

**REPORT OF THE
PUBLIC ACCOUNTS COMMITTEE
ON
THE REPORTS OF THE DIRECTOR OF AUDIT
ON
THE ACCOUNTS OF THE GOVERNMENT OF
THE HONG KONG SPECIAL ADMINISTRATIVE REGION
FOR THE YEAR ENDED
31 MARCH 2001
AND THE RESULTS OF
VALUE FOR MONEY AUDITS (Report No. 37)
AND
*SUPPLEMENTAL REPORTS ON
REPORT NOS. 35 AND 36 OF THE DIRECTOR OF AUDIT
ON
THE RESULTS OF
VALUE FOR MONEY AUDITS***

February 2002

P.A.C. Report No. 37

Chapter 8

The administration of sale of land by public auction

Audit conducted a review to:

- evaluate the effectiveness of the administration of sale of land by public auction;
- examine the implementation of the Government's planning objective for the sale of a site in Siu Sai Wan; and
- ascertain whether there was room for improvement in the administration of the sale of land by public auction.

Implementation of planning objective for developing the Siu Sai Wan site and the change in classification of the site

2. The Committee noted from the Audit Report that the Government's planning objective for developing the Siu Sai Wan site was to lower the development density in order to "thin out" the population and that the maximum plot ratio for the domestic part of the development should be 6.5. This was in line with the Metroplan Selected Strategy (Metroplan) and the Hong Kong Planning Standards and Guidelines (HKPSG). In June 1996, the draft Special Conditions of the Conditions of Sale of the site contained Clause 10(b)(i) which specified that the total gross floor area (GFA) for the domestic part of the development should not exceed 167,700 square metres. However, at the District Lands Conference (DLC) meeting held on 27 September 1996, the representative of the Planning Department said that the maximum residential GFA of a plot ratio of 6.5 might not be achievable. The DLC subsequently agreed to delete the clause. In the event, the GFA of the domestic part of the development was 223,914 square metres, which was equivalent to a plot ratio of 8.819. This was much higher than the plot ratio of 6.5 specified in the Metroplan.

3. The Committee considered that the deletion of the clause which specified the maximum GFA restriction by the DLC had resulted in the failure to achieve the Government's planning objective. They queried the justification for such a decision and whether it was a normal DLC practice to delete certain clauses.

4. **Mr R D Pope, Director of Lands**, said that:

- the DLC was chaired by an Assistant Director of the Lands Department and its members included representatives from the Planning Department, the Buildings Department and other government departments; and

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- there was indeed some discussion at the DLC meeting about the plot ratio of the Siu Sai Wan site. The consensus of the meeting was that the Conditions of Sale of the site should remain silent on the maximum GFA and just state that the maximum GFA should be subject to the Building (Planning) Regulations (B(P)R).

5. **Mr Bosco FUNG Chee-keung, Director of Planning**, supplemented that:

- the Planning Department had originally proposed to prescribe in the Conditions of Sale a clause which stipulated that the maximum plot ratio for the domestic part of the development of the Siu Sai Wan site should be 6.5; and
- he understood that at the DLC meeting, members considered that the development of the site was subject to many constraints, including the provision of a public transport interchange, a public car park, retail carparking spaces and an emergency vehicular access. In view of these constraints, the DLC arrived at the collective decision that it would be more preferable to provide maximum design flexibility for the prospective purchaser.

6. In response to the Committee's request, the Director of Lands provided a copy of the minutes of the DLC meeting held on 27 September 1996 vide his letter of 21 December 2001, in **Appendix 68**.

7. The Committee asked whether the failure to achieve the planning objective for developing the Siu Sai Wan site and the subsequent confusion over the matter was a result of poor planning and coordination. In response, the **Director of Lands** said that:

- as the land authority and the chairman of the DLC, his representative was the final authority on the Conditions of Sale of a site. However, decisions over the Conditions of Sale were normally arrived at by discussion, as was in this. Following a discussion, the consensus of opinions was to leave the Conditions of Sale silent on the maximum GFA and the maximum plot ratio permitted;
- he did not think that there was confusion over the matter. The Metroplan was only guidelines and had no statutory effect. It was the Outline Zoning Plan (OZP) that was statutory. If the Administration wanted to impose control on the plot ratio of a particular site, it would do so by specifying the plot ratio in the OZP concerned. As there was no such provision in the OZP

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of the Siu Sai Wan site, there was no reason for the chairman of the DLC to specify a plot ratio in the Conditions of Sale. Actually, it was quite correct for the DLC to decide to leave the matter open so that it was up to the developer to try to get as much development on the site as he wished; and

- although members of the DLC had originally thought that the purchaser could not even achieve a plot ratio of 6.5, the fact that the purchaser subsequently achieved an 8.819 ratio did not matter.

8. On the classification of the Siu Sai Wan site, the Committee noted from paragraph 4.5 of the Audit Report that the Lands Department had approved the reserve price of \$6,300 million on the basis that the site was a Class A site. Paragraphs 4.26 and 4.27 further revealed that, in the end, the purchaser succeeded in obtaining the Building Authority's agreement to "grant modification in treating the site as a Class C site", provided that a street was maintained alongside the south-eastern boundary. As a result of the change in the site classification from Class A to Class C, the total GFA of the development increased from 226,918 square metres by 41,985 square metres to 268,903 square metres.

9. The Committee asked:

- whether, if the Administration had been aware that the plot ratio could be higher than 6.5, the reserve price of the site would have been increased and the site could have been sold at an even higher price;
- whether a mistake had been made by assuming that the site was a Class A site when assessing the reserve price of the Siu Sai Wan site; and
- the reason why, after the Lands Department had determined the reserve price of the site on the basis that it was a Class A site in March 1997, the Building Committee agreed in May 1997 that the site was a Class C site.

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

- in March 1997, the Lands Department did value the site as a Class A site and, in hindsight, that was incorrect. At that time, the Administration did not know that the developer could build to a higher plot ratio. If the Administration had thought that the site could become a Class C site and the plot ratio could thus be higher, a higher reserve price would have been set. But that was academic because finally the site was sold at \$11,820 million,

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which was significantly higher than the reserve price of \$6,300 million. Thus, there was no question of the Government having lost any income. According to his understanding, all the bidders at the auction assumed that the site was a Class C site and that was why the price went so high;

- he did not accept that a mistake had been made. That involved professional judgment. When valuing the site, the Lands Department obtained the best professional advice from the Buildings Department and the advice was that it was a Class A site. So the Lands Department valued it accordingly. It transpired that because of legal arguments, the purchaser was able to obtain approval for treating the site as a Class C site and hence get a higher plot ratio. It was not a matter of change of mind within a short time; and
- it was actually very difficult for the Buildings Department or other departments to make any judgment on the classification of a site until the developer had submitted his specific building proposal.

11. **Mr LEUNG Chin-man, Director of Buildings**, added that:

- the classification of a site was made purely for internal purposes and was not specified in the Conditions of Sale. In a land auction, all bidders were aware that it was possible to develop a site as a Class C site under the B(P)R;
- there could be change in circumstances, including a specific building proposal from the developer, that might affect the classification of a site. The Buildings Department could only give advice on the classification of a site based on the prevailing circumstances and available information. Based on the then available information, the Siu Sai Wan site was classified as a Class A site. The purchaser's proposal to provide internal streets so as to change the site classification could not have been known until the purchaser had actually submitted the building plans; and
- the Buildings Department was responsible for ensuring that the development of a site was in compliance with the Buildings Ordinance. As to the plot ratio of a development and whether it was a correct judgment to assess the reserve price of the Siu Sai Wan site on the basis of a maximum plot ratio of 6.5, these were outside the Buildings Department's purview.

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12. The **Director of Planning** said that:

- the original maximum plot ratio of 6.5 for the Siu Sai Wan site was determined according to the Metroplan. The Metroplan was not a statutory document but only a conceptual strategy setting out a number of directions for the Metro area to follow in terms of planning and development. However, it was difficult to comply with all the directions laid down in the Metroplan in a land sale. Therefore, it had been the practice that while the Metroplan provided a reference for land sale and planning purposes, certain adjustments were allowed; and
- in the present case, although a maximum plot ratio of 6.5 had been used in the draft Special Conditions, when the DLC discussed the Conditions of Sale of the site, members considered that the plot ratio might not be achievable and decided to allow the purchaser more design flexibility. That was a collective decision although it might not be the best one. It had not occurred to them that the developer could achieve a plot ratio of higher than 6.5.

13. According to paragraphs 2.24(a) and 2.25 of the Audit Report, several prospective purchasers of the Siu Sai Wan site had enquired of the Planning Department about some basic information on the development of the site, including the site classification and the maximum GFA. However, the Planning Department did not record details of the answers to such enquiries. There was also no evidence indicating that the Planning Department had notified the Lands Department of the answers it gave to the prospective purchasers.

14. Since in land auction, the classification of a site and the maximum plot ratio permitted were pieces of essential information that had a direct bearing on the land premium, and that prospective purchasers had raised enquiries on such information before the auction, the Committee queried whether an error had been committed by the Administration in deciding to delete the maximum domestic GFA restriction from the Conditions of Sale of the Siu Sai Wan site. They further asked whether the Administration had deliberately chosen to remain silent on the maximum GFA with a view to obtaining a higher auction price.

15. In response, the **Director of Lands** reiterated that he did not agree that an error had been committed. The maximum GFA was only stipulated in the Metroplan but not in the OZP. He considered that if the maximum plot ratio of 6.5 had been specified in the Conditions of Sale of the Siu Sai Wan site and the developer had not been given flexibility, the auction price of the site might not have been as high as \$11,820 million.

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16. To ascertain the Director of Lands' role over the DLC's decision to delete the clause concerning the maximum GFA, the Committee asked:

- whether the Director of Lands had reviewed or endorsed the DLC's decision; and
- about the Director's relation with the DLC.

17. In his letter of 11 January 2002 in *Appendix 69*, the **Director of Lands** stated that:

- he had not taken any action to review or endorse the DLC's decision;
- as Head of Department and the land authority of Hong Kong, all DLC papers and decisions were available to him and, where appropriate, he would review these decisions in consultation with his senior staff. In logistical terms, however, he was normally reliant on his staff and particularly the DLC chairmen, to draw his attention to potentially controversial cases and decisions; and
- the DLC's decision reached in this case was both correct and in accordance with prevailing policy, and thus was not specifically drawn to his attention at the time.

18. On the procedures for handling pre-auction enquiries received from prospective purchasers, the **Director of Lands** said that:

- at that time there were no policy guidelines requiring the departments concerned to direct all pre-auction enquiries about the Conditions of Sale to the Lands Department. It was the practice then for individual departments to answer the questions; and
- in response to the Audit recommendations, he had agreed with the Planning Department and the Buildings Department that, in future, all enquiries on the sale conditions of a site should be directed to the Lands Department for reply as the department was responsible for lease conditions. This had also been agreed by the industry. After consulting representatives of the industry, it had also been agreed that the Lands Department would not answer any enquiries relating to the interpretation of the Conditions of Sale. On receiving such enquiries, staff of the Lands Department would suggest the

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prospective purchasers to approach their legal advisers for any necessary advice. Occasionally where there was an error in the Conditions of Sale of a site, the error would be corrected and the clarification would be published in the newspaper for general information.

19. The Committee noted that although the Planning Department had received and answered a number of enquiries concerning the classification of the site, the domestic GFA, and the development density before the auction, details of the answers were not recorded and there was a change in the classification of the site after the land sale, the Committee wondered if the Administration had been fair to those prospective purchasers who had made enquiries.

20. The **Director of Buildings** explained that:

- he was responsible for enforcing the Buildings Ordinance and the B(P)R. When a purchaser submitted building plans according to the law after the land sale, he was bound to make a fair judgment as to whether the plans could be approved under the law. He could not reject the plans simply because the site was originally classified as a Class A site before the auction; and
- because of the change in circumstances after the land sale, the Buildings Department agreed to treat the site as a Class C site. There was no question of contradiction between the former decision and the latter decision.

21. The **Director of Lands** supplemented that the Conditions of Sale were the contract between the Government and the purchaser. Any purchaser of land should base their judgment only on the Conditions of Sale and should not obtain advice from other government departments.

22. The **Director of Planning** admitted that it was a mistake that his staff had not recorded the answers to the pre-auction enquiries concerning the classification of the site, the domestic GFA, etc. It had now been agreed among his department, the Lands Department and the Buildings Department that all enquiries relating to the Conditions of Sale should be referred to the Lands Department.

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23. The Committee considered that there were three competing objectives in the development of a site, namely the Buildings Department's concern about density control, the Lands Department's concern about revenue and the Planning Department's concern about the achievement of planning objectives. The Committee asked:

- which objective would be more dominant when there was a conflict and what the Government's overall land policy objective was;
- whether the Government's planning objective of lowering the development density for developing the Siu Sai Wan site had ever been abandoned; and
- as the maximum domestic GFA of the Siu Sai Wan site was not specified in the Conditions of Sale, resulting in uncertainties about the classification of the site, and the bidders had to take the risk of applying for changing the site classification after the purchase, whether the arrangement had been fair to all prospective purchasers with different capacity to take risk.

24. The **Director of Lands** replied that:

- as the land authority, the Lands Department took advice from other government departments and set the Conditions of Sale. It had never specified the site classification in the Conditions of Sale. It was entirely up to the developer to obtain whatever site classification he could from the Buildings Department, depending on the development scheme he produced;
- for the Siu Sai Wan site, the Lands Department did not consider it appropriate for the Government to assume that it was a Class C site because if the purchaser could not obtain a Class C site classification subsequently, the Government might be sued for giving wrong information to the prospective purchasers. Moreover, if the Lands Department had assumed that the site was a Class C site and set a higher reserve price, the site might not be sold in the end as the developer might doubt whether he could really get Class C classification. Hence, the Lands Department had to take a conservative view about the development potential of the site. It only based its assessment on what it knew to be a fact and leave the risk to the developer. After all, it was only after a lot of legal arguments that the Building Authority was eventually persuaded that the site could be a Class C site; and
- on the other hand, if the Lands Department had assumed that it was a Class A site and included a maximum GFA clause in the Conditions of Sale, the Government would have potentially lost the revenue that could have been obtained from the purchaser who could change it to a Class C site.

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25. **Mr John TSANG Chun-wah, Secretary for Planning and Lands**, in his letter of 28 December 2001 in *Appendix 70*, advised the Committee that:

- the Government's overall land policy objective had been, and still was, to ensure an adequate land supply to meet market demand and to facilitate infrastructural developments which were essential to the long-term social and economic development of Hong Kong. Compatibility and complementarity with land use planning were part and parcel of this overall objective of optimizing the use of land. Maximising land revenue was not an overriding factor;
- the Metroplan was essentially a broad conceptual strategy which was subject to on-going review. The HKPSG, on the other hand, provided non-statutory guidelines on development density for different areas in Hong Kong. The two documents were planning frameworks which formed one of the factors to be taken into account in determining site-specific development controls. Other considerations, such as design feasibility and flexibility, were taken into account in determining the development density of a particular site. The Administration did not usually have specific planning objectives for individual sites; and
- the arrangement of not specifying the maximum domestic GFA in the Conditions of Sale of the Siu Sai Wan site was not unfair to prospective purchasers. The terms set out in the Conditions of Sale, the OZP and the B(P)R were open and transparent to all prospective developers. The developers should be capable of making their own decisions as to how they could fully utilise the potential of the site within the provisions of the Conditions of Sale and the statutory framework of the OZP and the B(P)R.

26. The Committee further asked whether the decision to delete the clause specifying the maximum domestic plot ratio of 6.5 from the Conditions of Sale of the Siu Sai Wan site had violated the Government's land policy objective.

27. In his letter of the 28 December 2001, the **Secretary for Planning and Lands** stated that the decision was not against the overall land policy objective.

28. The **Director of Lands** said that the Lands Department would only impose plot ratio restrictions where these were stipulated in the OZP. Where there were no such restrictions in the OZP, they would not be included in the Conditions of Sale because there

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was no authority for him to do so. By imposing a limit on the plot ratio, the Lands Department would be restricting the land revenue. While his role was to achieve the best planning for Hong Kong, he also had the duty to obtain the best land price he could, for the benefit of the general public.

29. The Committee then referred to the Committee's Report No. 21A on "Sale of a commercial site in Garden Road" published in May 1994. In that case, the planning intention was to erect a building of six to seven storeys. However, because of a loophole in the Special Conditions of Sale of the site, it turned out that a 31-storeyed building was erected. The Director of Lands accepted that the Government's planning intention should always be clearly reflected in the Conditions of Sale. It was also the Committee's recommendation that the Government's planning intention should always be accurately translated into the Conditions of Sale of a site.

30. Against the above background, the Committee questioned whether the Administration had failed to fulfil its undertaking by deleting from the Conditions of Sale of the Siu Sai Wan site the clause specifying the maximum domestic plot ratio, resulting in the failure to achieve the planning intention.

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

- in the Garden Road case, he had accepted that the loophole would not have arisen if the planning intention for a low-rise commercial building had been specified in the OZP. The Government had subsequently taken steps to change the system so that plot ratio restrictions were more commonly written into the OZPs; and
- in other words, planning intentions for developing a site would be stipulated in the OZP concerned. Otherwise, there might only be a planning view without any statutory effect.

32. In the light of the Director of Lands' reply, the Committee asked why the planning objective for developing the Siu Sai Wan site had not been incorporated in the OZP.

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33. The **Director of Planning** said that:

- it was normal practice to incorporate plot ratio and height restrictions in the OZPs where there was a policy that the maximum level of development would need to be controlled to a level below that permitted under the B(P)R. Where there were no such provisions in the OZPs, the development of the sites was subject to the control of the B(P)R. As such, there was no need to impose restrictions again in the OZPs under the Town Planning Ordinance; and
- as the Siu Sai Wan site was a new land lease, its development could be controlled through the Conditions of Sale. Hence, the maximum GFA permitted was not incorporated in the OZP but was specified in the draft Special Conditions of the Conditions of Sale of the site. However, the DLC meeting subsequently decided collectively to delete the clause in order to give the developer greater flexibility.

34. The Committee further asked if it had been specified in the Conditions of Sale that the site was a Class A site and the developer subsequently succeeded in persuading the Building Authority that it was a Class C site, whether the developer would be required to pay land premium. The **Director of Lands** replied that it was government policy not to make fundamental changes to the Conditions of Sale within five years of a sale. The Lands Department believed that a change in the maximum GFA would be a fundamental change.

35. Referring to paragraph 4.37 of the Audit Report, the Committee asked about the Director of Lands' view on the recommendation that he should, prior to the auction of a site, seek advice from the Building Authority on the classification of a site to be sold. They also enquired whether, if the Lands Department had followed all the Audit recommendations, a higher reserve price might have been set and whether the auction price might have been different.

36. The **Director of Lands** said that:

- he agreed with the Audit recommendation and would seek clarification from the Building Authority on the classification of a site for the purpose of assessing the reserve price; and
- he did not believe that the outcome would be different even if he had followed all Audit recommendations.

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37. The Committee questioned whether, prior to the auction of the Siu Sai Wan site, the Lands Department had explored the possibility of changing the classification of the site from Class A to Class C, so as to obtain the highest price for the site in the auction. The **Director of Lands** informed the Committee, vide his letter of 21 December 2001 that:

- it was not normal land administration practice to specify site classification in the lease conditions, hence, the question of changing the classification of the site did not arise. The issue of site classification was a matter for the Building Authority under the provisions contained in the B(P)R of the Buildings Ordinance;
- in the context of the B(P)R, the classification of a site for development would depend on the number of streets it abutted on. These streets might either be public or private. Accordingly, where a developer proposed in his development scheme to include a street within the site, this might well lead to a change in site classification. The Building Authority would not normally commit itself to site classification until a formal building scheme was submitted by the purchaser; and
- from the Lands Department's point of view, provided a site would be offered for sale competitively by auction or tender, then clearly it was in the Government's interests, both in respect of optimising development and maximising premium, to allow the developer the greatest flexibility to exploit the full potential of the site within the provisions of the Conditions of Sale and the statutory framework of the OZP and the B(P)R. In this respect, developers were professionally advised by architects, engineers, surveyors and lawyers, and thus such developers were fully able to make their own commercial decisions on the preferred development options as reflected in the competitive bids they made for the site.

38. The Committee enquired whether, when considering the terms and conditions for the disposal of the Siu Sai Wan site, representatives from the government departments concerned had paid any visit to the site.

39. In the same letter, the **Director of Lands** stated that:

- in addition to routine inspections made by staff in District Lands Office/Hong Kong East, the case officer concerned had visited the site on not less than ten occasions throughout the entire process of drawing up and finalising the draft Conditions of Sale. The case officer was a professional surveyor at Estate

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Surveyor rank. Prior to the discussion of the case at the DLC, specific site visits had been paid, on two occasions, by the chairman of the DLC. He was accompanied by the District Lands Officer (Hong Kong East), an officer at the Chief Estate Surveyor level, and the case officer concerned; and

- according to the Director of Planning, it was common practice for district planners to conduct site visits regularly. His district planner who handled the terms and conditions for the disposal of the Siu Sai Wan site had visited the site at least ten times on different occasions.

40. The Committee wondered whether in most land sale cases, the maximum or minimum GFA were specified in the Conditions of Sale. The **Director of Lands** replied that the maximum GFA would only be specified where there was a restriction on plot ratio in the OZP concerned. For a site such as the Siu Sai Wan site, it was normal not to specify the maximum GFA. As it was only stated in the Conditions of Sale that the maximum GFA was to be governed by the B(P)R, it was entirely up to the developer to obtain whatever plot ratio he could get on the site. That was the fairest and most transparent way to optimise development.

41. In response to the Committee's request, the **Director of Lands** provided, vide his letter of 21 December 2001, information on the number of sites sold by public auction from 1994 to 2000 with the maximum plot ratio/GFA specified in the Conditions of Sale and the number of sites that did not, and the reasons thereof.

42. The Committee noted from paragraphs 4.15, 4.16 and 4.20 to 4.27 of the Audit Report that after the land sale, the purchaser proposed to provide two internal streets in order to make the Siu Sai Wan site a Class C site. The proposal was accepted by the Buildings Department. Ultimately, the Building Authority agreed that only one street had to be provided. The Committee enquired whether it was unusual to accept after a land auction the successful bidder's application to create two additional streets so as to change the classification of a site from Class A to Class C, resulting in an increased plot ratio.

43. In response, the **Director of Buildings** said that:

- it was really up to the developer who had bought the site. Under the Buildings Ordinance and the B(P)R, a street included public streets and private streets. When a developer submitted a development scheme proposing to carve out private streets, the streets would be treated as streets if

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they met the requirements of a street. However, in carving out private streets, the developer would be losing certain site area; and

- in some cases the Buildings Department required the developers to carve out private streets to provide access roads, such as for a huge development like Whampoa Garden and Taikoo Shing. In other words, it would depend on the circumstances of individual cases.

44. In his letter of 18 December 2001 in *Appendix 71*, the **Director of Buildings** provided the Committee with the number of applications for changing plot ratio received by the Buildings Department and the number of applications involving the creation of streets within sites from 1989 to 1998, as well as the number of such applications that had been approved.

45. At the Committee's invitation, the **Secretary for Planning and Lands** offered his views on the way the departments concerned had handled the sale of the Siu Sai Wan site. He stated that:

- the Lands Department, the Planning Department and the Buildings Department did have competing objectives. The Administration had to seek an appropriate balance so as to optimise the different competing objectives, including the maximisation of income for the Government, the maximisation of clarity in the land sale process and the maximisation of development potential;
- it was very important to have more clarity and transparency in the land sale process and to give the sense that there was a level playing field where everybody was getting an equal amount of information;
- although there was a lot of risk for the developer, it was proper because they were the people who would be making the profits; and
- he had agreed with the three Directors that in future, density control should be achieved by one of the following measures:
 - (a) if there was a policy to cap the GFA of a site below the limit set out in the B(P)R and such a cap was set out in the OZP concerned, reference to the cap would have to be made in the Conditions of Sale of the site;

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- (b) if there was a policy to cap the GFA of a site below the limit set out in the B(P)R but such a cap was not set out in the OZP concerned, the cap would have to be specified in the Conditions of Sale of the site; and
- (c) in other cases, the maximum level of GFA or plot ratio permitted as stipulated in the B(P)R would apply.

46. The Committee enquired whether, after implementing the above three measures, it was still possible for a purchaser to apply for treating a site as a Class C site so as to increase the plot ratio.

47. The **Secretary for Planning and Lands** said that in theory, any classification was possible with any piece of land provided that the developer was willing to give up certain site area for creating streets. This would be subject to discussions between the developer and the Director of Buildings and it was also the risk to be taken by the developer.

48. The **Director of Buildings** supplemented that:

- even if the maximum plot ratio permitted had been specified in the Conditions of Sale, under the law, the purchaser could still apply for increasing the plot ratio. The Buildings Department would have to fairly consider the application according to the law. However, the Director of Lands might not accede to the purchaser's request; and
- in the event that the maximum plot ratio permitted was not specified in the Conditions of Sale but was to be governed by the B(P)R, the classification of the site would be subject to the developer's judgment and interpretation of the B(P)R.

49. The Committee further asked:

- about the Director of Buildings' views on the feasibility of specifying the classification of a site in the Conditions of Sale at the outset by, where necessary, stating clearly that the purchaser would be required to carve out certain additional streets within the site; and
- whether the Administration had the authority to impose such a requirement and whether it had ever done so.

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50. In his letter of 11 January 2002 in *Appendix 72*, the **Director of Buildings** informed the Committee that:

- the classification of a site depended on the number of streets it abutted on. The Building Authority had to make a definitive ruling, with reference to the B(P)R, on the classification of a site specific to a development proposal upon submission of building plans for the proposed development. Given this, the Building Authority would be required to classify a certain site based on the submitted building plans in the manner specified under the B(P)R even if a different site classification was stipulated in the Conditions of Sale;
- however, where density control had to be effected through the Conditions of Sale at a level below the limit set out in the B(P)R, the appropriate way to do that was to specify the maximum permissible GFA in the Conditions of Sale, because site classification was really a matter for determination under the Buildings Ordinance; and
- he understood that the Lands Department had not, in the past, set out in the Conditions of Sale any requirements to carve out additional streets within a site for the purpose of site classification.

51. The Committee noted from paragraph 4.38(a) of the Audit Report that the Director of Buildings had said that he would consult the building profession and industry as soon as possible with a view to refining the definition of streets under the B(P)R and issuing a Practice Note for Authorised Persons on the principles for determination of streets, and on the possibility of creating a street within a site for the purpose of site classification and the relevant requirements. The Committee asked about the progress so far made.

52. The **Director of Buildings** advised the Committee that after consulting the industry, the Practice Note had already been issued. He had also consulted the industry with regard to the suggestion to refine the definition of streets. In his letter of 21 December 2001 in *Appendix 73*, the **Director of Buildings** added that he planned to submit the proposed amendment of the B(P)R to refine the definition of streets to the Legislative Council in June 2002.

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

- express grave dismay that:

- (a) the Director of Lands, and the chairman and members of the District Lands Conference (DLC) had:
 - (i) neither achieved the Government's planning objective of lowering the development density in order to "thin out" the population, despite the Committee's recommendation in their Report No. 21A on "Sale of a commercial site in Garden Road" that "the Government's planning intention should always be accurately translated into the conditions of sale of a site", nor
 - (ii) sought to obtain the maximum revenue at the public auction by upgrading the Siu Sai Wan site to a Class C site, for example, by requiring the provision of an extra street;
- (b) although the maximum plot ratio permitted and the maximum gross floor area (GFA) of the development of the site were essential information for the prospective purchasers to consider before the public auction, the Conditions of Sale of the Siu Sai Wan site were silent on the site classification and the maximum GFA. As the result of the uncertainties about the classification of the site, the Government eventually failed to achieve the planning objective, prospective purchasers might not have put forward the most competitive bids at the auction, and the Government was unfair to developers of various sizes with different risk-taking capacity;
- (c) the DLC's decision to delete the clause specifying the maximum residential GFA from the Conditions of Sale of the Siu Sai Wan site was unjustified because the decision had not fulfilled any land policy, revenue, or planning objectives;
- (d) with the change in the classification of the Siu Sai Wan site from Class A to Class C after the auction, the total GFA of the development was increased from 226,918 square metres by 41,985 square metres to 268,903 square metres. If the additional GFA had been taken into account, the reserve price of the Siu Sai Wan site would have been increased by \$1,018 million;

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- (e) if the site had been clearly classified as a Class C site for auction, the eventual auctioned price might be higher than the present auctioned price of \$11,820 million; and
- (f) the requirement for the provision of retail carparking spaces was not stipulated in the Conditions of Sale of the Siu Sai Wan site;
- do not accept the Secretary for Planning and Lands' statements that:
 - (a) the arrangement of not specifying the maximum domestic GFA in the Conditions of Sale of the Siu Sai Wan site was not unfair to prospective purchasers; and
 - (b) maximising land revenue is not an overriding factor;
- consider that the reason for the sale of land by public auction must be to maximise land revenue after other objectives, such as land supply, town planning, environmental and safety concerns, have been clearly provided in the Conditions of Sale and relevant legislation;

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- express concern that other departments concerned, such as the Planning Department, did not have the procedures similar to those of the Lands Department's Lands Administration Office Instruction, which requires the recording and advertising of all pre-auction enquiries received from (and answers given to) prospective purchasers if they relate to a basic ambiguity in the Conditions of Sale;
- acknowledge that the Director of Lands:
 - (a) will advertise any necessary amendments to the Conditions of Sale where basic ambiguities in the Conditions of Sale are identified;
 - (b) will notify all departments concerned of the requirements of the Lands Department's Lands Administration Office Instruction to record all pre-auction enquiries received from (and answers given to) prospective purchasers; and
 - (c) after consulting the industry, has obtained the industry's agreement that the departments concerned should direct all pre-auction enquiries about the Conditions of Sale to the Lands Department, so as to enable the

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Department to deal with such enquiries centrally and provide answers, where appropriate, to prospective purchasers before the date of auction of a site, and that the Lands Department will not answer any enquiries relating to the interpretation the Conditions of Sale of a site;

Implementation of planning objective for developing the Siu Sai Wan site

- acknowledge the Secretary for Planning and Lands' statement that, in future, density control could be achieved by one of the following three measures:
 - (a) if there is a policy to cap the GFA of a site below the limit set out in the Building (Planning) Regulations and such a cap is set out in the Outline Zoning Plan concerned, reference to the cap will have to be made in the Conditions of Sale of the site;
 - (b) if there is a policy to cap the GFA of a site below the limit set out in the Building (Planning) Regulations but such a cap is not set out in the Outline Zoning Plan concerned, the cap will have to be specified in the Conditions of Sale of the site; and
 - (c) in other cases, the maximum level of GFA or plot ratio permitted as stipulated in the Building (Planning) Regulations will apply;

Change in classification of the Siu Sai Wan site and the provision of retail carparking spaces

- acknowledge that the Director of Buildings:
 - (a) before the auction of a site, will take action to clarify and remove any uncertainties (such as that relating to the definition of streets under the Buildings Ordinance) about the classification of the site;
 - (b) has undertaken to submit to the Legislative Council the proposed amendment of the Building (Planning) Regulations to refine the definition of streets in June 2002;
 - (c) after consulting the industry, has issued a Practice Note for Authorised Persons on the principles of definition of streets and on the possibility of creating a street within a site for the purpose of site classification and the relevant requirements; and

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- (d) on completion of the development of a site, will verify whether the internal streets to be provided within the site for site upgrading purpose, as agreed by the purchaser/developer, have in fact been constructed;
- acknowledge that the Director of Lands has agreed to:
 - (a) prior to the auction of a site, seek clarification from the Director of Buildings on the classification of the site for the purpose of assessing the reserve price; and
 - (b) review the existing instruction with the aim of making any necessary amendments to state the circumstances in which approval for the provision of additional carparking spaces in a development would be given and the basis for charging the related approval fee; and
- wish to be kept informed of:
 - (a) the progress of the actions taken to improve the procedures for sale of land by public auction;
 - (b) the progress made in amending the Building (Planning) Regulations to refine the definition of streets; and
 - (c) the outcome of the review of the existing instruction relating to the provision of additional carparking spaces.