the STT applications by Developer A had influenced the determination of the proposed boundary of an extended Lantau North Country Park.

86. Given that the developer had applied for an STT in 1981, the Committee asked why the Administration had not processed the application promptly so that STT rent could be collected earlier.

87. The Committee also referred to paragraph 5.18 of the Audit Report which revealed that after rejecting Developer A's second application in 1998, the Lands D had asked the developer to reinstate the land. However, the Lands D had not taken follow-up action to ascertain whether the land had been reinstated. The Committee asked why this had happened.

88. The **Director of Lands** stated that:

- it appeared to be the then Government's intention to resolve the problem by rectifying the lot boundaries after the whole project had been completed rather than granting an STT to the developer. The Government had not suffered any loss in revenue because, after the STT was granted, the Government had collected rent from the developer with effect from the time of occupation, i.e. October 1982; and

- he could not find an explanation in the records with regard to why the Lands D had not taken follow-up action at that time to ascertain if the land had been reinstated. Perhaps the staff concerned had not followed through the procedure.

89. The Committee further asked whether it was a normal arrangement in the 1980s for the Government not to take timely rectification action on encroachment on government land for the reason that the development concerned was still on-going. The **Acting Director of Lands**, in his letter of 8 January 2005 in ***Appendix 47***, stated that this approach was not the normal arrangement in the 1980s to address encroachment on government land.

90. The Committee asked about the measures that the Administration would take to ensure that encroachment on government land was rectified in a timely manner. The **Director of Lands** stated that:

- the Lands D had an established procedure for dealing with encroachment on government land. Depending on the nature and extent of the encroachment, different actions would be taken; and

- if the encroachment was of a small scale, the Lands D would regularise it by granting an STT. For example, if a house owner encroached on a piece of government land in front of a small house in the New Territories and turned it into a garden, the Lands D might consider leasing the land to the house owner on an STT. This was because the land concerned was not big and even if it was not encroached on, it was not very useful. By doing so, the Lands D could also ensure that the land would not be used for other worse purposes and could bring in revenue. If the encroachment was very serious, the Lands D would ask the person concerned to reinstate the land or might even consider instituting prosecution.

91. The **Secretary for Housing, Planning and Lands** added that the Administration would ensure that the officers concerned would follow through the above established procedure.

92. According to paragraph 5.23 of the Audit Report, the Islands District Council member who complained about the deletion of the public golf course and the proposed STT in July 2002 was dissatisfied that the Government tried to resolve the encroachment problem by issuing the STT as this would undermine the Government's bargaining power. The Committee asked whether the Administration agreed to such a view.

93. The **Secretary for Housing, Planning and Lands** and the **Director of Lands** stated that:

- the purpose of regularising encroachments on government land by way of STTs was indeed to ensure that the Government would not suffer financial losses due to unauthorised use of the land. This was because the rent under an STT was assessed on full market rent basis; and

- if necessary, the Government could require the occupier of the land to reinstate the land and prosecute the occupier. However, under some circumstances, it would be more practicable to issue an STT so that the occupier could continue to use the land while the Government could collect rental at the market rate.

94. The Committee noted from Appendix B of the Audit Report that there was a provision concerning the rate of payment for any excess or deficiency in area of the site in General Condition 5(a) of the lease conditions of the Yi Long Wan development, but not in those of the DB development. The Committee asked about the reason for the discrepancy.

95. The Committee further noted that there was also encroachment on government land at the Yi Long Wan site. However, it seemed that the Administration had been more proactive in dealing with the problem at Yi Long Wan. As both the DB and Yi Long Wan developments were located on Lantau Island and developed in the same period, the Committee asked why different approaches had been adopted in addressing the land encroachment problems on the two places.

96. In his letter of 8 January 2005, in ***Appendix 47***, the **Acting Director of Lands** explained that:

- the records of Master Lease Conditions in the Lands D showed that between the grant of the lot at Yi Long Wan in 1975 and the DB in 1976, there was a change in approach and the rate of payment condition was dropped; and

- the golf course encroachment at DB was, and remained, an unbuilt open area operated by a single entity. The grant of an STT was the appropriate means to regularise it. The circumstances of the encroachment at Yi Long Wan, involving two privately owned residential blocks in multiple ownership constructed partially outside the lot, were quite different from those of DB and therefore warranted different treatment.

97. According to paragraph 5.15 of the Audit Report, Developer A had said that the extension of the area for the golf course had been agreed to at prior meetings with the SNT. The Committee enquired whether:

- there were records of those meetings;

- the Lands D had ascertained with the SNT at that time the truthfulness of Developer A's claim of agreement; and

- it was because of the SNT's agreement, as claimed, that the Lands D had been more lenient in dealing with Developer A.

98. In his letter of 8 January 2005, in ***Appendix 47***, the **Acting Director of Lands** said that the Lands D's files did not contain any record of discussions between the SNT and Developer A. Similarly, the Lands D did not have any file record showing whether or not it had ascertained with the SNT the truthfulness of Developer A's claim of agreement.

Grant of land at Discovery Bay and Yi Long Wan

99. Regarding the encroachment at Yi Long Wan, the Committee noted from paragraph 5.42(b) of the Audit Report that the Registrar General's Department had said in 1983 that despite the undertaking, it would be difficult to ask Developer B to pay a premium for the extra piece of land. The Committee asked whether it was possible for the Lands D to recover the premium nowadays.

100. The **Director of Lands** responded that:

- although Developer B had undertaken in December 1980 to pay a premium for the extra piece of land, in January 1983, it requested the Lands D to confirm that there would be no premium for revising the site boundary. This meant that it had withdrawn his undertaking. According to the file records, Developer B was in great financial difficulties at that time and could not pay the premium at all. That was why the matter had not been followed up by the Registrar General's Department; and

- legally, the Administration could ask the grantee for the Yi Long Wan site to pay the premium. However, the developer for the site almost did not exist nowadays and the flats had been sold. The Administration would have to discuss with more than 200 owners to recover the premium. Even if one owner disagreed to pay, there would be a lot of problems. It was doubtful whether the Administration could collect any premium.

101. The Committee noted that the Government could take prosecution action against encroachment of government land. The Committee enquired why the Administration had not prosecuted Developer A which had occupied government land illegally for more than 20 years.

102. The **Director of Lands** responded that:

- there were guidelines in the LAOI setting out the circumstances under which STTs should be granted. The Lands D's policy did allow it to regularise encroachments by granting STTs. In view of the fact that the land concerned had been occupied by Developer A for several decades, the Lands D considered it more pragmatic to grant it an STT rather than prosecuting it and asking it to reinstate the land;

- in fact, the Ombudsman had stated in her report that she agreed with the Lands D on the proposed course of action (i.e. granting an STT). She considered the case to be a fait accompli where events had left the Lands D with little alternative; and

- another reason for granting an STT to Developer A was that, as pointed out in paragraph 5.24(c) of the Audit Report, the occupation of the land had been acknowledged in writing in 1983 by the Director of Lands on the basis that formal documentation would be issued at a later date. It could be argued that a form of tenancy had been in place. If the Lands D took prosecution action in 2003, there might be a legal dispute.

103. To ascertain whether the rent for 21 years paid by Developer A for the occupation of the government land (paragraph 5.26 of the Audit Report referred) was reasonable, the Committee asked:

- about the amount and basis of the rent paid;

- the amount of rent originally proposed by the Lands D; and

- the estimated amount of revenue that could have been generated by the encroached pieces of land if they had not been used by Developer A.

104. **Mr LAU Chi-ming, District Lands Officer/Islands, Lands D**, said that the rental was calculated on the basis of the full market rate at 1982 when the occupation of the land took place and then reviewed every three years thereafter according to the prevailing market rates at the respective times.

105. The **Director of Lands** and the **Acting Director of Lands** stated, at the public hearing and in the letter of 8 January 2005 in ***Appendix 47*** respectively, that:

- an STT was a contract between the Government (as the landlord) and a private party (as tenant). Developer A had given verbal consent to disclosing the amount of STT rent paid. The total amount of rent paid for the 21-year period from October 1982 to October 2003 was $7.23 million. This was a negotiated amount;

- the negotiated rental was based on evidence of market transactions. The figure initially proposed in the negotiation by the Lands D was $11.2 million for the same period; and

- the three encroached areas were remote and hard to access. The areas adjoining the encroached land at Wong Chuk Long were either steep sloping government land or private land owned by Developer A. As regards the other two encroached areas, they were largely sloping areas. The Lands D did not consider that they were capable of separate alienation or use by any party other than Developer A and, as such, no revenue would have been generated if they had not been used by Developer A.

106. The Committee questioned why the Lands D allowed the STT rental to be cut by such a large extent after negotiation, notwithstanding that the developer had encroached on government land for a long time. It seemed that the Government had treated big developers much more leniently than small landlords.

107. The **Director of Lands** explained that:

- STT rental, like land premium, was very often determined by negotiations. The professional surveyors in the Lands D would make an analysis and valuation of the rental with the benefit of all relevant information and their expertise. However, valuation was not an exact science. Different surveyors would hold different views on the valuation of a site;

- regarding the encroachment by the golf course, the Lands D made a valuation and proposed that $11.2 million should be charged. During the negotiations with the developer, it also presented its data. Such negotiations were very common in land premium matters. Having considered the arguments and evidence of both sides, the Lands D was of the view that the developer's appeal was not unjustified. Therefore, the proposed rental was reduced to $7.23 million. In deciding to accept the amount, the Lands D took into account the Crown rent back in 1981, the remote location of the encroached areas and the fact that their commercial value was almost zero. The Lands D had also made reference to the rent for a government site used for gardens after 1982 as well as the rateable value; and

- the occupation of government land at DB for the operation of a golf course was a very special case. It did not mean that the Lands D would adopt the same approach in dealing with others who encroached on government land. The case was special in that the DB development had its own unique development history, the developer had indeed applied for an STT with the Government at different times but the applications were rejected for various reasons, and the Government had intended to resolve the matter after the

whole development had been completed. The case did not reflect the Government's overall policy.

108. It appeared to the Committee that the Director of Lands' reply, that there was a relationship of landlord and tenant between the Government and Developer A, suggested that the developer's encroachments on the government land was legal. Moreover, instead of penalising the developer, the Lands D had allowed the developer to bargain the STT rental with it. In the end, the Lands D accepted a smaller amount. The Committee asked the Secretary for Housing, Planning and Lands whether:

- he considered Developer A's encroachments on government land legal and the rent of $7.23 million reasonable; and

- he agreed that the Administration was not doing its best to protect public money.

109. The **Secretary for Housing, Planning and Lands** responded that:

- there was a division of duties within the Government. While a bureau secretary had to shoulder the responsibilities for all the departments under his purview, the secretary would not know everything about the daily operations of these departments; and

- it was most important to have proper systems in place. Being a bureau secretary, he was responsible for overseeing the systems. As for daily operations, since these were very trivial, he could not look at each and every one of them in detail and had to rely on the Director. In turn, the Director would also have to rely on his subordinates. Officers of different ranks in a department had different responsibilities.

110. The Committee queried why the Secretary for Housing, Planning and Lands considered issues relating to public money trivial. The **Secretary for Housing, Planning and Lands** responded that:

- he had mentioned that he would not look at trivial issues in general, but not that public money was trivial. As the Lands D was responsible for those issues, he would see if it had discharged its duties properly;

- as regards whether Developer A's occupation of government land was legal, he could not make a personal judgement as he was not a professional. Presumably, the Lands D had discussed with the Department of Justice before stating that a form of tenancy had been in place. He had not seen the relevant legal advice; and

- he did not know about the STT rent in 2003. The assessment of STT rent fell within the Lands D's daily operation. It did not have to report the assessment to him and he did not need to ask about that.

111. In response to the Committee's enquiry about the legal basis of the view that a form of tenancy had been in place, the **Director of Lands**, in his letter of 24 January 2005, stated that:

- in considering Developer A's application for an STT in July 2002, the Lands D had taken legal advice on the status of the encroached land. The advice was that the Government had acknowledged the occupation of the land by Developer A in a series of correspondence over a number of years since March 1983 and had indicated in writing that the encroachment would be regularised upon issue of the Crown Lease at the completion of the whole development when the Government would carry out a survey of the lot boundaries. In October 1996, Developer A applied for an STT of the encroached land. This was rejected at that time as the land was within the proposed extended limits of the Lantau North Country Park. Developer A reactivated his application for an STT in mid-2002, and this was approved in July 2002;

- based on the above sequence of events and course of conduct by the Government in its dealings with Developer A regarding the encroached land between the time when the Government became aware of the encroachment in 1982 and the issuance of a formal STT in 2002, the legal advice was that a form of tenancy would have been created; and

- since Developer A had been occupying the encroached land with the full knowledge and acquiescence of the Government in the period (with the intention of regularisation upon the completion of the development of DB), it could not be said to be a trespasser. It was a tenant at will from the Government, subject to agreement of boundaries and any other terms, including rent or mesne profits payable for the period of its occupation prior to issuance of the formal STT. It was on this basis that the Government was entitled to demanding the payment of the rent or mesne profits for the period from 1982 to mid-2002.

Evidence obtained at the public hearing on 12 January 2005

112. Upon the Committee's request, **Sir David Akers-Jones** provided written comments on the various issues mentioned in the Audit Report in which he was involved as the then SNT, SCNTA or CS. His written response dated 5 January 2005 is in ***Appendix 49***.

113. At the Committee's public hearing on 12 January 2005, **Sir David Akers-Jones** made an opening statement, the full text of which is in ***Appendix 50***. In summary, he said that:

- he was over 77 years old and had retired for more than 17 years. It was very difficult for a man of his age and who had been out of Government for so long to recall things that took place over 25 years ago. The time lapse and lack of access to information made it very difficult to recollect details;

- his involvement in the DB matter was very limited and took place over the short period of time between 1977 and 1982 when he was the SNT. By 1982, the functions of the SNT and its successor, CNTA, had been taken over by the Secretary for Lands and Works and the Lands D. Thus, many departments had reviewed his work;

- during the period when he was the SNT, he had a very capable team of estate surveyors and legal advisers and he relied on their expertise and assistance when making decisions. There were well defined and established procedures and officials within a clear chain of command with no-one acting alone. In his experience, there were proper contemporaneous records of transactions and he was very surprised to find that many documents had not been kept or were now missing. Before he made any decision, there would be input from various other departments;

- neither the Director of Audit nor the Public Accounts Committee had ever previously made any recommendations or comments on the DB development when he was the SNT or any time thereafter until recently, after 25 years;

- at the time when he was the SNT, there was no planning control legislation in place in the New Territories. Also, there were few proposed developments of the size of DB at that time. In the early 1970s, DB was a barren rocky area without any infrastructure or development;

- the original developer, Mr Edward WONG, had a good innovative idea but it later went into liquidation after heavily mortgaging the property to the bank. The whole DB project was at substantial risk of not proceeding at all and there were concerns that the mortgagee bank might take possession of the land. Accordingly, it was important that the development be permitted to proceed with a certain degree of flexibility. This more flexible approach was allowed by the ExCo granting to the developer the land at DB for a holiday resort/commercial development, as opposed to a previously restrictive approach adopted by the ExCo to restrict the use of land merely for the purposes of a holiday resort with limited residential and commercial use;

- it was the lease conditions that specified the planning intention of the land (there being no OZP). The MLP under the lease conditions was a mechanism for giving control with a degree of flexibility. The lease conditions were drafted by a senior official in the Registrar General's Department. The MLP provisions incorporated into the lease conditions were clear;

- given the barrenness, long distance, the lack of infrastructure and difficulty of access to urban areas of Hong Kong in the 1970s and there being no precedent for such an idea, it would have been difficult to assess its popularity in terms of how many people would buy holiday homes or use the recreation facilities or if it would have been different had a hotel been built. In addition, it would have been hard to assess the value of a hotel development as opposed to a holiday home development in respect of such a risky development. In any event, the estate surveyors in those days would have made their best valuation assessments at that time and he would have followed their advice and legal advice when making any decisions;

- he believed that DB was a resort and would remain one, with its fine recreational golf and yacht club facilities, the access by the public to the golf during the week, the beach fronts and restaurant cafes and landscaping in the area. If there were no flexibility allowed by the ExCo and the MacLehose and subsequent Administrations, the development would not have been commercially viable and would not have been anywhere near the success it was today; and

- while he was the SNT, he had no better or worse relations with developers and other tycoons than other senior officials then and now. He was not asked to be a director, albeit an independent non-executive director, of the DB developer until 2000, some 13 years after his retirement as the CS.

114. Regarding Sir David Akers-Jones' query as to why Audit had taken up this subject for review only recently but not earlier, the **Director of Audit** explained that the review arose from a complaint about the DB development and the Legislative Council had also dealt with the complaint in 2002.

115. The Committee noted that according to the ExCo paper of July 1976, DB should be developed into a holiday resort with limited residential and commercial purposes. Thus, the residential and commercial developments should be ancillary to the holiday resort development. However, it turned out later that the residential and commercial developments became primary while the resort development was only secondary. The Committee asked Sir David why, at that time, he considered that the actual development of DB was not out of step with the ExCo's decision.

116. The Committee also referred to paragraph 2.17 of the Audit Report which mentioned that, in July 1985, the PGLA of the Lands D had said that "the form this development has taken to date, i.e. that it is very much less of a tourist resort (both for overseas and local tourists) and more of a typical residential development". The Committee asked Sir David whether he was aware of such views within the Government at that time.

117. **Sir David Akers-Jones** responded that:

- a resort could take many forms. The fact that there were now 15,000 people living in DB did not preclude it from being considered a resort. Similarly, the hotels and high-rise buildings in Phuket, Miami, Blackpool, Brighton, Nice, Cannes or Monte Carlo did not prevent any of these places being considered a resort. In his opinion, the inclusion of residential and commercial development in DB was part of the growth of a resort as it developed;

- as reflected in the Explanatory Statement in the DB OZP of 2003, the DB development "is primarily a car-free environment evolved from the original concept of a holiday resort approved in 1973. This intention [of a resort] is still maintained by the existing and planned provision of a diversity of recreation facilities …… ". Hence, the development of DB had conformed with the description that it was a resort and it remained to be so. It was in line with the ExCo's decision of 1976; and

- in 1985, he had retreated from the scene into being the SCNTA. He was not present at those meetings when the PGLA's views were raised. However, he was aware of the general way the DB development was proceeding, including high-rise buildings taking the place of low-rise buildings. He would also have been aware of the comments like those raised by the PGLA.

118. The Committee pointed out that at present the public could only play at the DB golf course during non-holidays. There was no resort accommodation or hotel but only residential development at DB. The Committee asked why he still considered that the original resort concept had not been changed.

119. **Sir David Akers-Jones** stated that:

- he still considered the DB development a resort although it had changed somewhat from the early concept. The hotel GFA was allowed to be reduced because reasonable men would not insist upon a developer building a vast number of hotel rooms if nobody was going to occupy them. Having decided that the amount of hotel accommodation needed at that time was much less, it was reasonable to switch the spare GFA to housing accommodation. Although the balance of residential, commercial and hotel development had been switched flexibly, the total GFA had remained constant in many years; and

- members of the public could go to DB and use the recreational facilities there, including the beach. They could not use the club because it was a membership club. As for the other facilities, some were private for the residents of DB and some were open to the public. In fact, the developer, instead of providing a pubic golf course, had imported 300,000 cubic metres of sand from China to fill up the once muddy foreshore, turning it into a beach which was 700 metres long, backed by a promenade and trees.

120. Regarding the discussion by the DPC in 1985 about the need to report the change in the concept of the DB development to the ExCo, the Committee asked why Sir David, as the then CS, decided that there was no need to do so (paragraph 2.21 of the Audit Report referred). The Committee also asked whether the decision was made upon the developer's request and whether he had tried to circumvent the ExCo for some reasons.

121. **Sir David Akers-Jones** responded that:

- the background of the issue was that, in 1985, the Joint Declaration had just been approved by the British Parliament. The Governor and the ExCo were very occupied. The Governor was beginning a long period of shuttling between Beijing and London. As the CS, he had to shoulder additional administrative responsibilities. Hence, they were under great pressure;

- notwithstanding the above, the main reason for not going back to the ExCo was that the resort development had continued and the development up to that time did not represent a major change in principle; and

- he had not wanted to circumvent the ExCo and he had not received any request from the developer. It was a matter of whether the ExCo should be bothered with decisions that could be properly made by the SNT, who was authorised by the lease conditions to make those decisions. If the ExCo had wanted the decision to be referred back to it, it would have said so. The Secretary for Lands and Works had said that, in his view, it was not necessary to refer to the ExCo and he agreed with him.

122. The Committee asked about the details of the Secretary for Lands and Works' view and whether, with hindsight, Sir David considered that the matter should have been reported back to the ExCo.

123. **Sir David Akers-Jones** stated that:

- on the question of whether the matter should be reported back to the ExCo, Mr Todd, the Secretary for Lands and Works had minuted to him, then CS. It was stated in the file minute (in ***Appendix 51***) that "The question arises whether, in view of the initial ExCo approval in 1976 and the potentially controversial changes now contemplated, ExCo approval need be sought at this stage. I would think probably not but would be grateful for your advice."; and

- Mr Todd was a very reliable person. He acted upon Mr Todd's recommendation.

124. The Committee questioned why, as the CS, Sir David had simply acted upon his subordinate's advice. **Sir David Akers-Jones** stated that Mr Todd, the Secretary for Lands and Works, was an immediate subordinate, not a junior one. Mr Todd was virtually on the same level as he himself as far as seniority was concerned. Mr Todd was a man on whose judgement he could rely.

125. According to Sir David Akers-Jones' written response, in 1977, when Mr WONG's business went into liquidation and the development was in the hands of the mortgagee bank, another developer took over the development with the encouragement of the Hong Kong Government. It appeared to the Committee that if the DB project was taken over by the mortgagee bank, it would not leave the land idle and might look for another developer. The Committee asked why the Government intervened in commercial operation at that time and did not allow the mortgagee bank, which was a bank tied to the former Soviet Union, to take over the development, and why no tendering exercise was held. The Committee asked whether these were due to political considerations.

126. **Sir David Akers-Jones** responded that:

- there should be no other company which wanted to take over a development at the then remote Lantau Island. The new developer was a company owned by Mr CHA Chi Ming, who was well known to the Administration. He was a prominent person and had made a great contribution to Hong Kong. The trust that the Administration put in him then had been amply rewarded; and

- as the original developer had gone into liquidation, the development was in the hands of the Official Receiver. The then Governor-in-Council had to make the decision about what to do with the development. The Official Receiver advised that this was the best solution and the Governor-in-Council made a decision in the best interests of Hong Kong.

127. The Committee then turned to the SCNTA's approval of MLP 5.0 in February 1982 which removed the requirement for the provision of the public golf course. In his written response, Sir David Akers-Jones gave a detailed description of the administrative procedures for dealing with changes to MLPs. It was stated that the views of all departments were taken into account in approving MLPs for the New Territories, and "I [the SNT] would not have approved a MLP or changes to a MLP or any land transaction that had to be dealt with by me without a full discussion with the PGLA. If the PGLA/NT thought a premium or other conditions of approval were justified, he would have recorded it and action would have been taken."

128. According to the above description, there should be records of the discussions about the deletion of the public golf course and the approval of MLP 5.0 at that time. However, the Committee was informed by the Lands D that there were no records of any inter-departmental discussions on the deletion of the golf course prior to the approval of MLP 5.0 in February 1982. There were also no documents showing why the then Commissioner for Recreation and Culture welcomed the proposal that other recreational facilities would be provided in place of the public golf course. The Committee therefore asked:

- why there were no such records; and

- whether there had indeed been inter-departmental discussions relating to the public golf course and MLP 5.0 at that time.

129. **Sir David Akers-Jones** stated that:

- he was also surprised that many documents were now missing; and

- the question of whether there should be a public golf course was first raised in 1977 when the developer proposed a list of recreational activities to replace it. The decision to delete the golf course was certainly not a sudden one made by him alone. The discussion about the golf course had been going on for a number of years since the developer first raised it and both the pros and cons had been considered. Thus, there was the statement that the R&CD was in favour of the deletion and the substitution by other recreational facilities. There was also the objection raised by the Highways Department representative, but that was a lone voice. The others fell in with the R&CD and so did he.

130. The **Director of Lands** supplemented that:

- the Lands D informed the Committee in the letter of 8 January 2005 that there were no documents showing why the then R&CD welcomed the proposal. In fact, there was a document stating that the Commissioner for Recreation and Culture welcomed the proposal that other recreational facilities would be provided in place of the public golf course. But the document did not explain why he welcomed the proposal; and

- the Lands D had tried its best to look for the records of inter-departmental discussions relating to the deletion of the golf course prior to the approval of MLP 5.0 and no records were found. But the failure to find the records did not mean that there were no such discussions before the decision was made.

131. The Committee noted that Sir David Akers-Jones had stressed that he had all along relied on professional advice when making decisions. However, according to paragraphs 3.5 to 3.7 of the Audit Report, the PGLA had said that the public golf course was one of the main reasons for the Government to have approved the land grant and such a requirement was particularly referred to in a special lease condition. Despite the PGLA's comments, the SCNTA approved the deletion of the public golf course. The Committee asked Sir David why he went against the PGLA's advice and whether that was because of his personal preference.

132. **Sir David Akers-Jones** responded that:

- the PGLA had raised a valid point and it was his duty to raise it. But there had been a consensus in the Government that it would be better to have other recreational facilities than the public golf course; and

- the ExCo had not requested that changes to the lease conditions be reported back to it. Instead, he was authorised to make changes and there were systems and procedure in place as to how he would make changes, not autocratically, but in consultation with the officers of the department and those outside the department. That was what he did.

133. On the question of land premium on approval of changes made in MLP 4.0 in 1977, the Committee noted Sir David Akers-Jones' written response that whether or not premium was payable would have been given full consideration not by one official acting on his own but together with his colleagues and superiors. It seemed that no premium was charged after this proper consideration, no doubt taking into account the drastic slump in the property market.

134. The Committee asked whether there were records showing that it was a collective decision that no premium was necessary and that the main reason was the drastic slump in the property market.

135. **Sir David Akers-Jones** responded that:

- he would not have been involved in deciding about premium. Valuation for premium was the job of a professional team of estate surveyors headed by the PGLA. While there were few MLPs processed at that time, the question of premium on a change of MLP was always actively considered. The estate surveyors would have considered the question of premium very seriously before making the decision that this particular modification at that time did not attract a premium; and

- he did not think that there were records of the discussions among the estate surveyors. Both the Secretary and the Director had not been able to produce them.

136. In response to the Committee's enquiry as to whether there was a drastic slump in the property market in the period around 1977, the **Director of Audit**, in his letter of 10 January 2005, in ***Appendix 52***, advised that according to the "Estimates of Revenue and Expenditure for the year ending 31st March 1979", it was mentioned that there was an economic recession in 1975-76 and continuing recovery during 1976-77.

137. The Committee referred to paragraph 5.15 of the Audit Report which mentioned that Developer A had said that the extension of the area for the fourth and fifth holes of the DB golf course had been agreed to at prior meetings with the SNT. According to Sir David Akers-Jones' written response, the developer might have been referring to meetings with the headquarters staff of the New Territories Administration which might not have involved meetings with him. The Committee asked Sir David:

- whether, according to his recollection, the developer had really discussed the matter with him and, if so, why he had not instructed his subordinates to consider charging a premium for the government land occupied by the developer; and

- why the officials concerned had omitted the question of premium until recently.

138. **Sir David Akers-Jones** responded that:

- the developer might have talked to him. As the land concerned was a very rough hillside area, one did not know where the boundaries were and it was very easy to go outside the boundaries;

- the question of premium was entirely a matter for the PGLA and his staff. It seemed that the decision taken at the time was that the problem of encroachment could be sorted out when there were proper boundaries. The encroachment problem had been sorted out subsequently by the granting of an STT and the developer had paid a substantial penalty for having encroached on the land. Thus, the officials had discharged their duty; and

- he had a clear recollection of the officials concerned at that time. Their approach to work was not casual and their integrity was not in question. They would have certainly done a professional job on such a small question of encroachment on a rough area.

139. It was mentioned in Sir David Akers-Jones' written response that he was invited to become a non-executive director of The Mingly Corporation Limited (Mingly) in 2000, 13 years after his retirement as the CS. The Committee asked Sir David whether, given that the development of DB was still in progress today, his acceptance of the invitation from Mingly, an associate of Developer A, to be its director would give rise to concerns that he had made decisions alone in dealing with Developer A in order to pave the way for his post-retirement life.

140. **Sir David Akers-Jones** said that Mingly had nothing to do with Hong Kong Resort Company, i.e. Developer A. It was an entirely separate company engaging in financial investment.

141. The Committee asked the Secretary for Housing, Planning and Lands, after hearing Sir David Akers-Jones' reasons for deciding that the developments in DB needed not be reported back to the ExCo, whether he still maintained his earlier view that the case should have been brought back to the ExCo.

142. The **Secretary for Housing, Planning and Lands** responded that the critical consideration was whether there had been change to the original resort concept. Sir David had explained that the resort concept had been maintained. If this was agreed, it was not necessary to report to the ExCo. However, he held a different opinion. After hearing Sir David's explanation, he still maintained the view that the original concept of the DB development had changed and such change should have been brought back to the ExCo.

Grant of land at Discovery Bay and Yi Long Wan

143. **Conclusions and recommendations** The Committee:

Change in concept of the Discovery Bay development

- acknowledges that the development of the Discovery Bay (DB) began in the 1970s and 1980s and took place against the particular background that existed at those times;

- expresses alarm and strong resentment that:

  (a) the lease conditions of the DB site failed to specify the requirements for achieving the development concept; and

  (b) the original resort concept of the DB development, as reflected in the Governor-in-Council's decision of 6 July 1976, had changed from a holiday resort and residential/commercial development to that of a first-home community, and the Administration had failed to obtain the Executive Council (ExCo)'s endorsement of that change;

- acknowledges that the Secretary for Housing, Planning and Lands:

  (a) considers that there had been change to the original resort concept of the DB development and such change should have been brought back to the ExCo for endorsement; and

  (b) has undertaken to seek the ExCo's endorsement of the development concept of DB;

- urges the Secretary for Housing, Planning and Lands to expeditiously seek the ExCo's endorsement of the change of concept;

- notes that the Director of Lands will implement the audit recommendations mentioned in paragraph 2.25 of the Director of Audit's Report (the Audit Report);

Provision of facilities in the Discovery Bay development

- expresses astonishment and serious dismay that:

  (a) the approval of Master Layout Plan (MLP) 5.0 had in effect deleted the requirement to provide a public golf course, notwithstanding its specification in the lease conditions; and

(b) the Lands Department (Lands D) had failed to assess the implications, financial or otherwise, of the deletion of the facilities in the DB development;

- notes that the Director of Lands will implement the audit recommendation mentioned in paragraph 3.21 of the Audit Report;

Changes in Master Layout Plans and premium implications

- expresses astonishment and finds it inexcusable that the Lands D failed to:

(a) maintain a record of the public recreational facilities actually provided in the DB development;

(b) verify the specific as-built facilities in the DB development with those agreed with the developer to ensure that they had in fact been built; and

(c) document the reasons for not assessing and/or charging premium for the changes in those MLPs;

- condemns the then land authorities for having failed to assess whether premium should be charged for the changes made in the MLPs after the land grant and prior to 7 June 1994 (including the deletion of the public golf course in MLP 5.0 and the cable car system in MLP 5.1);

- notes that the Director of Lands has implemented the audit recommendations mentioned in paragraph 4.23 of the Audit Report;

Site boundaries of Discovery Bay and Yi Long Wan developments

- expresses grave dismay that:

(a) despite a lapse of 28 years after the land grant of the DB site, the Lands D had not yet set out the boundaries of the site;

(b) some 41,200 square metres of government land adjoining the DB site had been occupied without authorisation for over 20 years, but the Lands D did not take timely actions to rectify the encroachments;

(c) although certain buildings of the Yi Long Wan development were found outside the boundaries of the land grant, the Lands D had not taken any follow-up action to resolve the encroachment problem;

(d) there was a lack of co-ordination between the then District Office/Islands and the then Registrar General's Department, before the latter gave its pre-sale consent of the Yi Long Wan development; and

(e) without seeking legal advice, the Certificate of Compliance for the Yi Long Wan site had been issued before rectification of the site boundary problem;

- notes that the Director of Lands will implement the audit recommendations mentioned in paragraphs 5.12, 5.34 and 5.49 of the Audit Report; and

Follow-up actions

- wishes to be kept informed of the progress in:

(a) seeking the ExCo's endorsement of the development concept of DB; and

(b) implementing the various recommendations made by the Audit Commission and other improvement measures.