

香港特別行政區政府
The Government of the Hong Kong Special Administrative Region

房屋及規劃地政局

香港花園道美利大廈
九樓



Housing, Planning and Lands Bureau
9/F, Murray Building
Garden Road, Hong Kong

本局檔號 Our Ref. HPLB(CR)(PL) 1-150/34 (2005) Pt. 6 電話 Tel.: 2848 6288

來函檔號 Your Ref. 傳真 Fax: 2869 0167

12 December 2005

Ms. Miranda Hon
Clerk to Public Accounts Committee
Legislative Council
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Ms Hon,

**The Director of Audit's Report on the
Results of value for money audits (Report No. 45)**

Chapter 3 : Development of a site at Sai Wan Ho

I refer to your letter dated 9 December 2005.

In respect of the written submission by Mr CM LEUNG, the departments concerned have provided some factual clarifications and corrections to the information contained in the written submission. They are attached at Annexes 1 to 5. Since the written submission by Mr LEUNG contains his opinions expressed to the Public Accounts Committee, it is not appropriate for the departments to make any comment on them.

Yours sincerely,

(Parrish Ng)

for Secretary for Housing, Planning and Lands

c.c. DB (Attn : Mr Cheung Hau-wai) [Fax : 2868 0793]
D of Lands (Attn : Mr Patrick Lau) [Fax : 2525 4960]
D of Plan (Attn : Mr Bosco Fung) [Fax : 2877 0389]
D of ArchS (Attn : Mr Yue Chi-hang) [Fax : 2810 7341]
D of Audit (Attn : Mr Benjamin Tang) [Fax : 2583 9063]
SFST (Attn : Mr Martin Glass) [Fax : 2523 5722]
D of J (Attn : Mr Raymond Chan [Fax : 2136 8277]
Ms Grace Chan)
Mr Leung Chin-man [Fax : 2870 1737]

Buildings Department's Response to Mr CM Leung's Written Submission to the PAC (ref: PAC/R45/CH3/GEN13):

1. Regarding paragraph E(1) of the written submission, it is confirmed that on 18 November 1999, the Buildings Department advised the Lands Department in writing that the Government Accommodation should be included in gross floor area calculation under Building (Planning) Regulation 23(3)(a). The Buildings Department cannot trace any written records about advice given to the Lands Department in November 2000. According to information provided by colleagues of District Lands Office/Hong Kong East, their office had phoned the then Chief Building Surveyor/Hong Kong East to enquire about the relevant question.
2. Regarding paragraph E(3) of the written submission, we believe when Mr CM Leung was referring to the reply given to the developer made by Buildings Department, he was actually referring to the reply made by the "Lands Department".

Lands Department's Response to Mr CM Leung's Written Submission to the PAC (ref: PAC/R45/CH3/GEN13):

1. Regarding paragraph (1) in Part B of the written submission, the Department wishes to clarify that the main objective and function of the conditions of sale or what is commonly known as the lease are to ensure that the grantee will develop the site in accordance with the stipulated use and provide certain facilities, and to bind the grantee not to undertake activities or uses and build facilities not permitted under the lease. The lease itself is neither a mechanism nor an instrument for seeking the maximum premium in a land sale.
2. Paragraph (4) in Part B of the written submission stated that Lands Department will formulate the most appropriate strategy to obtain the best land sale revenue taking into account the individual circumstances of each site. The Department wishes to clarify that the process of formulating the land sale conditions by the Government does not involve a strategy. The Government will consider how to implement through the land sale conditions the prevailing planning intention embodied in the Outline Zoning Plan in which the site is located. Within this established framework, we will try our best to realize the highest premium from the sale of the site. It is not up to Lands Department to take the initiative in determining whether the lease should be "open" or otherwise. The decision is based on planning intention.
3. Part E of the written submission refers to a written reply from Buildings Department to a developer. Actually it was Lands Department who replied. Copies of the letter from the developer to Lands Department and our reply have already been forwarded to the Chairman and members of the Public Accounts Committee on 9 December 2005.

Planning Department's Response to Mr CM Leung's Written Submission to the PAC (ref: PAC/R45/CH3/GEN13):

Planning Department has no comment on Mr LEUNG's written submission.

Architectural Services Department's Response to Mr CM Leung's Written Submission to the PAC (ref: PAC/R45/CH3/GEN13):

Architectural Services Department has no comment on Mr LEUNG's written submission.

Department of Justice's Response to Mr CM Leung's Written Submission to the PAC (ref: PAC/R45/CH3/GEN13):

1. Regarding paragraph (1) of Part D of the written submission, Mr. Leung's comment was “不應把地契合約條款本身視為一個相干的因素” or key factor. We are not clear about Mr. Leung's meaning of “相干的因素”. If Mr. Leung was of the view that lease condition was an “irrelevant factor” (無關因素) and should not be taken into consideration as one of the factors, we disagree with such view. We opine that lease condition was one of the relevant factors (a relevant factor). In exercising the discretionary power provided under B(P)R23(3)(b), the Building Authority should take into consideration such relevant factor.
2. According to paragraph (2) of Part D of the written submission, as a matter of fact Mr. Leung had considered the lease condition. This accorded with our understanding. With reference to Buildings Department's paper (BAC 22.10.2001 minutes of meeting) and the meetings between the Buildings Department and our government counsel, we fully understood that the Building Authority at that time had regarded the lease condition as one of the relevant factors (a relevant factor) and had considered it. As to the importance of such factor and the weight to be attached to such factor in the exercise of discretionary power, it should be decided by Mr. Leung as the Building Authority.
3. In relation to “independent of lease conditions”, our responses are as follows:
 - (a) As stated in paragraph 3(d) of our memo dated 22.10.2001, we concurred with Buildings Department's response to the developer's Authorised Person that “The exercise of development control via the B.O. is independent of the lease conditions in every case. It is

undesirable that the Buildings Department should be compelled to follow the lease conditions in general.”

We agreed that:

- (i) Building development is controlled under the Buildings Ordinance and the lease conditions;
 - (ii) These two controls operate independently;
 - (iii) These two controls are not mutually exclusive;
 - (iv) The Building Authority’s exercise of discretionary power should not be bound by the lease conditions.
- (b) We opine that lease condition was one of the relevant factors that the Building Authority should take into consideration. As to the importance of this relevant factor and the weight to be attached to this factor, these should be decided by the Building Authority. The Building Authority should exercise its discretionary power as the public interest required.
- (c) According to Mr. Leung’s written submission, Mr. Leung had considered the lease condition including the developer’s obligation to construct the public transport terminus (PTT) under the lease. We opine that the lease condition and the developer’s obligation to construct the PTT were relevant factors. Accordingly, in the exercise of discretionary power the Building Authority should take these relevant factors into consideration. Our legal advice dated 22.10.2001 did not say (nor should it be understood as) “不應考慮地契上已列明須興建巴士總站這規定”.
- (d) Regarding paragraph (4) of Part D of Mr. Leung’s written submission, Mr. Leung was of the view that “收取補地價的困難這個情況” was not a “相干因素”. If “相干因素” means “有關因素”, we have reservation on Mr. Leung’s conclusion. We have never received any instruction to provide legal advice in this respect. However, Mr. Leung’s written submission indicated that as a matter of fact Mr. Leung had taken into consideration such relevant factor.

- (e) We opine that lease condition was one of the relevant factors that should be taken into consideration. However, in the exercise of discretionary power under the Buildings Ordinance, the Building Authority should not be bound by the lease conditions.
4. Regarding paragraph (2) of Part F of Mr. Leung's written submission, we would like to clarify that in our memo of 22.10.2001 we did not say “無須考慮地契須興建公共交通總站的規定”. At that time, we knew Mr. Leung had regarded “地契須興建公共交通總站的規定” as one of the relevant factors that should be taken into consideration.