

立法會

Legislative Council

LC Paper No. CB(1)416/08-09(01)

Ref: CB1/PL/DEV

Panel on Development

Meeting on 19 December 2008

Information note on gross floor area concessions granted under the Buildings Ordinance

Purpose

An item on "Measures to foster a quality and sustainable built environment" will be discussed at the meeting of the Panel on Development on 19 December 2008. According to the Administration's paper on "Public engagement on measures to foster a quality and sustainable built environment" provided to the Panel for discussion of the item, control on gross floor area (GFA) concessions granted under the Buildings Ordinance (Cap. 123) is a major policy option pursued by the Administration to improve the built environment. This information note provides members with reference materials on past discussions within the Legislative Council on GFA concessions granted under the Buildings Ordinance.

Reference materials

2. As cited in the Administration's paper, the incident on the Sai Wan Ho Development on Inland Lot No. 8955 (also known as "Grand Promenade") has aroused the public's concern over the fact that developers are entitled to enjoy various concessions in the calculation of GFA which directly contribute to the increase in building bulk and height. The Public Accounts Committee (PAC) had examined the Sai Wan Ho Development and the Committee's conclusions and recommendations were included in the PAC Report No. 45 tabled at the Legislative Council meeting on 15 February 2006. Relevant extracts from the PAC Report on the basic facts of the case and PAC's conclusions and recommendations are given in **Appendix I**. Meanwhile, the Government had appointed an Independent Committee of Inquiry (ICI) on the Sai Wan Ho Development on Inland Lot No.

8955 to conduct an inquiry into the exercise of discretionary powers by the Buildings Authority in respect of the development. The report of the ICI was released on 9 May 2006. An extract of the report on the views and recommendations of the ICI is given in **Appendix II**.

3. At its meeting on 27 May 2008, the Panel on Development discussed with the Administration the measures to promote green features in building developments. At the meeting, members noted that 12 green features might be exempted from GFA and site coverage calculations subject to fulfillment of certain specified conditions and design requirements, and that the Administration had formed an inter-departmental working group to conduct a review on the effectiveness of the arrangements. The Administration also advised that apart from the exemption of green features from GFA calculations, the increase in building height and bulk was also attributed to other GFA concessions that might be granted under the Buildings Ordinance. As such, the Administration would conduct a comprehensive review taking into account the aggregated effect of the various GFA concessions that might be granted under the Buildings Ordinance. The relevant extract from the minutes of the meeting is in **Appendix III**.

4. A list of the relevant papers is in **Appendix IV**.

Legislative Council Secretariat
Council Business Division 1
17 December 2008

**Extract from the Public Accounts Committee
Report No. 45 - Chapter 1 of Part 7**

Development of a site at Sai Wan Ho – the Grand Promenade

Case summary

In Report No. 45 of the Director of Audit, it was found that -

- (a) In January 2001, a site at Sai Wan Ho, Hong Kong (the Site), with an area of about 12 200 square metres (m²), was sold by tender to a developer (the Developer) at a premium of \$2,430 million for a residential development. The lease conditions of the Site required the Developer to provide, on a reimbursement basis, Government Accommodation comprising of a marine police operational area (MPOA) with a net operational floor area of not less than 1 500 m², and a public transport terminus (PTT) which included a public transport interchange and a cross boundary coach terminus.
- (b) In late November 2000, before the close of tendering of the Site, a prospective tenderer (not the successful tenderer) sought clarification from the Lands Department (Lands D) on whether the Government Accommodation would be excluded from the GFA calculation. After consulting the Buildings Department (BD), the Lands D informed the prospective tenderer that the lease conditions did not specify a maximum GFA, and the Director of Buildings had advised that, under Building (Planning) Regulation (B(P)R) 23(3)(a), the Government Accommodation “shall be included” in the GFA calculation. While the Lands D recorded enquiries from, and its answers to, prospective tenderers on its file, Audit could not find records showing that the Lands D had publicised them.
- (c) In November 1998, the Metro Planning Committee of the Town Planning Board had been informed that the Site would be able to produce about 1 000 residential flats. According to the Planning Department (Plan D)’s calculation, this was equivalent to a maximum permissible domestic GFA of 85 720 m². However, in November 1999, in response to the Lands D’s enquiry about the drafting of the lease conditions, the Plan D recommended a minimum

GFA of 80 000 m² for residential purposes to produce about 1 000 residential flats with an average size of 80 m². It now transpired that the actual development of the Site turned out to be a development of five 61 to 64-storey blocks of 2 020 residential units, with a total domestic GFA of 135 451 m².

- (d) In November 1999, when the draft Special Conditions of the lease of the Site was being prepared, the BD had advised the Lands D that the Government Accommodation (i.e. the PTT and the MPOA) should be included in the GFA calculation. However, the information had not been incorporated into the lease conditions. At the expanded BAC on 1 August 2001 to determine the application of the Authorised Person (AP) for the Developer for excluding the Government Accommodation from the GFA calculation, there were diverse views on the issue. After seeking legal advice, the Building Authority decided in October 2001 that the PTT should be excluded from the GFA calculation while the MPOA should be included.
- (e) In November 1998, during the planning of the MPOA, the Architectural Services Department (ArchSD) assessed that the approximate area for the 71 parking bays of the MPOA was 3 200 m². The departments concerned considered that the ArchSD's assessment was excessive. In late November 1998, the Hong Kong Police Force (HKPF) had accepted the proposed layout of the MPOA with 1 500 m² of space. The ArchSD also confirmed that the expected project requirements were achievable. However, after the sale of the Site, the AP claimed that extra space was required to meet the MPOA requirements specified in the Technical Schedule, and that the PTT had to be extended to "encroach" on areas designated on the Control Drawing as "Proposed Space Reserved for Entrance Lobbies and Other Facilities to Upper Floor" (the Reserved Areas).
- (f) In view of the need to extend the PTT into the Reserved Areas, in July 2001, the AP asked for bonus areas in return for the dedication of part of the Reserved Areas for public use. On 1 August 2001, the Building Authority agreed to grant bonus areas to the Developer in return for the dedication of part of the Reserved Areas for PTT use. Although the relevant departments considered that the amendments of the layout and the alleged extension into the Reserved Areas had stemmed from the AP's own design, the ArchSD said that there were no grounds to reject the AP's proposal because, among other things, the Control Drawing attached to the lease conditions was "for information only" and was "not to scale".

- (g) In January 1999, the BD advised the Lands D that the Site was a Class B site under the Buildings Ordinance. In December 1999, to qualify the Site as a Class C site, the Lands D incorporated a Special Condition in the lease stating that an area of about 194 m² (i.e. Area III) would be demarcated as a non-building area and should be open for public passage at all times. In the circumstances, the Lands D and the prospective tenderers might have considered that Area III would have to be excluded from the site area in plot ratio and site coverage calculations. Indeed, the Lands D had excluded this area from the site area calculation when it carried out the reserve price valuation. However, after the sale of the Site, at the BAC held on 1 August 2001, the Building Authority agreed that the Site was a Class C site without requiring the Developer to demarcate Area III as a street.

(Paragraphs 1, 11, 17, 24, 103, 104, 125 of Chapter 1 of Part 7, PAC Report No. 45)

X X X X X X

Conclusions and recommendations of Public Accounts Committee

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

Pre-tender enquiries on gross floor area (GFA) calculation

- expresses great dissatisfaction that:
 - (a) the Lands Department (Lands D) had not publicised pre-tender enquiries and answers on GFA calculation before the close of tendering of the land sale of the Site; and
 - (b) when a prospective tenderer sought, after noting that there was no explicit statement on exemption of the Government Accommodation from the GFA calculation under the Land Grant Conditions and that public transport termini (PTTs) were often exempted from GFA calculation in a number of other cases, confirmation that the Government Accommodation (i.e. the PTT and the marine police operational area (MPOA)) would be exempted from the GFA calculation of the Site, the Lands D only

informed the tenderer that the Conditions of Sale did not specify a maximum GFA and, as advised by the Director of Buildings, “the Government Accommodation shall be included in the GFA calculation, under B(P)R 23(3)(a)”. The response could have been interpreted as that the PTT would be included in the GFA calculation;

- notes that the Director of Lands has agreed to implement the audit recommendations mentioned in paragraph 2.9 of the Director of Audit’s Report (the Audit Report);

Development intensity of the Site

- expresses concern that, before recommending a minimum domestic GFA of 80,000 square metres (m²) for the Site in November 1999, the Planning Department (Plan D) had not reassessed the need for and the adequacy of public facilities in the district with a view to ensuring that adequate facilities and infrastructure would be provided;
- notes that:
 - (a) the Director of Planning has agreed to implement the audit recommendations mentioned in paragraph 3.26 of the Audit Report; and
 - (b) the Director of Lands has agreed to implement the audit recommendation mentioned in paragraph 3.27 of the Audit Report;
- recommends that the Secretary for Housing, Planning and Lands should improve the communication and coordination among the Buildings Department (BD), the Lands D and the Plan D to ensure that planning intentions are achieved when a site is developed;

Provision of Government Accommodation

- expresses great dissatisfaction that from the outset, when the Architectural Services Department (ArchSD) said that the net operational floor area of the MPOA of 1,500 m² was not adequate, the Lands D and the ArchSD did not take any action to resolve the problem by either revising the area of the MPOA, or by reducing the number of parking bays;

- expresses serious disappointment that the Control Drawing attached to the lease conditions was “for information only” and was “not to scale”. As a result, the ArchSD considered that there were no grounds to reject the Authorised Person (AP)’s proposed layout of the MPOA although it deviated from the original design in the Control Drawing;
- notes that:
 - (a) the Director of Architectural Services has agreed to implement the audit recommendations mentioned in paragraph 4.31 of the Audit Report; and
 - (b) the Director of Lands has agreed to implement the audit recommendation mentioned in paragraph 4.32 of the Audit Report;

Site classification

- expresses grave concern that, in deciding the site classification before the land sale, the BD had not sought clarification from the Plan D about the planned use of Area II, on which the Building Authority had subsequently relied as one of the considerations for accepting the AP’s submission that the Site was a Class C site without the need to exclude Area III from the site area calculation;
- expresses dissatisfaction that it might have been unfair to other tenderers in the sale of the Site as the Building Authority had subsequently accepted that the Site was a Class C site and this increased the development potential of the Site after the land sale;
- notes that the Director of Buildings has agreed to implement the audit recommendations mentioned in paragraph 5.19 of the Audit Report;

Granting of exemption areas

- finds it unacceptable that:
 - (a) although the BD had advised the Lands D, when the draft Special Conditions of the lease of the Site were being prepared, that the Government Accommodation should be included in the GFA calculation, the information had not been incorporated into the lease conditions of the Site;

- (b) the lease conditions of the Site had not specified whether the Government Accommodation should be included in the GFA calculation. Prospective tenderers therefore could have doubts about this point;
 - (c) for cases where there was no maximum GFA clause in the lease conditions, the Lands D did not consider it appropriate to stipulate in the lease conditions whether the government accommodation required would be included in GFA calculation; and
 - (d) the BD did not, in the absence of established procedures, devise any criteria for appointing external observers when the two observers were invited to attend the Building Authority Conference (BAC), and they had not been required to declare whether they had any conflict of interest;
- expresses alarm and strong resentment, and finds it unacceptable that, in deciding to exercise his discretionary power to exclude the PTT from the GFA calculation, the Building Authority:
- (a) had not attached due weight to the factors for consideration listed in the guidelines on exercising discretionary approval (i.e. Practice Note 23 issued by the BD in September 2000), including lease restrictions, views of other government departments, effect of the development on the adjoining sites and the district, and fairness;
 - (b) had adopted a very restrictive view on public interest, by confining himself to the question of whether the provision of the PTT was in the public interest, without due regard to other factors that might be relevant, e.g. the lease had already required the Developer to provide the PTT, the difficulty likely to be faced by the Lands D in charging additional premium, and the visual impact, increased development intensity and obstruction to air flow resulting from increased building bulk/height;
 - (c) had viewed the role of the Building Authority as distinct from that of a civil servant holding the post of Director of Buildings. As such, he had not adequately taken into consideration such public interest and government policies that might be relevant;
 - (d) had not attached due weight to the views of other government

departments which had raised objection to the exclusion of the PTT from the GFA calculation because, apart from the Plan D, representatives of the other relevant government departments (i.e. the Lands D, the Transport Department (TD), the Highways Department (HyD) and the Fire Services Department), had not been invited to the BAC held on 22 October 2001 at which the Building Authority decided on the matter; and

- (e) had not sought clarification on the legal advice given by the Department of Justice, on which he had relied in discounting considerations that might be relevant although the advice did not make specific suggestion in that respect;
- expresses grave dismay at the Building Authority's decision to exclude the PTT from the GFA calculation of the Site and finds it unacceptable, as it:
- (a) had negative financial implications, in that:
 - (i) the value of the Site would be affected by whether any of the Government Accommodation would be included in or excluded from the GFA calculation. The tender price offered might have been higher if the PTT had been excluded from the GFA calculation at the outset;
 - (ii) the Lands D's assessment of the tender reserve price of the Site was on the basis that the Government Accommodation would be included in the GFA calculation. The reserve price could have been higher if it had been decided before the land sale that the PTT with an area of 7,297 m² would be excluded from the GFA calculation; and
 - (iii) the prospective tenderer who received written confirmation that the Government Accommodation "shall be included in the GFA calculation" subsequently offered the second highest bid. That tenderer might have put forward an even more competitive bid if he had been informed that the PTT would be excluded from the GFA calculation; and
 - (b) might be unfair to other tenderers in the sale of the Site as it was contrary to the advice given to some tenderers before the close of the land sale that the Government Accommodation would be included in the GFA calculation, and this decision increased the

value of the Site after the land sale;

- notes that:
 - (a) the Director of Buildings has agreed to implement the audit recommendations mentioned in paragraph 6.27 of the Audit Report;
 - (b) the Director of Lands has agreed to implement the audit recommendation mentioned in paragraph 6.28 of the Audit Report; and
 - (c) the Administration has agreed in April 2005 that the planning intention is that PTTs should be included in GFA calculation unless otherwise specified in the relevant town plan or any specific planning approval for a site, and the Building Authority will follow the planning intention in exercising his discretion in granting GFA exemption for PTTs;
- strongly urges:
 - (a) the Building Authority to ensure that, when exercising his discretionary power, he will include in his consideration of an application the factors listed in any applicable Practice Note issued by the BD; and
 - (b) the Administration to review the criteria for deciding whether or not the maximum GFA of a site should be specified, with a view to removing any ambiguities about the development potential of the site;

Granting of bonus areas

- expresses grave dismay that:
 - (a) although no Lands D's endorsement had been obtained after the BAC's decision on 1 August 2001 that the Developer's proposed dedication of the Reserved Areas in return for bonus areas should be approved subject to the layout of the PTT being acceptable to all relevant government departments, the Building Authority approved the granting of bonus areas on 1 September 2001 without giving any explanation; and

- (b) the Building Authority approved the granting of bonus areas to the Developer on the basis that the proposed provision of landscaped areas and a larger PTT would benefit the public although the ArchSD, TD and HyD considered that the Government Accommodation could be constructed according to the Control Drawings and the Technical Schedules and the extension of the PTT into the Reserved Areas stemmed from the Developer's design and not from a requirement of the MPOA;
- expresses serious dismay that, when considering the AP's application for bonus plot ratio as a result of the Developer's revised design of the Government Accommodation, the relevant government departments had not evaluated the implications of the proposal on government revenue and development intensity against the benefits;
- notes that:
 - (a) the Director of Buildings has agreed to implement the audit recommendation mentioned in paragraph 7.31 of the Audit Report; and
 - (b) the Director of Lands has agreed to implement the audit recommendation mentioned in paragraph 7.32 of the Audit Report; and

Follow-up actions

- wishes to be kept informed of:
 - (a) the actions taken by the Secretary for Housing, Planning and Lands to improve the communication and coordination among the BD, the Lands D and the Plan D to ensure that planning intentions are achieved when a site is developed;
 - (b) any action taken to ensure that the Building Authority, when exercising his discretionary power, will include in his consideration of an application the factors listed in any applicable Practice Note issued by the BD;
 - (c) the progress of any review on the criteria for deciding whether the maximum GFA of a site should be specified, with a view to removing any ambiguities about the development potential of the site; and

(d) the progress made in implementing the various audit recommendations.

X **X** **X** **X** **X** **X**

**Extract from the Report of the Independent Committee of Inquiry
on the Sai Wan Ho Development on Inland Lot No. 8955**

Views and recommendations of the Independent Committee of Inquiry

11.1 The Committee's recommendations concern the following:

- (a) Assisting the BA's task by ensuring that the lease conditions are clear upon what is required, certain upon what the tenderer is paying for and specific about the development which is to be permitted;
- (b) Ensuring that control of development – particularly relating to height, bulk and density – is maintained. Under legislation by its proper application and amendment if necessary. Through Planning, the OZP and the lease conditions by early and thorough consultation between the three departments mainly concerned;
- (c) That action already undertaken to examine the imposition of maximum GFA and capping exemptions and bonus GFA as means of control be urgently pursued; and
- (d) Encouraging measures already in place to increase cooperation and coordination between the departments and the Bureau.

11.2 The suggestions we have received from both the relevant government departments and the professional institutions and associations in the industry relevant to our inquiry fall into two general categories:

- (a) Suggestions for the better control of height, bulk and density; and
- (b) Suggestions for improving the procedures followed by the Planning, Lands and Buildings Departments.

11.3 These suggestions and our recommendations all have an effect upon the exercise of discretion by the BA.

Control of Height, Bulk and Density

11.4 For the reasons which we have outlined in various parts of this report if the planning intention is to allow the maximum development potential under the legislation it does not always prove a sufficiently effective control of height, bulk and density. Where exemptions are granted even from laudable motives the ordinary limits provided for maximum GFA may be exceeded with undesirable results.

Legislative Control

11.5 Development is controlled through the legislation. This provides a reasonably understandable and workable system. This control has served Hong Kong well. But our inquiry leads us to think that this is being eroded and becoming uncertain. This may be the result of misapplication of B(P)R23(3)(b) as in the case of the PTT. Also it may be caused by routine use of section 42 of the BO to exempt desirable facilities instead of for resolving difficulties in special circumstances.

11.6 As the development of government land is of such importance to the revenue in Hong Kong we recommend that the use of these powers should be examined. The aim should be to amend provisions if necessary and in any event to ensure that its provisions are properly applied. Any expression of opinion on the law is with the reservations we have made earlier in this report.

11.7 The establishment of control by other means should not be used to avoid this examination and application of the legislation.

Control in Other Ways

11.8 We recommend also that control of height, bulk and density should be considered by the Planning Department and the Town Planning Board. The control may be by imposing a maximum GFA where appropriate and if necessary a height restriction as well. We accept that imposing a maximum for GFA may not be entirely without complication. Any control would need careful drafting. We are aware that the imposition of maximum GFA in the lease conditions is already being considered by the Bureau.

11.9 Any imposition of maximum GFA will not be effective if the BA later allows the exemptions so that the maximum is exceeded. It would be necessary for any Special Conditions to be drafted so that the developer could not take advantage in this way.

11.10 The Director of Planning informed the Committee that consideration is being given to imposing a cap on the exemptions from counting GFA and bonus GFA which may be granted. This is another way in which control may be restored. The Joint PN of the Buildings, Lands and Planning Departments caps the exemptions for green facilities at 8% of the total GFA but sky and podium gardens are excluded from this cap.

The Special Conditions

11.11 We have noted that the draft Special Conditions were varied after they had been approved at the District Lands Conferences without informing the relevant departments. One such variation was the omission of clauses concerning the Pink Hatched Black Area relevant to the BA's decision on site classification. It seems to the Committee that the relevant departments should consider whether this practice needs review.

11.12 Any height restriction or maximum GFA limitation should be reflected in the Special Conditions for the sale.

11.13 We consider it would assist the exercise of discretion by the BA if in relation to major developments the Planning Department, the Lands Department and the Buildings Department under the guidance of the Bureau give careful attention to the provisions of the Special Conditions which may impinge upon this discretion. Even before June 1973 an Appeal Tribunal constituted under section 43 of the BO said:

“It has been urged upon us, and we accept, that purchasers of land should be able to ascertain with complete precision the extent to which land can be developed since the purchase price will reflect this development potential.”

11.14 This ought to remain the standard aim for the drafting of the Special Conditions. If a particular result is required then the Special Conditions should be drafted so as to achieve the result, even if clauses are inserted for the avoidance of doubt and even the developer is prevented from applying for some benefit from the BA. We recognise this may involve compromising the policy of achieving the highest possible price. In the present case, for example, the Special Conditions could have plainly required the Pink Hatched Black Area to be constructed as a street and not counted for site area to make the Site Class C. Some of the difficulties concerned with the dedication of the Reserved Areas could have been avoided with the inclusion of dimensions. Also, if it was the intention that the PTT should be counted in the calculation of GFA, a provision to this effect could have been included. We accept that in these circumstances the price paid may have been

lower. If height, bulk and density need further control this may be a consequence.

11.15 In short the aim should be to ensure that the lease conditions are clear upon what is required, certain upon what the tenderer is paying for and specific about the development which is to be permitted.

The Public Transport Terminus

11.16 We note that since July 2005 PNAP 13 includes specific provisions for a PTT in paragraph 12,

“The BA generally accepts that public and private carparks, and public transport termini provided in buildings are space for parking or loading and unloading of motor vehicles falling within the meaning of B(P)R 23(3)(b).”

Paragraph 12(ii) specifically deals with a PTT in these terms :

“Public Transport Terminus (PTT)

The BA would take the advice of the Planning Department in determining the effect of excluding PTT from GFA calculation on the infrastructure, density and building bulk. As Planning Department has advised that the town planning intention is that all PTT should count for GFA calculation unless otherwise provided for in the relevant town plan, hence as a general rule, unless otherwise specified in the relevant town plan or any specific planning approval for the site, all PTT should be accountable for GFA.”

11.17 We have expressed our view about the applicability of the regulation which we maintain. We note that the PTT continues to be considered a special case under the regulation.

More Guidelines?

11.18 We have received some suggestions that the guidelines for the exercise of discretion by the BA should be made more precise and provided to all professionals. The point is that the exercise of discretion should be more open and the process transparent which was Mr Leung’s aim in the augmented BAC on 1 August 2001.

11.19 We agree with this aim but doubt whether increasing the rigidity of the guidelines and PNAPs would achieve the desired result. The consequence may simply be increased difficulty for the BA. The problem which Mr Leung faced in dealing with the PTT may have been removed. However, the difficulty in applying

“public benefit” test in those circumstances was highlighted. Exercising discretion in the public interest is necessarily uncertain and difficult. However, once B(P)R23(3)(b) is properly understood and is applied strictly to provisions which serve the parent building or its occupants these difficulties evaporate.

Should the Building Authority have Power to Amend the Lease?

11.20 Finally, on the exercise of discretion one suggestion has been that the discretion exercised by the BA should be effective against other departments. In other words the lease conditions could be varied by his ruling. Whereas this is an attractive and practical answer it is not acceptable. A third party cannot vary a contract made between others. Further, this is inconsistent with the three tier control over land development. This point raises the next matter which we consider.

Procedural Recommendations

11.21 We have received suggestions that there should be increased coordination and cooperation between Departments.

11.22 As the three departments concerned with the planning, sale and development of government land have quite different responsibilities and functions increasing coordination and cooperation between them and streamlining the procedures involved is not easy. Much responsibility in this respect rests with the Bureau and meetings are held under its leadership to find practical means in which they can work together better.

11.23 One practical result has been the issue of Joint PNs by the Buildings, Lands and Planning Departments to encourage the inclusion of desirable facilities in a development. The Joint PNs ensure that the lease conditions and the exercise of powers by the BA are coordinated.

11.24 We note also that the Bureau seeks to resolve any difficulties which may arise between the departments. This is a function which it should readily undertake when necessary.

11.25 If more control is imposed at the planning stage and during the drafting of the Special Conditions close cooperation between the three departments will be necessary. Obviously if this is to be achieved some administrative structure will be necessary but we cannot express any useful opinion on this. With the same line of thought one of the professional bodies suggested that the BAC should include a representative from the Planning Department and one from the Lands Department as part of its establishment. This suggestion is worth considering.

11.26 Cooperation and coordination are particularly important in a major development such as this.

The Ultimate Aim

11.27 The aim should be to ensure that planning intentions and lease conditions are open, certain and fair. The departments concerned should have a concept of what they wish to achieve in a development and ensure that the lease conditions achieve that result. A tenderer should know exactly what it is bidding for and the successful developer must know what it has bought. This will assist the BA's exercise of discretion even though he acts independently of the lease. Also the tendency will be to reduce the number of applications.

11.28 The consequence of greater certainty and less scope for a developer to apply to the BA for benefits may lower the price. On the other hand the competition may be keener when those bidding are aware with certainty of the development potential. These are policy matters. We recommend this approach under our terms of reference to assist the BA in his task.

**Extract from the minutes of meeting of the Panel on Development
on 27 May 2008**

X X X X X X

VI Review of the measures to promote green features in building developments

(LC Paper No.
CB(1)1602/07-08(04)

-- Information paper provided by
the Administration)

1. SDEV highlighted that increased building height and bulk for developments could be attributed to three factors, namely non-accountable gross floor area (GFA) granted under regulation 23(3)(b) of the Building (Planning) Regulations for facilities such as parking area, loading and unloading area and lift lobby; bonus GFA granted for the provision of public passage in private developments; and exemption from GFA and site coverage calculations for green features. As such, a review of measures to promote green features in building developments alone would not suffice. The Administration would engage the stakeholders and community in more active and in-depth discussion once the Interdepartmental Working Group (WG) had completed its studies and review of the matter.

(Post-meeting note: SDEV's speaking note (LC Paper No. CB(1)1721/07-08(01)) was subsequently issued to members on 30 May 2008.)

2. Mr Albert HO expressed support for the Administration's adoption of a comprehensive approach in reviewing the measures to promote green features in conjunction with the other two types of measures affecting the building bulk as mentioned by SDEV, and enquired about the timetable of the review. He considered that the Administration should have clear criteria for granting GFA exemption or bonus. He considered it too generous to exempt all the GFA of the specified green features because such features would directly enhance the value of those properties. He also expressed concern on exempting the GFA of clubhouses and asked whether the review would include this aspect.

3. In response, SDEV said that the survey conducted by the WG revealed that the provision of most of these green features would be an important factor in the respondents' consideration of purchasing a residential unit. While a cap for the

cumulative exemption of GFA for green features was already present, the aggregate effect of the abovementioned three types of measures whereby GFA exemption/bonus might be granted was the crux. The review would also revisit the cap of exemption for various green features and re-examine GFA exemption of clubhouse, which was granted by the Building Authority under section 42 of the Buildings Ordinance as a general policy rather than on an individual basis. The Administration would consult the public in the second half of 2008 and take forward the matter as soon as possible, if there was community consensus. The Director of Buildings (DB) added that GFA exemption of clubhouse was a measure to enhance the living environment of the residents. There were clear criteria for granting exemption. For instance, the GFA of the clubhouse should not be more than 5% of that of the development, the clubhouse should be used by residents of the development concerned and its design requirements were clearly specified in the relevant Practice Note. The whole process was transparent.

4. Dr KWOK Ka-ki said that although the intention of the policy was good, developers were the ones to benefit most because the saleable areas of properties were inflated by the presence of green features. The Administration should plug the loophole and should protect the rights of property purchasers by enhancing the measures governing the sale of uncompleted residential flats. He also considered that the policy had its social costs in that the increase in building bulk as a result of the GFA exemption would aggravate development intensity and might affect the provision of public open space. He shared the view that it was inappropriate to exempt all the GFA of green features.

5. In response, SDEV said that the policy was implemented based on clear criteria and conditions set out in the relevant Joint Practice Notes. Developers were required to pay additional premium for certain green features according to standard rates, unless the land leases concerned were unrestricted leases or without restrictions on the maximum GFA. The process was transparent and there was no loophole. The Transport and Housing Bureau protected the rights of property purchasers by requiring developers to provide sufficient information in the sales brochures of residential properties. She concurred that the impact of the increase in building bulk needed to be addressed and in this respect, the policy on promotion of green features might go counter to other policies aiming to achieve quality living environment. As such, a comprehensive review was necessary.

6. Mr CHAN Kam-lam said that the policy had enhanced the living environment of residents concerned. The provision of communal facilities for residents such as clubhouses and swimming pools in the developments concerned could supplement similar public facilities. In this regard, the policy had its social benefits. While developers would benefit from higher profits due to the increase in saleable area, they needed to pay higher construction costs and design costs for buildings with

green features. In view of the concerns over the effects of the policy on development intensity, he expressed support for conducting the review. Nevertheless, he hoped that the room for development of green measures would not be stifled as a result of the review. He suggested that in conducting the review, the Administration should listen to the views of the real estates industry and the public, and other building designs which could help enhance the living environment should also be considered.

7. In response, SDEV thanked Mr CHAN Kam-lam for his comments and said that the Administration would strike a balance in taking the matter forward. As regards new building designs, the Buildings Department was conducting a study on sustainable building design and the findings could provide input for the review.

8. Prof Patrick LAU shared the view that the Administration should do more to promote good building designs. He said that the policy on promotion of green features in buildings had come into being only after careful consideration by the authorities involved in planning, buildings and lands. The general public also accepted the policy. The Administration should not terminate the policy. The relevant authorities had been very vigilant in granting GFA exemptions and in assessing the required land premium. He did not observe that the policy had been abused or was biased towards developers. He supported the review but the review should be as comprehensive as possible, covering also the inappropriate site coverage restrictions under the Buildings Ordinance.

9. Mr James TIEN declared interest as a developer. He said that land premium alone already accounted for two-thirds of the costs of a development project. He supported measures to promote new and sustainable buildings designs, but he found that the present regulatory regime was not conducive to promoting new building designs. He considered it important to strike a proper balance among the interests of different parties in conducting the review. On concerns about protection for property purchasers, he considered that the Administration should focus on the sale of uncompleted residential flats because potential property purchasers could not inspect uncompleted flats to obtain an idea of the efficiency ratio and had to rely solely on the information in the sales brochures.

10. Miss CHOY So-yuk said that the GFA of some green features should not be exempted because they were merely features to enhance the value of the properties. She considered that the GFA of facilities for recycling purpose should be exempted. She also sought clarification on whether access to communal sky gardens was open to the public or limited to residents only, and whether double-glazed windows and thicker walls to reduce the noise level would be exempted.

11. In response, SDEV said that the 12 green features in the relevant Joint Practice Notes were drawn up after extensive public consultation. As regards facilities to encourage material recycling, the GFA of refuse storage and material recovery rooms would be granted exemption under the Building (Refuse Storage and Material Recovery Chambers and Refuse Chutes) Regulations. DB clarified that the communal sky gardens referred to in the Joint Practice Notes were not public facilities and thus access was limited to the tenants of the buildings concerned. Under the relevant Joint Practice Note, the GFA of non-structural prefabricated external walls would be exempted. As double-glazed windows would unlikely exceed the thickness of the walls, they would be exempted in most cases.

12. Miss CHAN Yuen-han said that as the current trend was for building developments to include green features, she wondered whether it was still necessary to grant GFA exemption for green features as an incentive measure. She asked whether the Administration would terminate the existing policy. On consultation, she asked whether there would be consultation forums for the public and the real estates industry and urged the Administration to ensure transparency and maintain dialogue with the stakeholders.

13. In response, SDEV said that to ensure continuity in its policy, the Administration would not terminate or change the existing policy at this stage before completing the review. The Administration would continue with its consultation work with stakeholders. As regards whether it was still necessary to provide developers with economic incentives for providing green features given that building developments with green features were well received, she said she could not anticipate developers' decisions on whether to provide certain facilities. By way of illustration, material recovery rooms on each floor were also exempted from GFA calculation, but few developers provided such facilities in their developments.

X X X X X X

Gross Floor Area Concessions

List of relevant papers

Council/Committee	Date of meeting	Paper
Panel on Planning, Lands and Works	22 February 2001	Administration's paper on "Green buildings - a proposal to enhance the quality of our living" (LC Paper No. CB(1)181/00-01(02)) http://www.legco.gov.hk/yr00-01/english/panels/plw/papers/a181e02.pdf Minutes of meeting (LC Paper No. CB(1)516/00-01) http://www.legco.gov.hk/yr00-01/english/panels/plw/minutes/pl211100.pdf
—	February 2001	Joint Practice Note No. 1 on Green and Innovative Buildings issued by the Buildings Department, Lands Department and Planning Department http://www.bd.gov.hk/english/documents/joint/JPN01.pdf
—	February 2002	Joint Practice Note No. 2 on Second Package of Incentives to Promote Green and Innovative Buildings issued by the Buildings Department, Lands Department and Planning Department http://www.bd.gov.hk/english/documents/joint/JPN02.pdf
—	April 2007	Practice Note (PNAP 13) on Calculation of Gross Floor Area and Non-accountable Gross Floor Area - Building (Planning) Regulation 23(3)(a) and (b) http://www.bd.gov.hk/english/documents/pnap/Pnap013.pdf

Council/Committee	Date of meeting	Paper
—	December 2008	Joint Practice Note No. 4 on Development Control Parameters http://www.bd.gov.hk/english/documents/joint/JPN04.pdf
Public Accounts Committee (PAC)	February 2006	PAC Report No. 45 - Chapter 1 of Part 7, Development of a site at Sai Wan Ho http://www.legco.gov.hk/yr05-06/english/pac/reports/45/m_7a.pdf
—	May 2006	Report of the Independent Committee of Inquiry on the Sai Wan Ho Development on Inland Lot No. 8955 http://www.info.gov.hk/info/ici/eng/
Finance Committee	15 March 2006	Supplementary question raised by Hon LEE Wing-tat and Dr Hon YEUNG Sum (Reply serial no. S-HPLB(PL)04) http://www.legco.gov.hk/yr05-06/english/fc/fc/sup_w/s-hplb-pl-e.pdf Minutes of meeting (Report on the Examination of the Estimates of Expenditure 2006-07, Chapter XIV : Planning and Lands) http://www.legco.gov.hk/yr05-06/english/fc/fc/minutes/sfc_rpt.pdf
Council Meeting	26 April 2006	Question no. 16 on "Eco-buildings" Hansard (pages 98 to 101) http://www.legco.gov.hk/yr05-06/english/counmtg/hansard/cm0426ti-translate-e.pdf
Council Meeting	17 May 2006	Motion debate on "Supporting the conclusions and recommendations of the Public Accounts Committee on the development of a site at Sai Wan Ho" Hansard (pages 118 to 196) http://www.legco.gov.hk/yr05-06/english/counmtg/hansard/cm0517ti-translate-e.pdf

Council/Committee	Date of meeting	Paper
Council Meeting	25 October 2006	Question no. 8 on "Residential property projects with green features" Hansard (pages 25 to 27) http://www.legco.gov.hk/yr06-07/english/counmtg/hansard/cm1025-translate-e.pdf
Council Meeting	1 November 2006	Question no. 6 on "Policy on green and innovative buildings" Hansard (pages 48 to 56) http://www.legco.gov.hk/yr06-07/english/counmtg/hansard/cm1101-translate-e.pdf
Council Meeting	23 May 2007	Motion debate on "Policies on sustainable urban development and green buildings" Hansard (pages 146 to 176) http://www.legco.gov.hk/yr06-07/chinese/counmtg/floor/cm0523-confirm-ec.pdf
Council meeting	9 April 2008	Written question on "Residential projects with green features" Hansard (pages 56 to 70) http://www.legco.gov.hk/yr07-08/chinese/counmtg/floor/cm0409-confirm-ec.pdf
Development Panel	27 May 2008	Administration's paper on "Review of measures to promote green features in building developments" (LC Paper No. CB(1)1602/07-08(04)) http://www.legco.gov.hk/yr07-08/english/panels/plw/papers/dev0527cb1-1602-4-e.pdf Minutes of meeting (LC Paper No. CB(1)2309/07-08) http://www.legco.gov.hk/yr07-08/english/panels/plw/minutes/de080527.pdf