

8 December 2005

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

(Fax : 2537 1204)

Dear Ms Hon

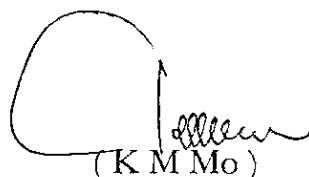
**The Director of Audit's Report on the
results of value for money audits (Report No. 45)**

Chapter 3: Development of a site at Sai Wan Ho

Thank you for your letter of 7 December 2005.

I attach herewith a copy of the Practice Note 23 on
"Discretionary Approval – Factors for Consideration" issued in September
2002 and the version issued in September 2000 for your reference.

Yours sincerely



(K M Mo)

for Director of Buildings

c.c. SHPL	(Attn : Ms Olivia NIP)	[Fax : 2899 2916]
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]
Mr Leung Chin-man		[Fax : 2870 1737]

Discretionary Approval – Factors for Consideration

From time to time, the Building Authority (BA) needs to exercise his discretion in approving or rejecting a submission. When exercising his discretion, the BA should take into account all consideration relevant to the particular application. While it is acknowledged that what is relevant depends on the application and its circumstances, the following should be considered in formulating recommendations :-

1. Government policy, public interest, objective of policy.
2. Town Plan restrictions, recommended standards or guidelines stipulated in the relevant HKPSG or Development plans.
3. Lease restrictions.
4. Statutory provisions and legal principles particularly those on which advice from S for J is available or which can be inferred from JR/Court/Appeal precedents.
5. Special circumstances of the case including the case history, reasonable expectation of the developer/AP, any previous disapprovals or approvals for the case or similar cases.
6. Special characteristics of the site affecting the planning, architectural, engineering or construction aspects of the proposed development.
7. Views of other government departments.
8. Effect of the development on the adjoining sites and the district.
9. Fairness.

Ref. : BD GP/OA/28

This issue Sept. 2000

Index under : Discretionary Approval
Approval - Discretionary

Discretionary Approval – Factors for Consideration

From time to time, the Building Authority (BA) needs to exercise his discretion in approving or rejecting a submission. In general, statutory powers have to be exercised reasonably and in good faith. When exercising his discretion, the BA should take into account all consideration relevant to the particular application. While it is acknowledged that what is relevant depends on the application and its circumstances, the following factors may be considered, if appropriate, in formulating recommendations :-

1. Government policy, public interest, objective of policy.
2. Town Plan restrictions, recommended standards or guidelines stipulated in the relevant HKPSG or Development plans.
3. Lease conditions. (NB While the development control under the Buildings Ordinance is independent of that under the lease conditions, the lease condition may provide some practical circumstances to assist us in exercising our discretionary power.)
4. Statutory provisions and legal principles particularly those on which advice from S for J is available or which can be inferred from JR/Court/Appeal precedents.
5. Special circumstances of the case including the case history, reasonable expectation of the developer/AP, any previous disapprovals or approvals for the case or similar cases.
6. Special characteristics of the site affecting the planning, architectural, engineering or construction aspects of the proposed development.
7. Views of other government departments.
8. Effect of the development on the adjoining sites and the district.
9. Fairness.

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