

For information

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

**Proposed Amendments to the Building (Planning) Regulations -  
Clarification on the Criteria of Street for Site Classification Purpose**

**Purpose**

This paper outlines the Administration's proposal to clarify the criteria of "street" for the purpose of site classification under the Buildings Ordinance (BO).

**Existing Definition of Street**

2. Under section 2 of the 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 Building (Planning) Regulations (B(P)R), a street includes any footpath and private and public street. However, the BO is silent, and so is the B(P)R, on the criteria that a street has to satisfy before it can be accepted for the purpose of site classification.

**Site Classification**

3. Regulation 2 of the B(P)R defines three different classes of site and the First Schedule specifies the maximum plot ratios<sup>1</sup> permitted for domestic and non-domestic buildings corresponding to three classes, as shown in the table below:

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<sup>1</sup> Plot ratio of a building shall be obtained by dividing the gross floor area of the building by the area of the site on which the building is erected.

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 <sup>2</sup> that abuts on two streets neither of which is less than 4.5 metres wide.	9	15
Class C	A corner site <sup>2</sup> that abuts on three streets none of which is less than 4.5 metres wide.	10	15

## Background

4. A site in Siu Sai Wan was sold by public auction in March 1997. The layout plan of the site is shown at **Annex A**. The site was developed as a Class C site with a permissible plot ratio of 10 as it was regarded as abutting on three streets, i.e. the Siu Sai Wan Road, the walkway in the Siu Sai Wan Sports Ground along the north-western boundary and the street created by the developer along the south-eastern boundary.

5. The case was the subject of the Director of Audit's Report's No. 37 (Chapter 7) published in October 2001, entitled "The administration of sale of land by public auction". The Director of Audit considered that the change of the Siu Sai Wan site from Class A to Class C after the auction was attributed, inter alia, to uncertainties in the B(P)R concerning the definition of street for site classification. He recommended in the Audit Report that the Director of Buildings should take actions to rectify such anomaly, including:

- (a) take prompt action to amend the B(P)R to remove uncertainties about the criteria of "street" in relation to site classification;

<sup>2</sup> A corner site shall not be regarded as abutting on 2 streets (for class B site) or 3 streets (for class C site) unless not less than 40% or 60% respectively of the boundary of the site abuts on those streets.

- (b) issue a Practice Note for Authorized Persons and Registered Structural Engineers on the criteria of "street" in relation to site classification as soon as possible; and
- (c) in the above practice note, clearly state the circumstances under which the upgrading of the classification of a site by the provision of internal streets within the lot will be accepted by the BA.

In response, the Government agreed to take forward the recommendations in the Audit Report.

6. BD has so far implemented all of the Director of Audit's recommendations under its purview except the amendment to B(P)R regarding streets for site classification which has taken a longer time for thorough deliberation. The proposed amendments to the B(P)R was previously discussed at the meeting of the Panel on Planning, Lands and Works on 24 February 2004. In response to questions raised by Members at the Panel meeting, we have provided a reply on 24 March 2004. A copy of the reply letter is at **Annex B**. We have since then refined the proposal which is now outlined in paragraphs 7 and 8 below.

### **Proposal**

7. To set out clearly the criteria of a street to be accepted for site classification purpose and to forestall streets from being extinguished to make "room" for more development, we propose to amend the B(P)R to clarify that a street will only be qualified for site classification purpose if any of the following circumstances exists with respect to the street:

- (a) the street is vested in the Government (i.e. a public street) and maintained by the Highways Department. Open space allocated to government departments would not meet this criterion;
- (b) the street is required to be constructed by the developer under the conditions of the lease of the site and is to be surrendered to Government when required to do so;
- (c) the street is required to be constructed by the developer on Government land adjoining the site under the conditions of the lease of the site;

- (d) the street is on land not owned by the owner of the site, but over which he has been expressly granted a right of way exercisable at all times; or
- (e) the street is constructed on land owned by the owner of the site, i.e. a private street which is under the same ownership as that of the site and therefore is also under the control of the owner of the site.

Setting the above circumstances will ensure that only streets that are on the whole under the control of Government or the owner of the site will qualify for site classification purpose. Together with the enforcement mechanism described in paragraphs 9 and 10 below, the permanent status of the street is reasonably assured and there should be limited chances of an extinguishment of the street.

8. We also propose to amend the B(P)R to clarify that if one or more of the circumstances mentioned in paragraph 7 above exists with respect to different parts of a street and these parts adjoin one another constituting a street, this street will also be qualified for site classification.

### **Enforcement Mechanism**

9. The BA would require that the streets used for site classification should be shown on the building plans submitted for approval. The land on which the street is situated will not be allowed to be included in the site area for the purpose of plot ratio and site coverage calculations.

10. If a street for site classification is not an existing one and has to be constructed, it should be completed before the occupation permit for the building on the site is issued. If the 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 street so created should remain as a street insofar as the buildings relying on it for attaining the plot ratio exist. Any subsequent 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. If any building or structure has been erected on or over the street so created in contravention of any of the provisions of the BO, the BA may serve a removal order requiring such unauthorized building or structure to be removed. Any person who, without reasonable excuse, fails to comply with such statutory order shall be guilty of an offence under the BO. The BA may also carry out the

removal or remedial works required and then recover the cost from the responsible party.

### **Public Consultation**

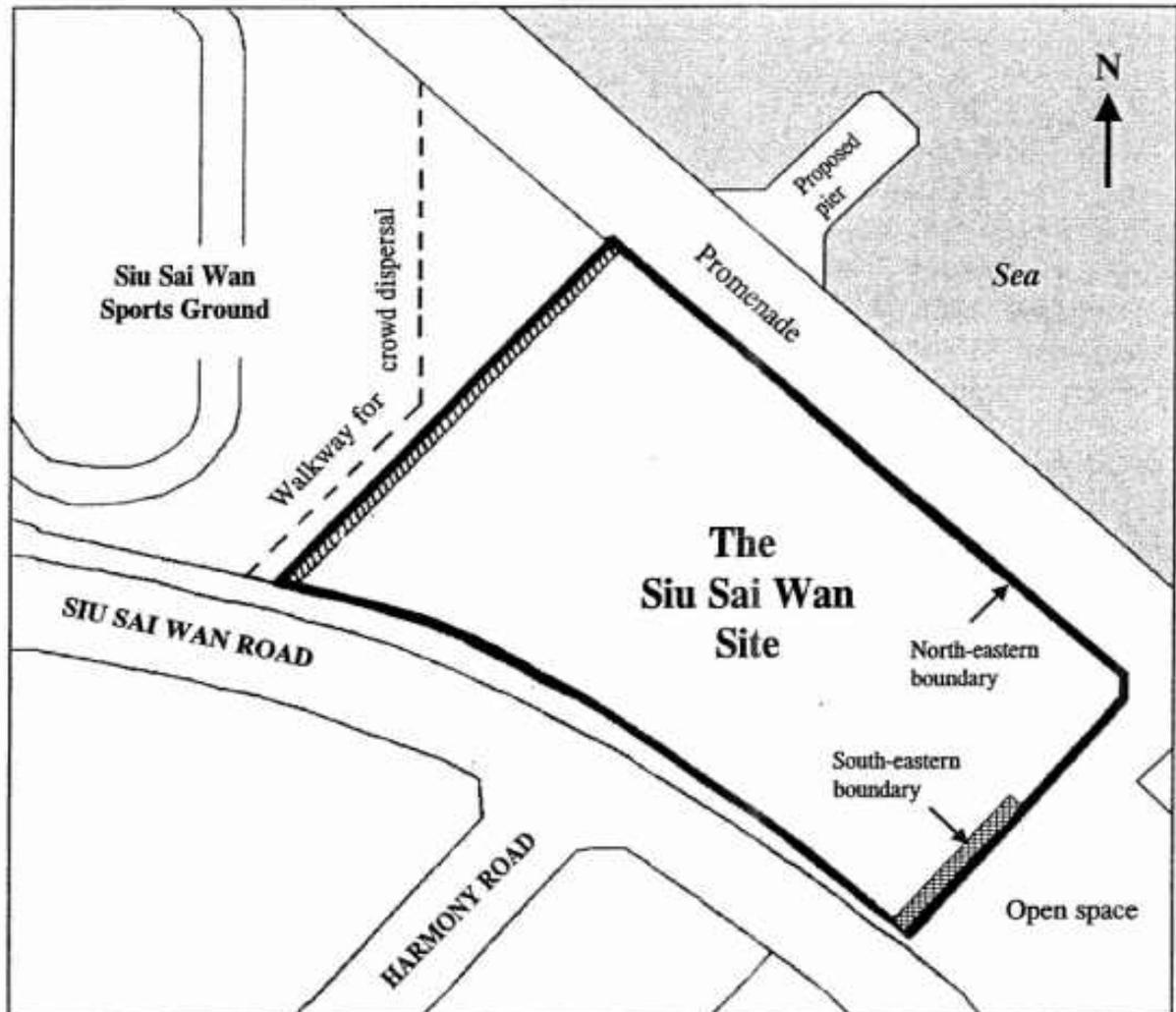
11. We have consulted the Building Sub-Committee of the Lands and Building Advisory Committee. Members of the sub-committee generally supported the proposal which serves to clarify the characteristics or criteria of a street that may be used for site classification purpose under the B(P)R.

### **Way Forward**

12. Subject to any comments from Members, we will take forward the proposal by tabling a Building (Planning) (Amendment) Regulation in the Legislative Council for a negative vetting approval process.

Housing, Planning and Lands Bureau  
May 2005

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

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24 March 2004

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Clerk to Panel  
(Attn: Ms Anita Sit)  
Panel on Planning, Lands and Works  
Legislative Council Secretariat  
Legislative Council Building  
8 Jackson Road, Central  
Hong Kong

Dear Ms Sit,

**Panel on Planning, Lands and Works**

**Proposed Amendments to the Building (Planning) Regulations -  
Refining the definition of "street" for site classification purpose**

I refer to your letter dated 5 March 2004 on the above subject and provide below our response to the relevant issues.

**Responsibilities of Public Officers Concerned**

The Panel asked whether any public officer had erred in the Siu Sai Wan case and, if yes, whether any disciplinary action had been or would be taken on the responsible public officer(s).

The case has been described in detail in "The administration of sale of land by public auction: Chapter 7 of Report No.37 of the Director of Audit (Audit Report)" published in October 2001.

Following the publication of the Audit Report, the Public Accounts Committee (PAC) held a hearing on 10 December 2001.

During the PAC hearing, the case was thoroughly discussed, including the subject of whether any public officers had committed any mistakes in handling the case. In response to queries by PAC Members, the Administration had clarified in the hearing that, firstly, the decision made at the District Lands Conference (DLC) held in September 1996 to delete the maximum plot ratio of 6.5 in the conditions of sale was a collective decision made after discussions among representatives of the Lands Department (LandsD), Planning Department (PlanD) and Buildings Department (BD). It was considered in the DLC that the development could not attain the plot ratio of 6.5 given the various constraints, including the provision of an emergency vehicular access as required under the lease. Lifting the maximum plot ratio of 6.5 and subjecting the development potential to the Building (Planning) Regulations (B(P)R) was meant to give more design flexibility to the development.

As explained in the hearing, at that time, the maximum plot ratio of 6.5 provided in the relevant metroplan was only a guideline. It was different from the maximum plot ratio stipulated in a statutory outline zoning plan (OZP) which had to be included as one of the conditions in the land lease. It was also explained at the hearing that the lifting of the maximum plot ratio of 6.5 was not a mistake as such. The decision of the relevant officers in the DLC that the development would not be able to attain a plot ratio of 6.5 was based on their judgment having regard to all relevant considerations. The Siu Sai Wan site was sold by public auction in March 1997 for \$11,820 million. The price was significantly higher than the Lands Department's reserve price of \$6,300 million.

The Panel also asked why the Siu Sai Wan site was considered a Class A site and no legal advice was sought before the auction. The Administration had explained in the PAC hearing that the site was considered as a Class A site taking into account the prevailing circumstances at that time, i.e. that the site abutted on one street. As regards the walkway of the Siu Sai Wan Sports Ground adjacent to the Siu Sai Wan site, BD considered that the walkway was not a street for site classification purpose under the B(P)R. Such consideration was based on the prevailing interpretation of the B(P)R and past experience,

and doubts did not arise over the interpretation pointing to the need to seek legal advice.

It was an acceptable practice for developers to carve out internal streets within a site to increase the plot ratio, but reduce the site area by the area of the street, if they thought it desirable and viable. Indeed it was up to the developers to do so. BD had acted in good faith according to the prevailing interpretation of the law and the prevailing circumstances. The problem lies in the existing definition of street which can be subject to wide interpretation. Our immediate task, as recommended by the Director of Audit, is therefore to amend the regulations and remove the uncertainties.

#### **Definition of Class B and Class C Sites under the B(P)R**

The Panel enquired about the rationale of the minimum percentage of the boundary of a site abutting on the streets in the definition of Class B and Class C site.

The control of development density of private buildings by plot ratio and site coverage with reference to the class of site was first introduced in the Building (Planning) Regulations in 1962. Before that time, the development density of a building was regulated by the permissible area of a building with reference to the number of streets which a site abutted on, i.e. the greater number of streets a site abutted on, the larger would be the permissible area of the building to be erected on the site. Under the pre-1962 legislation, a site abutting on three or more streets forming a corner or an island site would have the highest permissible building area. A site abutting on two streets forming a corner site would have a lower permissible building area whereas that abutting on one or two streets but not forming a corner site would have the least building area. This was to ensure that larger development density was only allowed on a site having larger and more open area surrounding it for the provision of natural lighting and ventilation and better accessibility.

During the formulation of the plot ratio and site coverage control system in 1960, it was considered that the term "corner site" should be elaborated upon. This was to ensure that a reasonable proportion of the site boundary should abut on the second or the third

street before the site would be considered as a "corner site". The requirement had since been changed and a corner site would not be regarded as abutting on two streets unless at least 40% of the boundary of the site abutted on the two streets (Class B site). Likewise, a corner site would not be regarded as abutting on three streets unless at least 60% of the boundary of the site abutted on the three streets (Class C site).

### **Measures Taken to Address the Problem**

The Panel asked for the measures which have been or will be taken to address the problems manifested in the auction of the Siu Sai Wan site.

The Director of Audit made a number of recommendations in Chapter 7 of Report No. 37. In respect of the implementation of planning objective for developing the Siu Sai Wan site, Director of Audit has recommended in paragraph 3.14 of the Report that the Director of Planning and Director of Lands should:

- (a) in order to achieve the Government's planning objective of lowering the development density of a site, ensure that:
  - (i) the maximum plot ratio/gross floor area (GFA) is included in the relevant OZP; and/or
  - (ii) the maximum plot ratio/GFA of the development of the site is specified in the Conditions of Sale of the site; and
- (b) if, for a particular site, it is considered inappropriate to include the maximum plot ratio/GFA in the OZP or specify in the Conditions of Sale of the site the maximum plot ratio/GFA of the development, critically vet and record in detail the justifications for doing so.

Separately, in paragraph 4.36 of the Report on the change in classification of the Siu Sai Wan site, Director of Audit recommended that the Director of Buildings should:

- (a) before the auction of a site, take action, including seeking legal advice, to clarify and remove any uncertainties (such as

that relating to the definition of street under the B(P)R about the classification of the site;

- (b) take prompt action to amend the B(P)R to remove uncertainties about the definition of street for site classification;**
- (c) issue a Practice Note for Authorised Persons on the principles of definition of street as soon as possible;**
- (d) in the Practice Note for Authorised Persons, clearly state the circumstances under which the upgrading of the classification of a site by the provision of internal streets within the site will be accepted by the Building Authority; and**
- (e) on completion of the development of a site, 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.**

Director of Audit has also recommended that the Director of Lands should, prior to the auction of a site, seek advice from the Building Authority on the classification of the site to be sold. The Administration agreed to all of the recommendations above.

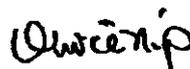
Regarding density control, it will be achieved through one of the following measures:

- (a) if there is a policy to cap the GFA of a site below the limit set out in the B(P)R and such a cap is set out in the OZP 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 B(P)R but such a cap is not set out in the OZP 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 B(P)R will apply.**

Furthermore, LandsD has put in place various measures to improve the procedures for sale of land by public auction. First, LandsD has issued a Practice Note to advise prospective purchasers that, upon release of the Conditions of Sale, all related enquiries should be addressed to LandsD. It will keep records of all enquiries received, answers given and follow-up action taken. If an enquiry relates to a basic ambiguity in the Conditions of Sale of a site and amendments to the Conditions of Sale are made to remove the ambiguity as a result, LandsD will advertise the amendments prior to the auction. Second, LandsD will seek clarification from the Director of Buildings on the classification of a site where necessary before auction of that site. Amendments have also been made to LandsD's existing instructions to include the circumstances under which a reference to the maximum GFA will have to be included in the Conditions of Sale of a site.

BD has also implemented all of the Director of Audit's recommendations under its purview except the amendment to the B(P)R regarding the definition of street for site classification purpose. Our current proposal to amend the B(P)R is therefore the only outstanding action to implement the Director of Audit's recommendations. The proposed definition of street for site classification will remove uncertainties and facilitate more effective control over development density.

Yours sincerely,



(Ms Olivia Nip) . . .  
for Secretary for Housing, Planning and Lands

c.c. DB (Attn: Mr CK Au)

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