

**Building Authority Conference****Minutes of the 5/01 Meeting  
held on Wednesday, 1 August 2001 at 10:30am  
in Room 1816**

<b>Present</b>	:	<b>Chairman</b>	
		Mr C M LEUNG	BA
		<b>Members</b>	
		Mr H W CHEUNG	DD
		Mr K M MO	AD/NB1
		Mr K M CHEUNG	AD/NB2
		Mr Y W LAU	AD/EB1
		Mr C K AU	AD/Sup
		Mr K K LING	DPO/HK, PlanD
		Mr Ernest WONG	ES/SKW, LandsD
		Mr T F LEUNG	SE/E&G, TD
		Mr C P CHOI	E/D(NP), HyD
		Mr S N LO	SDO, FSD
		Mr H K TANG	CBS/HKE
		Mr S YIP	CBS/HKW(Atg)
		Mr J R DOBBING	CBS/K
		Mr H Y TANG	CBS/NTW(Atg)
		Mr C Y LEE	CBS/NTE(Atg)
		<b>Secretary</b>	
		Mr N K WAT	BS/TS1
<b>External observers</b>	:	Prof. Alex C W LUI	
		Prof. Patrick S S LAU	
<b>In attendance</b>		<b>AP &amp; his team</b>	
		Mr Barry WILL	
		Mr Victor KWOK	
		Mr Tony SIU	
		Mr T M TAM	
		Ms Susanna LEE	
		<b>Owner's representatives</b>	
		Mr C K LAU	
		Ms Vicky CHUNG	
		Mr Terence LEE	
		<b>Representative of Owner's Consultant</b>	
		Mr Kelvin LEUNG	

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Meeting No. : 5/01 (1.8.2001)  
Case No. : BAC 6/01  
Address : Sai Wan Ho Ferry Concourse, Sai Wan Ho, Hong Kong  
File Reference : BD 2/3002/01  
Subject Matter : Determination on site classification, exclusion of the proposed Public Transport Terminus from GFA calculation, and proposed dedication of areas for public passage in return for bonus plot ratio.

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1. **Background**

- a) Building plans for a composite development comprising 5 residential tower blocks over a 6-storey podium with Marine Police Operational Area (MPOA) and a Public Transport Terminus (PTT) on the G/F had been disapproved, inter alia, on the following grounds :-
- (i) the site was not a Class C site;
  - (ii) the proposed MPOA and PTT should be included in GFA calculation; and
  - (iii) the proposed dedications for public passage were not acceptable.
- b) The AP had re-submitted the plans. The case was submitted to Building Authority Conference to determine (i) whether the site was a Class C site; (ii) whether the PTT and MPOA should be excluded from GFA calculation; and (iii) whether the proposed dedications in return for bonus plot ratio were acceptable.
- c) The proposed dedication area comprised of (i) most of the areas indicated in the control drawing in the lease as “areas reserved for entrance lobbies and other facilities for upper floors” (the “reserved areas”) on the G/F to become part of the PTT; (ii) a strip of land along the SE boundary forming the vehicular egress from the Marine Police Complex and MPOA; and (iii) the pedestrian walkway on Level + 11m.
2. The Chairman welcomed representatives of the various government departments and the two professors to the meeting. He informed the meeting that the role of the two professors were observers and they were to tender to the BA their impartial and independent views. Their presence would enhance the transparency of the decision making process and indeed the credibility of BD. The case was submitted direct to the expanded BAC which comprised of, inter alia, CBSs of the New Buildings 1 Division (who were members of the Building Committee I) and representatives of relevant government departments in the light of the complexity of the case.
3. The AP and his team, the owner’s representatives and the consultant’s representative (collectively called the AP’s team) were then invited to give a presentation of their case. The Chairman also explained to them the special composition of the Conference and the role of the two external observers.

4. Prof. Patrick S S LAU declared that he was the President of HKIA.
5. The AP presented his case and put forward the following:

Exclusion of PTT from GFA Calculation

- (a) There was an “access road” of more than 4.5m wide at the south-east of the site. It served as the EVA to the 2 marine fuelling stations and provided access to the public landing area as well as the Marine Police Regional Headquarter. It fell within the definition of street under the BO.
- (b) The “access road” was zoned “Open Space” on the OZP and its permanency was certain.
- (c) The lease for the subject site had not specified whether the PTT was countable for GFA. It only specified a minimum GFA and there was no restriction on the maximum GFA. The developer should be entitled to the development potential allowable under the First Schedule of B(P)R.
- (d) It was the genuine understanding of the developer when submitting his tender for the site that the PTT would not be countable for GFA under B(P)R 23(3)(b).
- (e) Although the provision of PTT was a known obligation under the Conditions of Sale, it did not necessarily mean that the entitlement to full development potential under the BO had to be taken away in fulfilling the obligation.
- (f) There were different categories of precedents on the treatment of PTT for the purpose of GFA calculations as follows:
  - i) The lease had not specified whether the PTT was accountable for GFA and the PTT was excluded from GFA calculation under the BO (e.g. United Centre, China Hong Kong City, Laguna City, Telford Plaza, Whampoa Garden and Nam Fung Centre).
  - ii) The lease had not specified whether the PTT was accountable for GFA and the PTT was counted for GFA under the BO (e.g. Cheung Sha Wan Plaza). For this case, the development potential of the site was restricted by the then airport height restriction.
  - iii) The lease had specified that the PTT was not accountable for GFA and the PTT was excluded from GFA calculation under the BO (e.g. Park Towers, Exchange Square, Sunshine City and Riviera Garden).
  - iv) The lease had specified that the PTT was not accountable for GFA but the PTT was counted for GFA under the BO (e.g. South Horizons, Hong Kong Station, Waterfront, Galaxia, Laguna Verde and Citygate). For these cases, the GFAs were capped under lease.
  - v) The lease had specified that the PTT was accountable for GFA and the PTT was counted for GFA under the BO (e.g. Island Resort).

- (g) The car-parking area in MPOA was ancillary to the function of the Marine Police Regional Headquarter. The lease was silent on whether MPOA was accountable for GFA. Such area for use as car parks and loading and unloading of vehicles should be exempted from GFA calculation under B(P)R 23(3)(b).

Dedication for Public Passage

- (h) The following proposed dedicated areas should be entitled to bonus plot ratio:
- i) Extra space was required to be provided for the MPOA to meet the requirements specified in the Technical Schedule of the lease. As a result of this, the PTT had to be extended to include most of the “reserved areas” on G/F. It was reasonable in the circumstances to dedicate the “reserved areas” for public use in return for bonus.
  - ii) For the strip of land along the SE boundary the developer proposed to dedicate it for public passage to facilitate access to the PTT. Although the land had been designated as a right-of-way under the Conditions of Sale, the developer should have the right to dedicate the land for public passage in return for bonus plot ratio.
  - iii) The proposed pedestrian walkway on Level + 11m would enable the provision of a continuous waterfront promenade, linking up the adjoining developments and MTR Station. It would be in the interest of the public for government to accept the dedication of the walkway in return for bonus.
6. The owner’s representative distributed a “Study Report on PTT” to members and drew members’ attention on those PTTs where the lease was silent on the accountability for GFA but were excluded from GFA calculation under the BO (i.e. United Centre, China Hong Kong City, Laguna City, Telford Plaza, Whampoa Garden and Nam Fung Centre). He also pointed out that amongst the 6 cases, the lease for the China Hong Kong City contained a clause specifying the minimum GFA while the leases for the other 5 cases had restrictions on the maximum GFA.
7. In response to a member’s query, the owner’s representative said that he was aware of some of the precedent cases quoted in his presentation prior to the submission of tender and that public car-parking spaces were accountable for GFA.
8. The AP’s team then left the meeting.
9. CBS/HKE tabled a block plan and the proposed building plans and briefed members on the background.
10. **Classification of Site**
- a) CBS/HKE tabled a block plan showing the site situation and said that the existing partly paved area on the south-east was a vehicular access but was not subject to any right-of-way.

- b) DPO/HK advised the meeting that the “access road” was zoned “Open Space” on the OZP with the exception of the 2 marine fuelling stations. The planning intention was to develop the “access road” into a continuous promenade to connect the planned promenade in Aldrich Bay and the Quarry Bay Park. He said that the piers being occupied by the Marine Police were intended to be used as recreational areas upon the vacation of the Marine Police and the “access road” would likely be required as an EVA to the piers.
- c) ES/SKW, LandsD said that the strip of land on the south eastern side of the site lied partly on land allocated to the Marine Police and partly on unleased and unallocated government land. Written enquiry had previously been made by District Lands Office/HK East to BD during the preparation of tender conditions to clarify whether this strip of government land zoned for open space could be classified as a street under the B(P)R. The reply from BD was that the government land was not regarded as a street under s.2 of the BO. To create a Class C site as per BD’s advice, a strip of land with 4.5m in width was therefore earmarked in the south-eastern corner of the subject site as a non-building area as well as a public passage. He added that the two “petrol filling stations” as mentioned by some members in the meeting were in fact “marine fuelling stations”. The term for the grant of the marine fuelling stations was 21 years from 1991. Vehicular access to the marine fuelling stations was not allowed under the lease.
- d) SDO, FSD said that the “access road” was an existing EVA to the marine fuelling stations though it was not indicated on the approved building plans of the marine fuelling stations.
- e) Members exchanged views on the issue and had the following observations:
- i) The “access road” was an existing EVA to the marine fuelling stations and an access to the public landing area. Notwithstanding the restriction on vehicular access, employees of the marine fuelling stations would likely have to pass over the “access road” for access to the stations. In this respect, members noted that the approved building plan of a marine fuelling station did show a door opening onto the “access road”. Members therefore held the view that the “access road” bore the characteristics of a street and would continue to serve the marine fuelling stations and the public landing area.
  - ii) It was the planning intention to develop the “access road” into a waterfront promenade for public passage. The “access road” was also intended to serve as an EVA to the piers that would be used as recreational areas.
  - iii) Apart from having the characteristics of a street, the permanency of the “access road” as a street under the BO could be ascertained in view of (i) & (ii).
- f) Having considered all the relevant issues, the majority of the members advised and the Chairman agreed that the “access road” was a street under the BO and the site was a Class C site.

11. Prof. Patrick S S LAU left the meeting.
12. **Dedication of most of the “reserved areas” on the G/F to form part of the PTT for public use**
  - a) SE/E&G, TD said that the proposed layout of the PTT in the building plans submitted was the result of (i) the enlargement of MPOA to cope with the requirements in the Technical Schedule; (ii) the conversion of the public footpaths outside the lot boundary into landscaped areas resulting the re-provision of footpaths within the PTT; and (iii) the provision of a larger PTT than as required. He opined that if the proposals referred to in (ii) & (iii) were not included in the redesign of the PTT, the “reserved areas” in the control drawing provided with the lease conditions might be sufficient to serve the original purposes intended under the lease. However, he agreed that the proposed PTT having a larger area would function better than the original one.
  - b) DPO/HK was of the view that the proposed PTT was an improvement to the original one. He supported the dedication of the “reserved areas” in return for bonus plot ratio.
  - c) ES/SKW, LandsD advised the meeting that the Technical Schedule was provided by concerned departments. He further added that the control drawing for the PTT was part of the Technical Schedule under the Conditions of Sale. The purchaser had to obtain prior approval from the Director of Lands who would consult relevant government departments before any amendment or alteration to the Technical Schedule could be made.
  - d) Members exchanged views on the issue and had the following observations:
    - i) The area for MPOA as indicated on the lease control drawing could not cope with the requirements set out in the Technical Schedule. As a result, the PTT had to be shifted southward.
    - ii) The redesigned PTT having a larger area was an improvement to the original one.
    - iii) The provision of landscaped areas, which resulted in repositioning the public footpaths within the PTT, should be encouraged.
    - iv) The developer should be compensated in return for the dedication of ground floor areas which could otherwise be used for other uses.
  - e) Having considered all the relevant issues and the views expressed by members, the Chairman **accepted** the proposed dedication of the “reserved areas” for use as PTT and **agreed** that bonus plot ratio be granted subject to an undertaking from the owner that he would not seek any further compensation from the government apart from the bonus given, and that the layout of the PTT was acceptable to all relevant government departments.

13. **Dedication of a strip of land at the SE boundary for public passage and of the vehicular egress from MPOA, and Dedication of the pedestrian walkway on Level +11m for public passage**

- a) ES/SKW, LandsD advised the meeting that the Pink Hatched Black Area at the south-eastern boundary of the lot was designated as non-building area under the Conditions of Sale and that the lot owner was required under the Conditions of Sale to permit the public at all times to pass and repass the Pink Hatched Black Area. The AP's proposal to dedicate this Pink Hatched Black Area was therefore out of the question and should be rejected. The lot owner was also required under the Conditions of Sale to permit a free and unrestricted vehicular access at all times to the Commissioner of Police and its officers, the Director and such other tenants, occupiers or licensees as might be approved by the Director over and along the Pink Hatched Black and Pink Cross-Hatched Black Area.
- b) DPO/HK said that the dedication of the pedestrian walkway on Level +11m would only be meaningful if the "access road" was also developed into a promenade and adequate pedestrian connection was provided to link up the promenade and the walkway. Otherwise the proposed pedestrian walkway would serve no purpose. He proposed that the dedication of the pedestrian walkway be accepted if the "access road" was to be developed into a promenade by the developer with adequate pedestrian connection to link it up with the walkway.
- c) ES/SKW, LandsD advised the meeting that if the promenade concerned would eventually be linked up pursuant to the OZP as and when the Marine Police was relocated, the proposed pedestrian walkway connecting the Aldrich Bay reclamation area and the promenade at Lei King Wan would only serve a temporary purpose and would become redundant in the longer term. There were also alternative routes for connecting the two areas.
- d) Members exchanged views on the issues and had the following observations:
- i) The strip of land at the SE boundary was an emergency vehicular egress for the Marine Police and therefore was not suitable for public passage.
  - ii) If the "access road" was developed into a promenade, the public could gain access via the promenade to the PTT. Under such circumstances, only a portion of the Pink Cross-Hatched Black Area fronting the proposed access to PTT at the SE boundary was required for public passage.
  - iii) The dedication of the pedestrian walkway was meaningful and beneficial to the public only if the "access road" was also developed into a promenade with a pedestrian connection with the walkway at Level +11m.
- e) Having considered all the relevant issues and members' views, the Chairman agreed that (i) bonus plot ratio be granted for the dedication of the pedestrian walkway on Level + 11m on conditions that the "access road" was developed into a promenade by the developer and that such proposals (including the proposed staircase and lift) were accepted by the relevant government departments; (ii) the amount of bonus plot ratio referred to in (i) would be subject to negotiation taking into account the cost of development of the promenade; and (iii) bonus plot ratio



be granted in return for the dedication of only the portion of the Pink Cross-Hatched Black Area fronting the opening giving access to the PTT for public passage.

- f) The Chairman directed CBS/HKE to consult LCSD on the proposal including the provision of staircase and disabled lift.

14. **Exclusion of the PTT from GFA calculation**

- a) CBS/HKE said that the normal practice of this department was to require PTT to be counted for GFA except in some cases where (a) the lease had expressly allowed for its exclusion; or (b) the lease had specified the maximum GFA; or (c) GFA exemption under the BO had been endorsed prior to the sale of the site to cater for special circumstances.
- b) DPO/HK opined that as the PTT was required to be provided under the lease, the exclusion of the PTT from GFA calculation would not generate any benefit to the public. He was a bit concerned about the increase in the development intensity if the PTT was allowed to be excluded from GFA calculation.
- c) ES/SKW, LandsD said that the Conditions of Sale had only specified the minimum residential GFA for the development. The plot ratio control of the development would be left to BD under the BO. He added that during the stage of preparing the Conditions of Sale, BD confirmed in writing that the Government Accommodation should be included in the GFA calculation under B(P)R. Based on BD's advice, LandsD assessed the tender reserve price on the basis that the Government Accommodation would be included in the calculation of GFA. In the circumstances, the PTT as a Government Accommodation should be accountable for GFA. He further said that LandsD had advised, in response to enquiries of some tenderers, that the Government Accommodation was accountable for GFA calculation under B(P)R 23(3)(a). In response to Chairman's enquiries, he further clarified that the purchaser of this site had not made an enquiry on the issue during the tendering stage.
- d) Members exchanged view on the issue and had the following observations:
- i) For the 4 quoted cases at Laguna City, Telford Plaza, Whampoa Garden and Nam Fung Centre, the maximum GFA was capped under the leases. As the permissible GFA under the BO would not be exceeded whether the PTT was counted or not counted for GFA calculation under the BO, BD did not address the issue directly in those cases.
  - ii) The site at United Centre was subject to a maximum PR of 18 and a bonus GFA of 5 times of the area of the PTT under the lease after the endorsement of the former PWD Conference.
  - iii) The PTT at China Hong Kong City was a closest case comparable to the subject PTT among the cases mentioned in the AP Team's Report, in that in both cases the lease had not mentioned whether the PTT was countable for GFA and the lease had only specified the minimum GFA for the development. The PTT at China Hong Kong City was allowed to be

excluded from GFA calculation under B(P)R 23(3)(b) on the ground that the PTT was ancillary to the use of the ferry pier in Concourse Building within the site. Some members considered that for the case under consideration, it was arguable that the PTT was a use ancillary to the principal use of the development.

- iv) Some members opined that the subject PTT was not different from that at China Hong Kong City, and there was no reason why BA should not grant similar exemption under B(P)R 23(3)(b).
  - v) Some members were of the view that the Cross Boundary Coach Terminus (CBCT) within the subject PTT was similar in nature to the ferry pier of the Concourse Building at China Hong Kong City. As such, some members opined that the CBCT should be counted for GFA as in the case of the Concourse Building and that the remaining part of the PTT could be treated as ancillary to the function of the CBCT and hence could be exempted from GFA calculation under B(P)R 23(3)(b).
  - vi) SE/E&G, TD said that the use of the local PTT was not a use ancillary to the function of the CBCT.
  - vii) Government Accommodation should not be treated differently from private accommodation when assessing the accountability for GFA calculation.
  - viii) The developer had knowledge of some of the precedent cases before the submission of tender.
  - ix) Whether PTT was accountable for GFA under leases varied from case to case.
- e) Prof. Alex C W LUI noted that while it could be argued that the developer should take steps to clarify if the PTT should be counted for GFA as he was aware of the different treatments accorded to the various projects, it could also be argued that the administration should also take steps to clarify the position before tender. There was clear inconsistency on whether PTT was accountable for GFA as reflected by BD's rulings in previous cases. He was of the view that developers might be confused on whether PTT was accountable for GFA as there was inconsistency on the treatment of PTT under the lease as well as under the BO. On this basis, he opined that the developer should be given the benefit of doubt. He also recommended that the inconsistency be clarified between the departments and guidelines be issued to the industry.
- f) The Chairman noted the spilt views amongst members on this issue. He **directed** that legal advice should be sought on the application of B(P)R 23(3)(b) in this case before making a decision on the matter.

15. **Advice given**

- a) The AP's team was invited to the meeting and the Chairman advised the team the following decision of the BA:
- (i) The site could be treated as a Class C site.
  - (ii) Dedication of portion of the "reserved areas" for use as PTT in return for bonus would be accepted subject to acceptance of the layout of the PTT by all relevant government departments and to an undertaking from the owner that he would not seek any further compensation from the government apart from the bonus given.
  - (iii) There was no objection in principle to the dedication of the proposed walkway on Level +11m if the "access road" (including the staircase and lift structure) was developed into a promenade by the developer simultaneously and the scheme was acceptable to all relevant government departments. The extent of the bonus to be given would be considered later and would be subject to negotiation between the government and the developer.
  - (iv) Only the portion of the Pink Cross-Hatched Black Area giving immediate access to the PTT would be accepted for dedication in return for bonus.
  - (v) A decision on the accountability of the PTT and MPOA for GFA calculation would be made at a later day.