

For discussion on
24 February 2004

**LEGISLATIVE COUNCIL PANEL
ON PLANNING, LANDS AND WORKS**

**Proposed Amendments to the Building (Planning) Regulations -
Refining the Definition of Street for Site Classification Purpose**

Purpose

This paper outlines the Administration's proposal to refine the definition of "street" for the purpose of site classification.

Background

2. The Director of Audit conducted a review to evaluate the effectiveness of the administration of sale of land by public auction with reference to a site in Siu Sai Wan sold in March 1997. The Audit Report No. 37 was subsequently published in October 2001. In light of the land auction case at Siu Sai Wan site, the Director of Audit recommended in his report, inter alia, that the Director of Buildings should amend the Building (Planning) Regulations (B(P)R) to remove uncertainties about the definition of street in relation to site classification. Since then, the Administration, having consulted the industry, has devised a proposal to amend the B(P)R for this purpose.

Site Classification and Existing Definition of Street

3. Regulation 2 of the B(P)R defines three different classes of sites and the First Schedule specifies the maximum plot ratios permitted for domestic and non-domestic buildings under the three different classes of sites, as shown in the table below -

Site	Definition	Maximum Plot Ratio of Domestic Buildings	Maximum Plot Ratio of Non-domestic Buildings
Class A	A site, not being a Class B or Class C site, that abuts on one street not less than 4.5 metres wide or on more than one such street.	8	15
Class B	A corner site that abuts on two streets neither of which is less than 4.5 metres wide.	9	15
Class C	A corner site that abuts on three streets none of which is less than 4.5 metres wide.	10	15

4. Under section 2 of the Buildings Ordinance (BO), a street includes the whole or any part of any square, court or alley, highway, lane, road, road-bridge, footpath, or passage whether a thoroughfare or not. Under regulation 2(1) of the B(P)R, a street includes any footpath and private and public street. The above definitions only give some examples of street. The definition of “street” in relation to site classification is, however, not clearly set out in the BO or B(P)R.

The Siu Sai Wan Case

5. The Lands Department determined the reserve price of the Siu Sai Wan site before the auction on the basis that it was a Class A site which abutted on Siu Sai Wan Road. The layout plan of the site is provided at the **Annex**. After the auction, the purchaser of the site (the developer) claimed that an existing walkway for crowd dispersal within the Siu Sai Wan Sports Ground along the north-western boundary of the site could be considered as a street for the purpose of site classification under the B(P)R. Although the walkway was part of the Siu Sai Wan Sports Ground which was under permanent government allocation to the then Urban Services Department, it could arguably be regarded as a “street” under the B(P)R as

it allowed public passage. Ultimately, the site was developed as a Class C site as it was regarded as abutting on three streets, i.e. the Siu Sai Wan Road (a public street), the walkway along the north-western boundary, and an internal street created by the developer along the south-eastern boundary.

Problem

6. As mentioned in paragraph 4 above, the existing definition of “street” under the BO and B(P)R does not clearly specify the characteristics and conditions of a street for the purpose of site classification. The lack of a clear definition is not conducive to effectively controlling the development density of a particular site. Developers can cite the Siu Sai Wan as a precedent and make use of any park or open space adjoining a site as a street for site classification purpose. Such open space will serve to unjustifiably increase the development density of a site. The permanence of an adjoining open space could not be guaranteed as it might be extinguished through subsequent construction on or alteration to it by its owner at any time in future. This would result in excessive development density of the building erected on the site adjoining the open space and defeat the purpose of control of development density of different classes of sites under the B(P)R. Taking the Siu Sai Wan case as an example, if the walkway in the Siu Sai Wan Sports Ground is eventually extinguished, the site would become only a Class B site instead of a Class C site. However, there is no mechanism to revert the site to a Class B site once the building has been built to its maximum permitted plot ratio as a Class C site. Therefore, we need to have a clear definition of street for site classification purpose to plug the above loophole and exercise more effective control over development density.

Proposal

7. We propose to amend the B(P)R to provide that a site should not be regarded as abutting on a street for the purpose of site classification unless, with respect to that street, any one of the following criteria is satisfied -

- (a) the street is vested in the Government and maintained by the Highways Department. (This refers to a public street such as Nathan Road. However, open space allocated to government departments like the walkway in the Siu Sai Wan case would not meet this criterion);

- (b) the Government has a right to require the surrender or redelivery of the street under a government lease. (This refers to a street that is required to be constructed or formed by the developer under the conditions of a government lease and which shall be surrendered or redelivered to Government when required);
- (c) the owner of the site has been expressly granted a right of way over the street exercisable at all times. (This refers to a street not owned by the owner of the site but he has an expressed right of way over the street); or
- (d) the street is held under a government lease by the owner of the site. (This refers to a street proposed to be constructed on land owned by the owner of the site).

Enforcement Mechanism

8. The Building Authority (BA) would require that streets for site classification should be shown on the plans submitted for approval. Moreover, if a street for site classification is to be constructed, it should be completed before the occupation permit for the building on the site is issued. If the said street has not been completed by the time the developer applies for an occupation permit, the BA would refuse to issue the occupation permit. In addition, the said street should remain as a street insofar as the buildings relying on it for attaining a higher plot ratio exist. Any proposal to build over or extinguish the street would result in contravention of the provisions of the BO and the BA would disapprove such a proposal.

Consultation

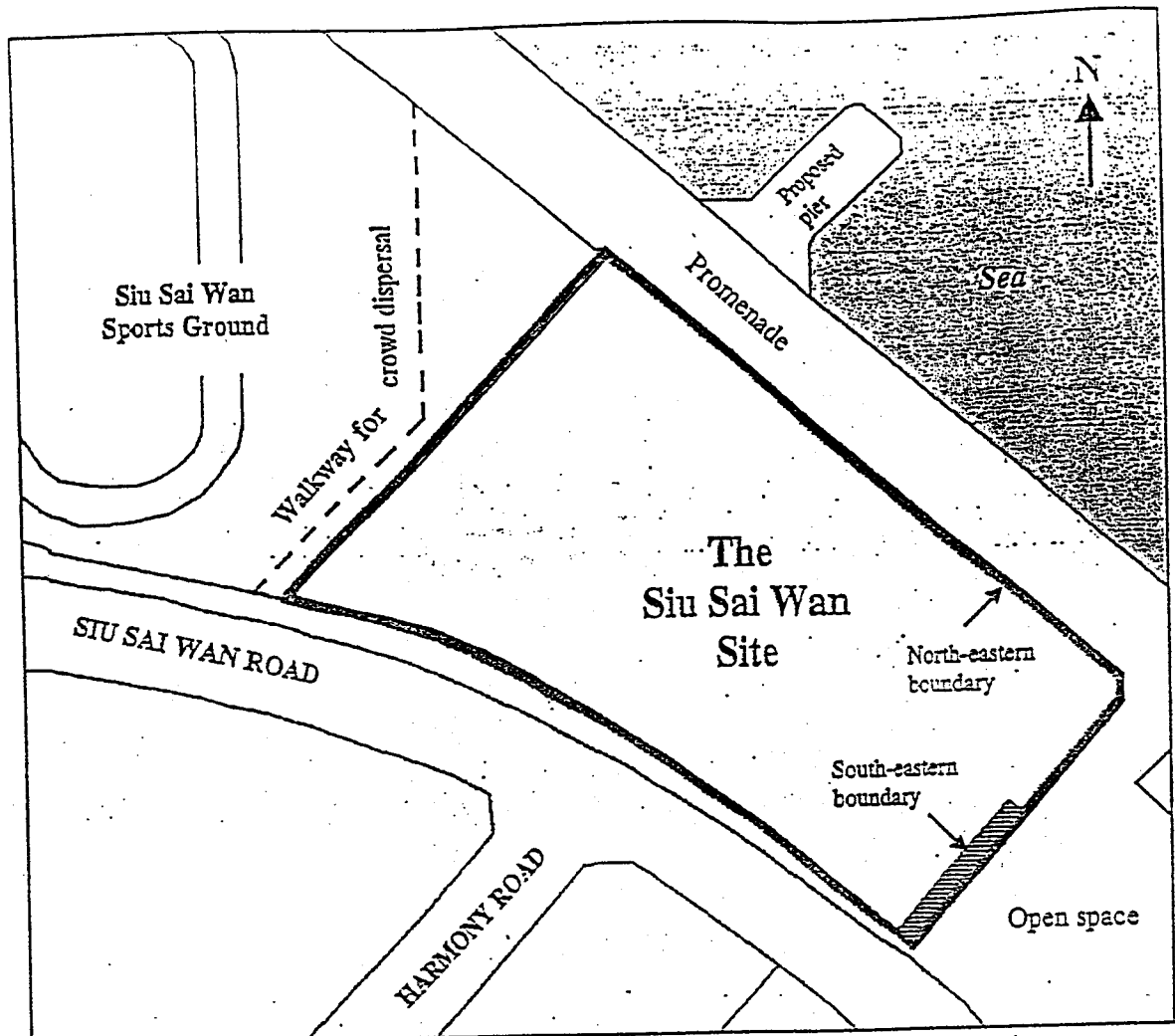
9. We consulted the Building Sub-Committee of the Land and Building Advisory Committee in January 2004. Members of the Sub-Committee generally supported the proposal to refine the definition of “street” for site classification purpose.




Way Forward

10. We are currently working on the draft legislative amendments to the B(P)R to effect the proposals outlined in paragraph 7 above, with a view to tabling them at the Legislative Council for negative vetting within the current legislative session. Members are invited to comment on the proposal.

Housing, Planning and Lands Bureau
February 2004

Layout plan of the Siu Sai Wan site



- Legend:
-  Proposed street included in the approved building plan of 13 March 1998 and in that of 7 February 2001, and provided by the Purchaser along the south-eastern boundary of the site
 -  Fence of the Siu Sai Wan Sports Ground
 -  Site boundary

Source: Records of the BD and the Plan D