

**CHAPTER 7**

**THE GOVERNMENT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION**

**CAPITAL WORKS RESERVE FUND**

**GOVERNMENT SECRETARIAT**

**Planning and Lands Bureau**

**GOVERNMENT DEPARTMENTS**

**Lands Department**

**Buildings Department**

**Planning Department**

**The administration of sale of land by public auction**

# THE ADMINISTRATION OF SALE OF LAND BY PUBLIC AUCTION

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# THE ADMINISTRATION OF SALE OF LAND BY PUBLIC AUCTION

## Summary and key findings

A. **Introduction.** In Hong Kong, the Government usually sells land by public auction because it is simple, transparent and perceived to be more competitive. In 2000-2001, the total revenue received through the auction of land amounted to \$8.4 billion. The terms and conditions for the sale of land are set out in the Conditions of Sale of a site, which may include conditions relating to the development, the minimum gross floor area (GFA), the maximum GFA of the development and other user requirements (para. 1.1).

B. **Audit review.** Audit has recently conducted a review to evaluate the effectiveness of the administration of sale of land by public auction and to ascertain whether there is room for improvement (para. 1.2). The audit findings are summarised in paragraphs C to H below.

C. **Improvement needed in the land auction procedures.** According to the land instruction of the Lands Department (Lands D) of December 1996, for all enquiries about matters relating to a basic ambiguity in the Conditions of Sale of a site, the answers given to prospective purchasers should be advertised in newspapers, and announced during the time of auction before bids were called for. The Lands D should also fully record all verbal answers on file. In the sale of the Siu Sai Wan site by public auction, Audit noted that a number of pre-auction enquiries were received by the Lands D and the Planning Department (Plan D). However, the Plan D did not record details of the answers given to prospective purchasers and none of the answers were advertised because the Plan D did not have procedures similar to those of the Lands D's land instruction (paras. 2.23 to 2.26).

D. **Government's planning objective for developing the Siu Sai Wan site not achieved.** The Government's planning objective for developing the Siu Sai Wan site was 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) which was approved by the Executive Council in 1991 and the Hong Kong Planning Standards and Guidelines (HKPSG). In an application submitted to the Town Planning Board (TPB) concerning the provision of a public transport interchange and a public car park in the development of the site, the TPB was also informed of the Government's planning objective (i.e. the maximum plot ratio of 6.5 for the domestic part of the development). In June 1996, a clause, which stated that the total GFA for the domestic part of the development should not exceed 167,700 square metres, was included in the draft Special Conditions of the Conditions of Sale of the site. However, in September 1996, at a meeting to consider the sale of the site, the District Lands Conference decided to delete the clause. In the event, the GFA constructed for the domestic part of the development was 223,914 square metres. This was equivalent to a plot ratio of 8.8, which was much higher than that of 6.5 specified in the Metroplan. Therefore, the Government's planning objective of lowering the development density in order to "thin out" the population could not be achieved (paras. 3.3, 3.5, 3.7, 3.8, 3.12 and 3.13).

**E. Change in classification of the Siu Sai Wan site led to significant increase in the total GFA.** According to the Building (Planning) Regulations (B(P)R), the number of streets on which a site abuts determines its classification (i.e. Class A, Class B or Class C), which in turn determines the maximum plot ratio permitted for its development. For a domestic building on a Class A site, the maximum plot ratio is 8. For a Class C site, it is 10. Before the auction of the Siu Sai Wan site, the Lands D determined its reserve price on the basis that it was a Class A site. Within one month after the auction of the site in March 1997, in April 1997 the Purchaser proposed to submit building plans for the site on the basis that it was a Class C site. However, the Buildings Department (BD) considered that the site was a Class A site under the B(P)R as it abutted only on one street. In May 1997, the Purchaser proposed to the BD that he would provide two internal streets so that, including Siu Sai Wan Road, the site would be abutting on three streets. This would make the site a Class C site. The BD agreed with the Purchaser's proposal (paras. 4.2, 4.5, 4.7, 4.12 and 4.14 to 4.16).

**F.** In May 1998, the BD received another request from the Purchaser asking the BD to consider the site as a Class C site under the B(P)R, but without the provision of the two internal streets. The Purchaser considered that an existing walkway and open space adjoining the site could be considered as streets under the definition of the B(P)R. In July 1998, the BD sought advice from the Department of Justice. Having considered the Department of Justice's advice, in November 1998 the Building Authority decided to "grant modification in treating the site as a Class C site", provided that a street was maintained alongside the south-eastern boundary. This was accepted by the Purchaser (paras. 4.17, 4.18 and 4.20 to 4.27).

**G.** Because of the change in the classification of the site 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. On the Siu Sai Wan site, there are now more than 3,000 flats, instead of 1,940 flats as shown in the approved Siu Sai Wan Outline Development Plan No. D/H22A/2 of December 1992. According to the Lands D's assessment of September 2001, if the additional GFA of 41,985 square metres had been included in determining the reserve price before the site was auctioned in March 1997, the reserve price would have been increased by about \$1,018 million (paras. 3.6, 4.27, 4.30 and 4.34).

**H. Provision of retail carparking spaces not specified in the Conditions of Sale.** In June 1997, the Authorised Person (AP) of the Purchaser submitted a proposal for the provision of retail carparking spaces in the development of the Siu Sai Wan site. The provision of the retail carparking spaces was made in accordance with the HKPSG. In November 1998, the Lands D accepted the AP's proposal. In the event, 90 retail carparking spaces were provided. The area of the retail carparking spaces was not GFA countable. The Lands D charged the Purchaser an approval fee of \$6.6 million. The provision of retail carparking spaces was not stipulated in the Conditions of Sale of the site. Audit considers that in future, the Lands D should specify in the Conditions of Sale of a site the provision of all types of carparking spaces, including retail carparking spaces, required by the HKPSG (paras. 5.5 to 5.7 and 5.11).

**I. Audit recommendations.** Audit has made the following main recommendations:

- (a) the Director of Lands should:

- (i) notify all departments concerned (including the Plan D) of the requirements of the Lands D's Lands Administration Office Instruction of recording all pre-auction enquiries received from, and the answers given to, prospective purchasers (para. 2.28(e)); and
  - (ii) request the departments concerned to direct all pre-auction enquiries about the Conditions of Sale to the Lands D for providing answers to prospective purchasers before the date of auction of a site (para. 2.28(f));
- (b) the Director of Planning and the Director of Lands should, in order to achieve the Government's planning objective of lowering the development density of a site, ensure that the maximum plot ratio/GFA is included in the relevant Outline Zoning Plan, and/or the maximum plot ratio/GFA of the development of the site is specified in the Conditions of Sale of the site (para. 3.14(a));
- (c) the Director of Buildings should:
- (i) 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 streets under the Buildings Ordinance) about the classification of the site (para. 4.36(a));
  - (ii) take prompt action to amend the B(P)R to remove uncertainties about the definition of streets (para. 4.36(b)); and
  - (iii) issue a Practice Note for Authorised Persons on the principles of definition of streets as soon as possible (para. 4.36(c));
- (d) 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 (para. 4.37); and
- (e) the Director of Lands should:
- (i) specify in the Conditions of Sale of a site the requirement for the provision of different types of carparking spaces, including retail carparking spaces, if this is considered essential for the development of the site, so that prospective purchasers are in a better position to assess their bids before the auction (para. 5.12(a)); and
  - (ii) state clearly in the Conditions of Sale of the site whether the floor area for the provision of carparking spaces, including retail carparking spaces, required by the HKPSG would be taken into account by the Government in determining the GFA of the development so as to avoid ambiguities (para. 5.12(b)).

J. **Response from the Administration.** The Administration has generally agreed with the audit recommendations (paras. 2.29, 3.15 to 3.16, 4.38 to 4.40, 5.13 and 5.14).



## **PART 1: INTRODUCTION**

### **Background**

1.1 Land with its limited supply is one of Hong Kong's most valuable assets. It is therefore essential that the Government utilises the land resources efficiently by optimising the use of land. In Hong Kong, the Government usually sells land by public auction because it is simple, transparent and perceived to be more competitive. It is less prone to manipulation or abuse. Land is usually sold under some broad categories of uses, namely industrial use, non-industrial use and residential use. The auctioned price of a site should reflect the market value of land. In 2000-2001, the total revenue received through the auction of land amounted to \$8.4 billion. The terms and conditions for the sale of land are set out in the Conditions of Sale of a site, which may include conditions relating to the development, the minimum gross floor area (GFA — Note 1), the maximum GFA of the development and other user requirements.

### **Audit review**

1.2 Audit has recently conducted a review:

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

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**Note 1:** *The GFA of a building is the area contained within the external walls of the building measured at each floor level (including any floor below the level of the ground), together with the area of each balcony of the building. The GFA should be calculated from the overall dimensions of the balcony (including the thickness of the sides thereof), and the thickness of the external walls of the building.*

## **PART 2: PROCEDURES FOR SALE OF LAND BY PUBLIC AUCTION**

2.1 This PART examines the procedures for the sale of land by public auction. The audit revealed that there is room for improvement in these procedures.

### **Background**

2.2 In Hong Kong, the density of land development is governed by the plot ratio. The plot ratio is the ratio between the GFA of a building and the area of the site on which the building is constructed. The plot ratio governs the GFA of the building that can be constructed. The Government exercises development density controls partly by statutory powers and partly by administrative measures.

2.3 The Buildings Ordinance (BO — Cap. 123), together with the Building (Planning) Regulations (B(P)R), sets the density limits and provides for the enforcement of the density limits. The maximum domestic and non-domestic plot ratios permitted are set by the First Schedule of the B(P)R. Other restrictions on development density are enforced through:

- (a) *Statutory controls incorporated in Outline Zoning Plans (OZPs — Note 2).* Under the Town Planning Ordinance (Cap. 131), the control on plot ratio can be imposed through the notation and notes indicated in OZPs;
- (b) *Conditions imposed under new or modified land leases.* All lease documents by which land is granted contain covenants or conditions which set out the restrictions as to the use of the land and the type of the development. If an owner wishes to use or develop the land in a way different from that permitted under the lease documents, a modification of the lease conditions is required; and
- (c) *Airport height restrictions.* Height restrictions are imposed under the Hong Kong Airport (Control of Obstructions) Ordinance (Cap. 301) to safeguard aircraft safety along the approach and take-off flight paths. Areas subject to such restrictions are prescribed on plans attached to an Order made under section 3 of the Ordinance.

2.4 The Planning Department (Plan D) has a manual of criteria for determining the location, scale and site requirements of various land uses and facilities. This manual is called the Hong Kong Planning Standards and Guidelines (HKPSG — Note 3). The HKPSG also contains

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**Note 2:** *OZPs are statutory plans prepared and published by the Town Planning Board under the provisions of the Town Planning Ordinance. The OZPs show the proposed land uses and major road systems of individual planning scheme areas. Areas covered by the OZPs are zoned for such uses as residential, commercial, industrial, open space, government, institution and community uses, green belt and other specified purposes.*

**Note 3:** *The HKPSG is useful in the commissioning of planning studies, the preparation/revision of town plans and the processing of planning applications.*

guidelines on building density for different areas in Hong Kong. However, as the HKPSG has no statutory effect, these guidelines can only be implemented where the circumstances mentioned in paragraph 2.3(a) and (b) above apply. According to the HKPSG, the maximum plot ratios permitted should be incorporated in the statutory OZPs wherever necessary and possible.

## **The Land Sale and Development Programmes**

2.5 The Basic Law provides that the Government of the Hong Kong Special Administrative Region (HKSAR) shall be responsible for the management, use and development of land within the HKSAR, and for the lease or grant of land to individuals, legal persons or organisations. The Chief Executive of the Government of the HKSAR has delegated to the Director of Lands the power to lease or grant land and to execute such lease or grant.

2.6 The Director of Lands prepares annually the Land Sale and Development Programmes for approval by the Land Disposal Committee (LDC — Note 4). The Land Sale and Development Programmes are rolled-forward programmes which consist of a yearly Land Sale Programme and a Land Development Programme for the subsequent four years. The Land Sale Programme sets out details of individual sites to be offered for sale in the following year, by way of auction or tender or under the Application System (see paras. 2.7 and 2.8 below). The Land Development Programme aims to identify sites that can be made available for disposal in the subsequent years.

2.7 *The Application System for land sales.* Since 1999-2000, the Government has introduced a system of sale of land by application whereby a list of sites (i.e. the Application List) is included in the published Land Sale Programme each year. The list contains information on the lot number, the location, the area of the site, the use, the plot ratio, the earliest available date and the amount of deposit required for each site. These sites will be made available for sale upon application by prospective purchasers.

2.8 Under the Application System, any prospective purchaser may submit to the Lands Department (Lands D) an application for the sale of a site in the Application List not more than three months before the published earliest available date for that site, indicating the minimum price at which he is prepared to bid for the site. If the Government considers that the application is acceptable, the prospective purchaser will be required to sign an agreement to bid for the site at the minimum price and to pay a deposit. The prospective purchaser will be notified of the date of sale and the site will be gazetted for sale by public auction or open tender as decided by the Government. If he is successful in acquiring the site, the deposit will be used to offset the purchase price. If he is unsuccessful, the deposit will be refunded. However, if the prospective purchaser's bid does not reach the minimum price or if he fails to submit a bid at or above the minimum price, his deposit will be forfeited.

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**Note 4:** *The LDC, chaired by the Secretary for Planning and Lands, was set up in December 1997. Its members include the Secretary for Housing, the Secretary for the Treasury, the Secretary for Works, the Commissioner for Transport, the Director of Lands, the Director of Planning and the Director of Housing or their representatives. Its terms of reference include: (a) the determination of the area of land (including land for public rental housing) to be disposed of under the five-year land disposal programme; (b) the monitoring of the disposal of land; and (c) the development of a land reserve for contingency purposes.*

## The Conditions of Sale

2.9 The terms and conditions relating to the grant of land are set out in the Particulars, General and Special Conditions of the Conditions of Sale. To ensure the optimum use of land within the framework of development plans, the Conditions of Sale of sites contain requirements which control the use and the extent of the development.

2.10 Once a site is included in the Land Sale Programme, the Lands D is responsible for the preparation of the Conditions of Sale. In order to ensure uniformity, the Technical Information Section of the Lands D prepares the master documents of the Conditions of Sale, after consultation with the Legal Advisory and Conveyancing Office of the Lands D and other relevant government departments. These master documents are used as a basis for the drafting of the Conditions of Sale.

2.11 A number of government departments are responsible for the control of land development. Their respective areas of responsibility for the control of land development are shown in Table 1 below.

**Table 1**

### **Areas of responsibility for the control of land development**

<b>Area of responsibility</b>	<b>Department</b>
Design, disposition and height restriction requirements for land development	Buildings Department (BD) Lands D Plan D
Provision of parking and loading/unloading spaces	Transport Department Plan D
Provision of public transport terminus and transport interchange	Plan D Transport Department Highways Department Architectural Services Department
Provision of public multi-storey car park	Transport Department Plan D
Vehicular access requirements	Transport Department Highways Department
Access for fire service personnel and appliances and provision of fire service installation and equipment	Fire Services Department

*Source: Lands D's records*

2.12 Before each land auction, the Lands D circulates draft Special Conditions of the proposed Conditions of Sale to the departments concerned and asks them to comment on the clauses that come within their purview. The Lands D then draws up a refined draft of the Special Conditions of the proposed Conditions of Sale. The refined draft will be discussed and approved at the District Lands Conference (DLC — Note 5) which may consist of representatives of the departments concerned. After approval by the particular DLC, the Conditions of Sale are finalised and are made available to the prospective purchasers.

### **Land auction procedures**

2.13 *Gazette Notification and newspaper advertisement.* Land auctions are published in the Government Gazette four weeks prior to the date of sale and are also advertised in leading English and Chinese newspapers, normally over a period of three consecutive weeks before the sale. For major and complicated land sales by auction or open tender, advertisements are placed about two to three months prior to the date of sale so as to give prospective purchasers sufficient time to carry out their feasibility studies. The Conditions of Sale and the sale plan may also be downloaded from the Lands D's web site after the land auction has been gazetted.

2.14 *Advertising of answers given to prospective purchasers.* From time to time, prospective purchasers may make enquiries about the Conditions of Sale of a site before the auction date. The Lands D considers that it is appropriate for the subject officer, i.e. the Senior Estate Surveyor or the Estate Surveyor of the respective District Lands Office, to answer such enquiries. According to the Lands Administration Office Instruction dated 22 March 1999 (Note 6) of the Lands D, if it is considered that the enquiry relates to a "basic ambiguity" in the Conditions of Sale of a site, the answers given to the enquirer should be advertised in the newspapers, and announced during the time of auction before bids are called for the sale of that particular site. For simple enquiries, there is no need to do so. However, irrespective of whether the enquiry is simple or relates to a basic ambiguity, the subject officer is required to fully record all verbal answers on file.

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**Note 5:** *The DLC is chaired by the Assistant Director/Regional of the Lands D. Its members include the responsible District Lands Officer, the case officers and representatives from other government departments concerned. The DLC's terms of reference include the consideration, in light of overall land policy and land instructions, of the terms and conditions for the disposal of land.*

**Note 6:** *This Lands Administration Office Instruction dated 22 March 1999, which has replaced Land Division Instruction dated December 1996 of the Lands D containing similar provisions, is still in force.*

2.15 **Determination of reserve price.** Prior to each land auction, a committee of the Valuation Conference (Note 7) is established within the Lands D to determine the open market value of the site. In effect, this represents both the opening bid price and the reserve price (Note 8) of the site.

### **New land auction procedures**

2.16 With effect from December 1997, the Lands D has introduced a new set of land auction procedures. Potential bidders are required to register their interest before they are allowed to take part in a government land auction.

2.17 On the day of the auction, a bidding paddle is given to a bidder at the Lands D's registration office upon presentation of a deposit cheque of an amount not less than the deposit required for one of the sites being offered for sale on that day. The amount of deposit (i.e. the immediate down payment) required for each site is stated in the Conditions of Sale of that site.

2.18 An officer of the auction sale registration office records the following particulars of the bidder to whom a bidding paddle has been issued:

- (i) his name and identity card number;
- (ii) the details of the deposit cheque (see para. 2.17 above);
- (iii) the name of the person or the company the bidder represents; and
- (iv) the number of the bidding paddle.

2.19 During the course of the auction, only bids from persons who raise their bidding paddles are accepted as valid bids. A successful bidder may complete and sign the Memorandum of Agreement in the name of another person or company.

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**Note 7:** *The committee is chaired by the Director of Lands or the Deputy Director/Specialist of the Lands D. Its members include the Assistant Director/Valuation, the auctioneer (who is an Assistant Director), the Chief Estate Surveyor and the Senior Estate Surveyor of the Valuation Section of the Lands D. Before June 1999, the committee was chaired by the Deputy Director/Specialist of the Lands D.*

**Note 8:** *The reserve price is the minimum price at which the Government should be recommended to sell a piece of land.*

2.20 **Land sale subject to reserve price.** A site is offered for sale subject to a confidential reserve price and the Government's right to withdraw the site from the sale. Sites for auction are normally sold to the highest bidder. The auctioneer, who is an Assistant Director of the Lands D, has the sole discretion of regulating the bidding and may withdraw a site from sale if he considers that there is any irregularity. He may refuse to accept any bid and no person shall, at any bid, advance less than the amount fixed for that purpose by the auctioneer. In the event of dispute, whether between two or more bidders or otherwise, the auctioneer may at his discretion determine the dispute or again put up the site for sale, or withdraw the site from sale.

2.21 A site is considered to have been sold after the fall of the hammer. The successful purchaser signs the Memorandum of Agreement and the sale plan annexed to the Conditions of Sale. He is also required to immediately hand over to the auctioneer the amount of deposit as stated in the Conditions of Sale. Within 28 days of the date of the Memorandum of Agreement, the purchaser is required to pay the Government the balance of the auctioned price in one lump sum.

2.22 In a test check of selected land auction cases to ascertain whether the procedures mentioned in paragraphs 2.13 to 2.21 above had been complied with, Audit found that, in three cases, there is room for improvement in the land auction procedures. Details of the three auction cases are listed below.

<b>Site location</b>	<b>Date of sale</b>	<b>Auctioned price</b>
Siu Sai Wan	25 March 1997	\$11,820 million
Ap Lei Chau	15 September 1997	\$105 million
Shau Kei Wan	29 February 2000	\$170 million

### **Audit observations on procedures for sale of land by public auction**

#### **Answers given to prospective purchasers by the Lands D**

2.23 As mentioned in paragraph 2.14 above, according to the then prevailing Land Division Instruction dated December 1996 of the Lands D (see Note 6 to para. 2.14 above), for all enquiries about matters relating to a basic ambiguity in the Conditions of Sale, the answers given to the prospective purchasers should be advertised in the newspapers, and announced during the time of auction before bids were called for the sale of the site. The subject officer of the Lands D should also fully record all verbal answers on file.

2.24 In the review of the three cases, Audit noted the following:

- (a) in the case of the **Siu Sai Wan site**, prior to the auction date, the Lands D received a letter dated 1 March 1997 enquiring whether the domestic carparking spaces, and the loading and unloading spaces as specified in the Conditions of Sale were “non-accountable” for the GFA calculation. In reply, the Lands D informed the enquirer that the carparking spaces and the loading and unloading spaces could be excluded from the GFA calculation if the Director of Lands was satisfied that such spaces would be used solely for the parking of motor vehicles and for loading and unloading. **This enquiry and the Lands D’s reply were filed in the subject file. However, Audit could not trace any record indicating that the Lands D’s clarification was advertised in the newspapers.** There was also no documentation on file indicating whether the Lands D had received any verbal enquiry before the auction;
- (b) in the case of the **Ap Lei Chau site**, there was no documentation on file indicating whether the Lands D had received any written or verbal enquiry from prospective purchasers before the auction; and
- (c) in the case of the **Shau Kei Wan site**, there was also no documentation on file indicating whether the Lands D had received any written or verbal enquiry before the auction. When the site was auctioned on 29 February 2000, the maximum plot ratio of the site was displayed at the lobby of the auction hall. According to the Lands D, displaying of the particulars of the sites to be sold at the entrance of the auction venue was a new auction arrangement implemented since December 1997. **However, Audit found that, up to July 2001, this arrangement had not been included in the relevant Lands Administration Office Instruction.**

#### Answers given to prospective purchasers by other departments

2.25 Prospective purchasers may also enquire of other government departments, such as the Plan D, matters relating to the sale of land by public auction. In the case of the Siu Sai Wan site, prospective purchasers were informed, by the Explanatory Statement attached to the Conditions of Sale, that the site was subject to the conditions of a Town Planning Board (TPB) permission which had been granted under section 16 of the Town Planning Ordinance (Note 9) for the provision of a public transport interchange and a public car park. Audit noted that, for the Siu Sai Wan site, prospective purchasers enquired of the Plan D:

- (a) the classification of the site;

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**Note 9:** *Section 16 of the Town Planning Ordinance provides that where a draft plan or an approved plan provides for the grant of permission for any purpose, an application for the grant of such permission should be made to the TPB.*

- (b) the domestic GFA and the development density of the site;
- (c) details of planning application, including the GFA for the development, and layout of the public transport interchange and car park; and
- (d) conditions granted under section 16 of the Town Planning Ordinance relating to the site, including the maximum GFA, and adjacent land uses.

2.26 The Plan D recorded all these enquiries in the Public Enquiry Forms (Note 10). However, as far as could be ascertained by Audit, the Plan D did not record details of the answers to these enquiries. Audit noted that several enquiries were raised to clarify some basic information on the development of the site, such as the classification of the site and the maximum GFA. As far as could be ascertained, there was no evidence indicating that the Plan D had notified the Lands D of the answers it gave to prospective purchasers. In the circumstances, the Lands D would not know whether the answers given by the Plan D were related to a basic ambiguity in the Conditions of Sale. The Plan D's answers to the above enquiries were not advertised because the Plan D did not have procedures similar to those of the Lands D's Lands Administration Office Instruction (see para. 2.14 above).

2.27 In respect of the auction of the Ap Lei Chau site and the Shau Kei Wan site mentioned in paragraph 2.22 above, Audit also reviewed the Public Enquiry Forms kept by the Plan D. Audit could not find any documentation on file indicating whether the Plan D had received any written or verbal enquiries from prospective purchasers before the auction.

#### **Audit recommendations on procedures for sale of land by public auction**

2.28 Audit has *recommended* that, for the sale of land by public auction, the Director of Lands should:

- (a) ensure that a complete record is kept of all pre-auction enquiries received, including verbal enquiries, and the answers given to prospective purchasers;
- (b) make a note on file if no pre-auction enquiries have been received;

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**Note 10:** *According to the Planning Manual (Plan D's internal reference for professional planners), enquirers, upon arrival at the office of the Plan D, should be asked to fill out a Public Enquiry Form about their personal particulars and questions.*

- (c) ensure that the answer to a pre-auction enquiry given to prospective purchasers is advertised if it is related to a basic ambiguity in the Conditions of Sale;
- (d) if it is decided that the answer to a pre-auction enquiry need not be advertised, record in the subject file the reasons;
- (e) notify all departments concerned (including the Plan D) of the requirements of the Lands D's Lands Administration Office Instruction of recording all pre-auction enquiries received from, and the answers given to, prospective purchasers;
- (f) request the departments concerned to direct all pre-auction enquiries about the Conditions of Sale to the Lands D for providing answers to prospective purchasers before the date of auction of a site; and
- (g) incorporate into the Lands Administration Office Instruction the new arrangement of displaying the maximum plot ratio and other relevant information of the sites to be sold at the entrance to the auction venue.

### **Response from the Administration**

2.29 The **Director of Lands** agrees with the audit recommendations on the procedures for the sale of land by public auction as mentioned in paragraph 2.28 above. He has said that:

- (a) where basic ambiguities in the Conditions of Sale are identified, the Lands D will advertise any necessary amendments to the Conditions of Sale; and
- (b) in his view, it is not appropriate for his staff to answer any enquiries relating to interpretation of the Conditions of Sale. Prospective purchasers should be advised to approach their own legal advisers or Authorised Person (AP — Note 11) for obtaining any necessary advice. He considers that the same procedure should be applicable to other departments. However, he intends to consult the industry on this matter before a final decision is taken.

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**Note 11:** *An AP is a person whose name is on the APs' register kept under section 3(1) of the BO as an architect, an engineer, or a surveyor.*

### **PART 3: IMPLEMENTATION OF PLANNING OBJECTIVE FOR DEVELOPING THE SIU SAI WAN SITE**

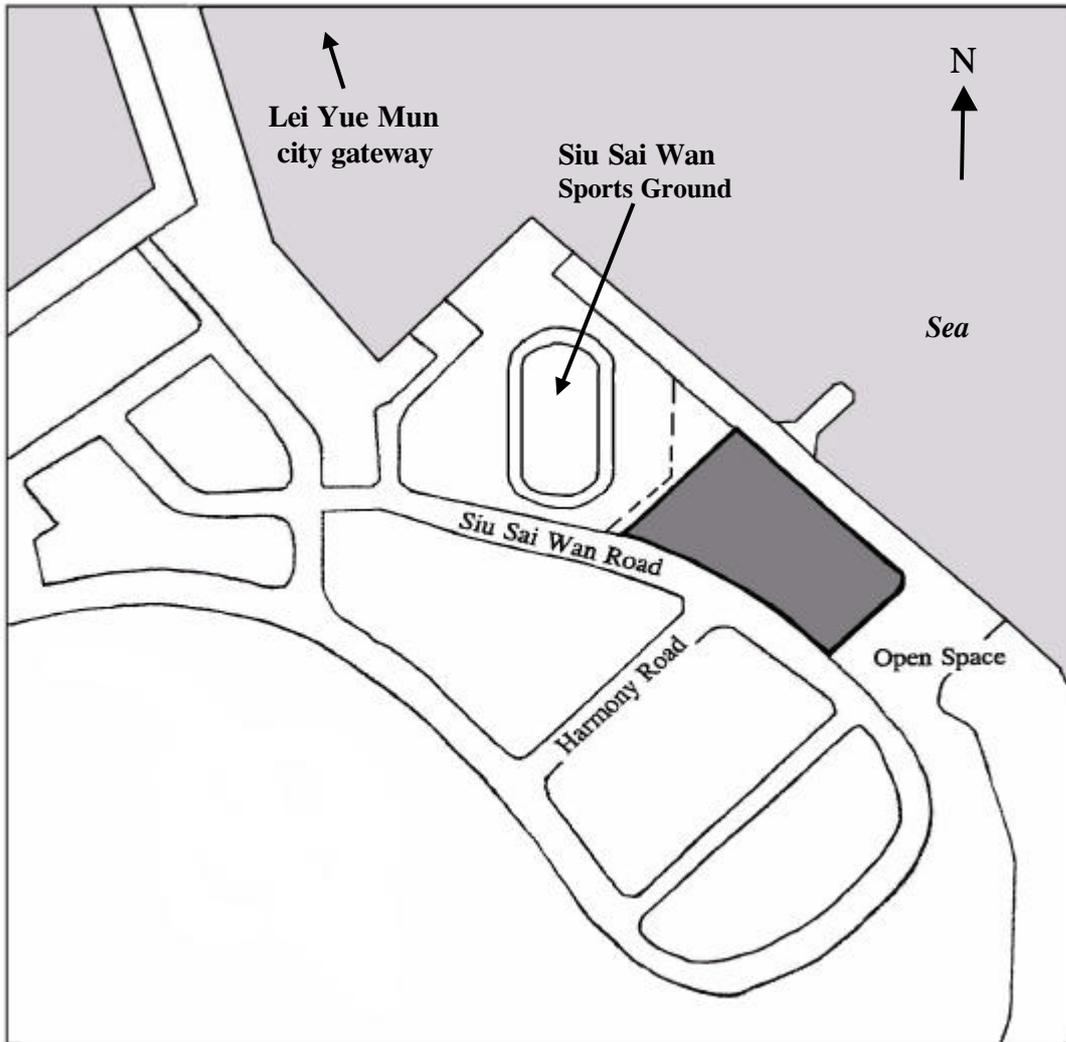
3.1 This PART examines the implementation of the planning objective for developing the piece of land located at Siu Sai Wan, Chai Wan, Hong Kong (hereinafter referred to as the Siu Sai Wan site) which was sold by public auction in March 1997. The planning objective of allowing a maximum plot ratio of 6.5 for the domestic part of the development of the Siu Sai Wan site was not achieved. The audit revealed that there is room for improvement.

#### **Background**

3.2 The Siu Sai Wan site, which was included in the 1996-97 Land Sale Programme, was sold by public auction in March 1997 at the price of \$11,820 million. The site has an area of about 25,592 square metres. It is on the new Siu Sai Wan reclamation and is visually prominent from the Lei Yue Mun city gateway. Figure 1 below shows the location of the site.

Figure 1

Location of the Siu Sai Wan site



Legend:  The Siu Sai Wan site (located on the new Siu Sai Wan reclamation)

Source: *Plan D's records*

## Planning objective

3.3 In 1991, the Executive Council approved the Metroplan Selected Strategy (Metroplan). The Metroplan is intended to provide a broad planning framework. The Metroplan was adopted as a statement of strategy to establish a land use-transport-environmental planning framework for restructuring the Metro area within the constraints set by the availability of resources and market conditions. The Metroplan recommended, among other things, lower development density for new development areas, such as the West Kowloon Reclamation, in order to “thin out” the population. To achieve the Metroplan’s objectives, lower development densities for new development areas were proposed, as follows:

- for sites for residential use, a maximum plot ratio of 6.5;
- for sites for industrial use, a maximum plot ratio of 8; and
- for sites for commercial use, a maximum plot ratio of 12.

3.4 **In May 1996, the Director of Planning informed the District Lands Officer/Hong Kong East (DLO/HKE) of the Lands D that, pursuant to the recommendation of the Metroplan and the HKPSG, the maximum plot ratio for the domestic part of the development of the Siu Sai Wan site should be set at 6.5, with about 1,940 flats on the site.**

3.5 In June 1996, the DLO/HKE issued a set of draft Special Conditions of the Conditions of Sale of the site to the relevant government departments for comments. It was proposed in the draft Special Conditions that the total GFA for the domestic part of the development should not exceed 167,700 square metres (Note 12).

3.6 In July 1996, having considered the DLO/HKE’s draft Special Conditions of the Conditions of Sale of the Siu Sai Wan site, the District Planning Officer/Hong Kong of the Plan D advised the DLO/HKE that:

- (a) **according to the Explanatory Statement of the approved Siu Sai Wan Outline Development Plan (ODP) No. D/H22A/2, which had been adopted by the then Secretary for Planning, Environment and Lands in December 1992:**
  - (i) **there should be 1,940 flats (see para. 3.4 above) and a maximum population of 5,210 for the Siu Sai Wan site development; and**

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**Note 12:** *This represents a plot ratio of 6.5 for the domestic part of the development on the site.*

- (ii) the site, which was visually prominent from the Lei Yue Mun city gateway, should be of an appropriate scale and form, such as the height of the buildings; and
- (b) according to the Explanatory Statement of draft Chai Wan OZP No. S/H20/6 dated 24 September 1993, there should be a public transport interchange and a public car park on this site and, under the Notes of the draft OZP, these required planning permission from the TPB.

3.7 In order to achieve the planning objective, before September 1996, Clause 10(b)(i) of the draft Special Conditions of the Conditions of Sale of the Siu Sai Wan site, which was circulated by the Lands D to members of the DLC, stated that the total GFA for the domestic part of the development of the site should not exceed 167,700 square metres (i.e. the maximum plot ratio should be 6.5).

3.8 **Maximum domestic GFA restriction deleted from the Conditions of Sale.** On 27 September 1996, a DLC meeting was held to consider the sale of the Siu Sai Wan site by public auction, the basic terms of the sale, and the draft Special Conditions of the Conditions of Sale. According to the Lands D's records of the meeting, the representative of the Plan D said that "in view of the emergency vehicular access problem, the maximum residential GFA of a plot ratio of 6.5 might not be achievable". He also said that he had no objection to deleting the maximum residential GFA restriction, and that the maximum GFA was to be governed by the Building (Planning) Regulations (B(P)R). The DLC approved the sale of the site by public auction, the basic terms and the Special Conditions. The DLC agreed that Clause 10(b)(i) of the draft Special Conditions, which specified that the total GFA for the domestic part of the development should not exceed 167,700 square metres (see para. 3.7 above), should be deleted.

3.9 In August 2001, in reply to Audit's enquiry about the events mentioned in paragraph 3.8 above, the Plan D explained that, at that DLC meeting on 27 September 1996, there was doubt among the members on whether the maximum domestic plot ratio of 6.5 stated in the draft Special Conditions would be achievable. A suggestion was raised by a DLC member to delete the draft Clause 10(b)(i) on the maximum domestic GFA. The representative of the Plan D shared the same view and, therefore, did not object to the proposed deletion of the maximum domestic plot ratio from the Conditions of Sale in order to provide maximum design flexibility for the prospective purchaser.

3.10 **Development scale stated in Transport Department's application to TPB.** It was stated in draft Chai Wan OZP No. S/H20/6 that it was necessary to obtain planning permission from the TPB for the inclusion of a public transport interchange and a public car park in the development of Siu Sai Wan site (see para. 3.6(b) above). According to the application submitted to the TPB by the Transport Department in August 1996, it was clearly stated that the proposed total GFA for the domestic part of the development of the site was 172,250 square metres. At that time, the estimated area of the site was about 26,500 square metres. The equivalent plot ratio for the domestic part of the development was 6.5 (i.e. 172,250 square metres ÷ 26,500 square metres).

3.11 In February 1997, in the Explanatory Statement attached to the Conditions of Sale of the Siu Sai Wan site issued to the prospective purchasers, they were informed that the TPB's permission had been granted under section 16 of the Town Planning Ordinance on 7 November 1996. They were also informed that copies of the application submitted for the TPB's permission were available for information at the District Lands Office, Hong Kong East of the Lands D, or at the Hong Kong District Planning Office of the Plan D.

### **Audit observations on the implementation of planning objective for developing the Siu Sai Wan site**

3.12 The Government's planning objective for developing the Siu Sai Wan site was that the maximum plot ratio for the domestic part of the development of the site should be 6.5, with about 1,940 flats and a maximum population of 5,210 (see paras. 3.4 and 3.6 above). This was in line with the Metroplan and the HKPSG. In the application submitted to the TPB seeking its permission to include in the development a public transport interchange and a public car park, the TPB was informed of the Government's planning objective, i.e. the maximum plot ratio of 6.5 for the domestic part of the development for the site. Indeed, the maximum domestic GFA calculated at a plot ratio of 6.5 for the domestic part of the development had originally been specified, and incorporated into the draft Special Conditions of the Conditions of Sale of the site. However, there was no clause specifying the maximum GFA or plot ratio in the approved final version of the Conditions of Sale.

3.13 As mentioned in paragraphs 2.4 and 3.3 above, the Metroplan and the HKPSG have no statutory effect and the Government's planning objective can only be achieved by means of incorporating provisions to that effect into the OZP or the Conditions of Sale of the site. As draft Chai Wan OZP No. S/H20/6, which took effect on 24 September 1993, did not stipulate the plot ratio for the site, the plot ratio of 6.5 for the domestic part of the development of the site could not be controlled through the OZP. In order to implement the planning objective for developing the site, the Government should have incorporated the maximum plot ratio of 6.5 or the maximum GFA for the domestic part of the development into the final version of the Conditions of Sale of the site. **In the event, the as-built domestic GFA of the development on the Siu Sai Wan site was 223,914 square metres. This was equivalent to a plot ratio of 8.819 (Note 13), which was much higher than that of 6.5 specified in the Metroplan (see para. 3.4 above). Hence, the Government's planning objective of lowering the development density in order to "thin out" the population could not be achieved.**

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**Note 13:** *This is the ratio between the actual domestic GFA of the Siu Sai Wan site (223,914 square metres (m<sup>2</sup>)), and the area of the site (25,592m<sup>2</sup>) after deducting the area (201m<sup>2</sup>) of the street provided by the Purchaser at the south-eastern boundary of the site (see Figure 2 in para. 4.4 below).*

$$223,914m^2 \div (25,592m^2 - 201m^2) = 8.819$$

## **Audit recommendations on the implementation of planning objective for developing the Siu Sai Wan site**

3.14 **Audit has recommended that the Director of Planning and the 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/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.**

### **Response from the Administration**

3.15 The **Director of Lands** generally agrees with the audit recommendations mentioned in paragraph 3.14 above. He has said that he has no objection to any agreed control over the density of permitted development to a level below that permitted under the B(P)R being incorporated in the OZP concerned.

3.16 The **Director of Planning** agrees with the audit recommendations mentioned in paragraph 3.14 above. He has said that where permissible plot ratio/GFA is not incorporated in the OZP, the permissible plot ratio/GFA can still be incorporated in the lease documents (e.g. the Conditions of Sale of a site).

## PART 4: CHANGE IN CLASSIFICATION OF THE SIU SAI WAN SITE

4.1 The Siu Sai Wan site, with a site area of about 25,592 square metres, was sold by public auction in March 1997 in the sum of \$11,820 million. The price was significantly higher than the Lands D's reserve price of \$6,300 million assessed for the site. After the site had been sold, there was a change in the classification of the site. This change resulted in a significant increase in the total GFA for the development of the site, from 226,918 square metres by 41,985 square metres to 268,903 square metres (Note 14). This PART examines the change in the classification of the site after it was sold. The audit revealed that there is room for improvement.

### Classification of the site and maximum plot ratio permitted

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

Table 2

#### Classification of site and maximum plot ratio permitted

Site classification	Definition and maximum plot ratio permitted
Class A	A site, not being a Class B site or a Class C site, that abuts on one street not less than 4.5 metres wide or on more than one such street. The maximum plot ratio permitted for a domestic building is 8, and that for a non-domestic building is 15.
Class B	A corner site that abuts on two streets neither of which is less than 4.5 metres wide. The corner site is not regarded as abutting on two streets unless at least 40 percent of the boundary of the site abuts on the streets. The maximum plot ratio permitted for a domestic building is 9, and that for a non-domestic building is 15.
Class C	A corner site that abuts on three streets none of which is less than 4.5 metres wide. The corner site is not regarded as abutting on three streets unless at least 60 percent of the boundary of the site abuts on the streets. The maximum plot ratio permitted for a domestic building is 10, and that for a non-domestic building is 15.

Source: B(P)R

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**Note 14:** *The GFA for the domestic part of the actual development as compared with that assumed by the Lands D in assessing the reserve price increased from 179,382 square metres to 223,914 square metres. The GFA for the commercial part of the development decreased from 47,536 square metres to 44,989 square metres. The net increase in the total GFA was 41,985 square metres.*

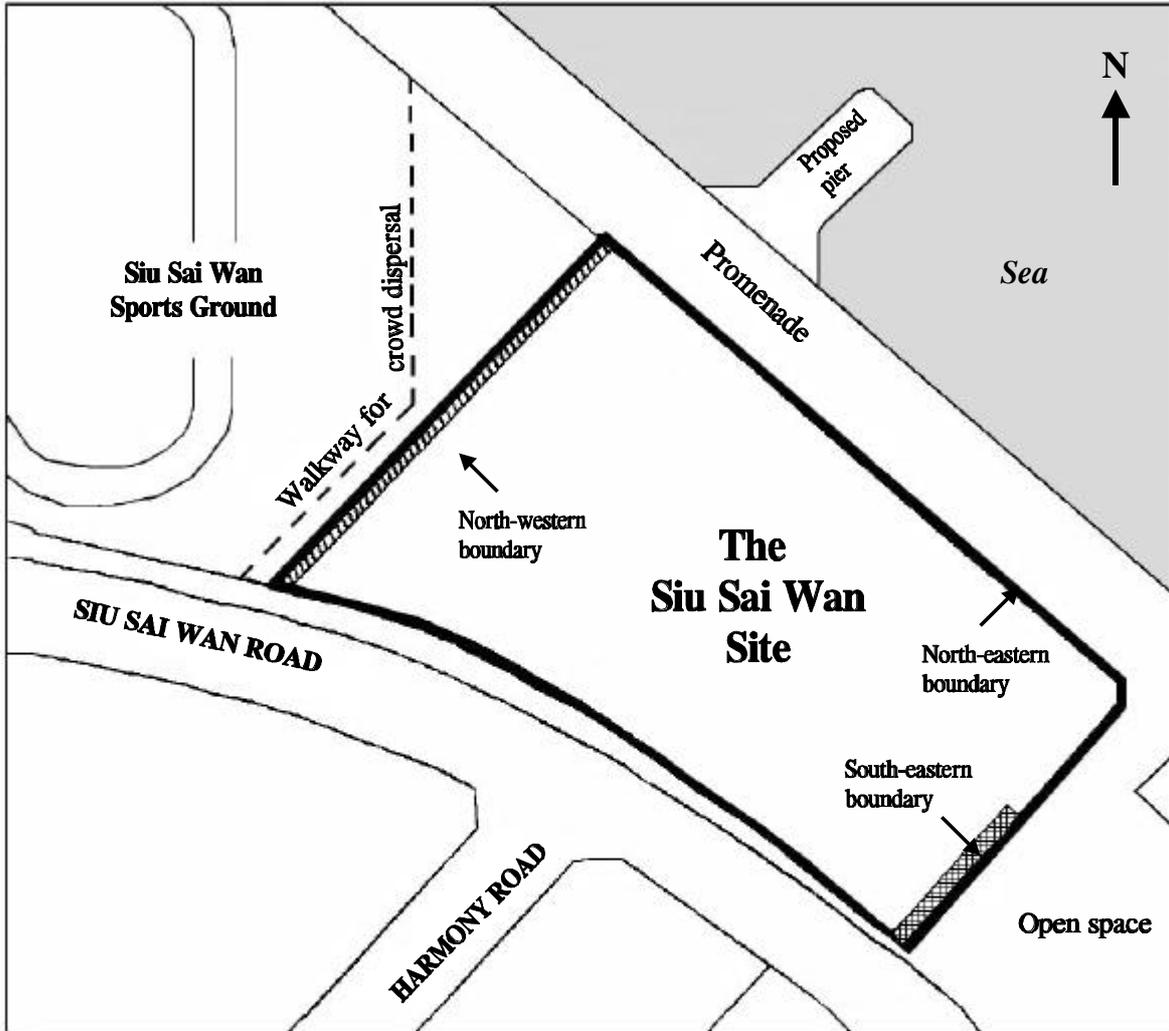
4.3 **Definition of street in the BO.** Under section 2 of the BO, a street includes the whole or any part of any square, court or alley, highway, lane, road, road-bridge, footpath, or passage whether a thoroughfare or not. Under Regulation 2(1) of the B(P)R, a street includes any footpath and private and public street.

#### **Classification of the Siu Sai Wan site before auction**

4.4 The Siu Sai Wan site is located in the new Siu Sai Wan reclamation area. At the western boundary of the site is the Siu Sai Wan Sports Ground, which was allocated to the then Urban Services Department (USD) in October 1994. The site adjoining the north-eastern boundary of the Siu Sai Wan site was designated as a promenade, and that adjoining the south-eastern boundary was designated as district open space on the Siu Sai Wan ODP (see Figure 2 below). According to the Explanatory Statement attached to draft Chai Wan OZP No. S/H20/6 dated 24 September 1993, the Siu Sai Wan site was assigned for private residential development, with a public transport interchange and a public car park at the lower floors. The Explanatory Statement stated that suitable planning and development controls would be exercised through lease conditions.

Figure 2

Layout plan of the Siu Sai Wan site



- Legend:
-  Proposed street included in the approved building plan of 13 March 1998 along the north-western boundary of the site but eventually not provided
  -  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

4.5 *Assessment of auction reserve price of the Siu Sai Wan site.* In March 1997, a committee of the Valuation Conference of the Lands D approved the reserve price of \$6,300 million on the basis that it was a Class A site. Under the B(P)R, for Class A sites, the maximum plot ratio permitted for domestic uses was 8, and that for non-domestic uses was 15 (see Table 2 in para. 4.2 above). Therefore, in estimating the reserve price, the domestic GFA for the development of the site was taken as 179,382 square metres, and the non-domestic GFA was taken as 47,536 square metres.

4.6 *Public enquiries on the Siu Sai Wan site.* As mentioned in paragraphs 2.25 and 2.26 above, before the auction of the Siu Sai Wan site, the Plan D had received a number of enquiries concerning the classification of the site, the domestic GFA, and the development density. The Plan D did not record details of the answers to these enquiries. The enquiries about matters such as the classification of the site and the maximum GFA would seem to indicate that there were uncertainties about the maximum development potential of the site.

#### **Purchaser considered the Siu Sai Wan site as a Class C site**

4.7 On 18 April 1997 (i.e. within a month after the auction on 25 March 1997), the Purchaser held a meeting with the BD to discuss the development potential of the Siu Sai Wan site. Following this meeting, on 22 April 1997, the Purchaser informed the BD that he was in the process of preparing building plans for the site, and that such plans would be prepared on the basis that it was a Class C site under the B(P)R (see para. 4.2 above). In support of his view that the site was a Class C site, the Purchaser provided the following information:

- (a) a copy of the signed Conditions of Sale of the Siu Sai Wan site, with a plan showing the site;
- (b) the adopted ODP (No. D/H22A/2) for Siu Sai Wan dated 8 December 1992;
- (c) draft OZP No. S/H20/6 dated 24 September 1993 and its Explanatory Statement; and
- (d) photographs showing the site, the Siu Sai Wan Sports Ground on the western side of the site, the promenade, the walkway to the promenade and the future pier.

4.8 The Purchaser also informed the BD about the following salient points:

- (a) **the Conditions of Sale of the Siu Sai Wan site did not specify any maximum GFA to be built, and as such, the development would be controlled by the regulations of the BO;**

- (b) the site was zoned Residential (Group A) (Note 15) on the draft OZP No. S/H20/6. According to the Explanatory Statement, this meant private residential development, with a public transport interchange and a public car park. The Explanatory Statement further stated that suitable planning and development controls would be exercised through the lease conditions. However, the Conditions of Sale did not specify any maximum GFA;
- (c) the related ODP highlighted the open space abutting on the site at the eastern and northern boundaries of the site as a promenade; and
- (d) on the western side of the Siu Sai Wan site was the newly completed Siu Sai Wan Sports Ground. The land of the sports ground had been allocated to the USD as a Permanent Land Allocation on the basis that it should not be used for any purpose other than for the Siu Sai Wan Sports Ground. The as-built drawings of the Siu Sai Wan Sports Ground indicated that the land abutting on the Siu Sai Wan site was a walkway for crowd dispersal of minimum 10-metre wide.

4.9 *The Purchaser sought advice of the Director of Lands.* On 29 April 1997, the Purchaser informed the Director of Lands that, by reference to the Explanatory Statement of draft OZP No. S/H20/6 and some other plans, for plot ratio calculation purpose, he was preparing a submission to the BD to seek confirmation of the classification of the Siu Sai Wan site under the B(P)R. The Director of Lands said that he had no objection to the Purchaser's above proposal as the Conditions of Sale of the site were silent on this aspect, and that matters concerning the BO were entirely within the purview of the Building Authority (BA — Note 16). On 1 May 1997, the Director of Lands informed the Director of Buildings of his reply to the Purchaser.

#### **BD initially considered the Siu Sai Wan site as a Class A site**

4.10 On 30 April 1997, upon receipt of the Purchaser's letter dated 22 April 1997, the BD requested the Lands D and the Plan D to comment on the status of the Siu Sai Wan site and the use of the adjoining sites. The BD also requested the USD to comment on:

- (a) whether there was a public right of way over the strip of land between the site and the Siu Sai Wan Sports Ground (hereinafter referred to as the walkway);
- (b) whether the USD had any objection if the walkway was treated as a street; and

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**Note 15:** *In Residential (Group A) zones, commercial uses are permitted as of right in the lower three floors, including the basement or basements of the building.*

**Note 16:** *Under the BO, the BA is the Director of Buildings.*

- (c) whether the Purchaser's proposal of building staircases from the Siu Sai Wan site to the adjoining Siu Sai Wan Sports Ground was acceptable.

4.11 On 5 May 1997, in response to the BD's request, the DLO/HKE of the Lands D said that:

- (a) the adjoining Siu Sai Wan Sports Ground was allocated to the USD in October 1994 under a Permanent Land Allocation. Apart from the normal Airport Height Restriction and the vehicular access points and emergency access points shown on the sketch plan for the Siu Sai Wan Sports Ground, there were no other development conditions governing the layout of the Sports Ground; and
- (b) the land adjoining the north-eastern boundary of the site was designated as a promenade and that adjoining the south-eastern boundary was designated as district open space on the Siu Sai Wan ODP dated 8 December 1992. The USD had already applied for a Permanent Land Allocation.

4.12 ***Building Committee of the BD considered the Siu Sai Wan site as a Class A site.*** On 6 May 1997, a Building Committee (BC — Note 17) of the BD discussed the site classification of the Siu Sai Wan site. The BC considered that:

- (a) **the existing 10-metre wide walkway, which was within the site of the Siu Sai Wan Sports Ground, could not be considered as a street;**
- (b) the government land on the north-eastern and the eastern boundaries of the site was zoned as open space but not streets in draft OZP No. S/H20/6; and
- (c) the government land on the north-eastern boundary of the site was shown as a promenade on the ODP. However, the ODP was not a statutory document.

**After taking into account the above points, the BC concluded that the Siu Sai Wan site was abutting only on one street and that it was a Class A site under the B(P)R.** The BC also agreed that the decision should be referred to the BA for his endorsement in view of the significance of the site.

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**Note 17:** *The BA established the BC to provide a forum for the discussion of proposals for building development. Its terms of reference are: (i) to consider proposals for building development; and (ii) to identify noteworthy, contentious and major points in the proposals for discussion. The Assistant Director/New Buildings of the BD is the Chairman of the BC. Members include representatives from the BD, the Plan D and the Lands D.*

4.13 *USD objected to treating the walkway as a street.* On 13 May 1997, in reply to the BD's enquiry as mentioned in paragraph 4.10 above, the USD said that:

- (a) **the USD objected to treating the walkway as a street because it was part of the Siu Sai Wan Sports Ground and was mainly used for crowd dispersal purpose;**
- (b) a public right of way did not exist over the walkway; and
- (c) the Purchaser's proposed arrangement concerning the building of staircases was not acceptable as this would raise the issue of right of way over the USD's site.

4.14 On 14 May 1997, the BD held a meeting with the Purchaser to discuss the classification of the Siu Sai Wan site. **The BD informed the Purchaser that, based on available information and consultation with other government departments, the BD considered that the site was a Class A site.** In order to provide exit routes from residential towers to the street, the BD agreed that internal streets would be necessary. The BD also agreed that the internal streets provided for the purpose of means of escape might also serve as streets for site classification purpose if the criteria of the B(P)R were fulfilled.

#### **Purchaser's proposal to provide two internal streets in order to make the Siu Sai Wan site a Class C site**

4.15 Referring to the meeting of 14 May 1997 with the BD, the Purchaser wrote to the BD on the same day. **The Purchaser proposed to provide two internal streets of 4.5 metres wide within the site: one street along the north-western boundary, and another street along a portion of the north-eastern boundary.** The site would then become a corner site. It would abut on three streets (i.e. the two proposed internal streets and Siu Sai Wan Road — see Figure 2 in para. 4.4 above). Sixty percent of the boundary of the site would abut on these three streets. **The site would then satisfy the definition of a Class C site as per B(P)R 2(1) and 2(2)(b) (see para. 4.2 above).** The BD was informed that, in accordance with the B(P)R, the area of the proposed internal streets would not be taken into account in the GFA and site coverage calculation. The Purchaser sought the BD's approval in principle so that he could prepare the building plans for submission.

4.16 *BD accepted Purchaser's proposal to provide two internal streets at the Siu Sai Wan site.* On 20 May 1997, the BC discussed the Purchaser's proposal. Having examined the block plan of the site, the BC agreed that the site was a Class C site. Members of the BC also suggested that the proposed 4.5-metre wide internal streets would preferably be located at the north-western boundary and the south-eastern boundary of the site. The Chairman of the BC also advised its members that, in attending the DLCs, they should specify the site classification for those leases

with “no restriction in the GFA provided under the lease condition”. On 23 May 1997, the BD informed the Purchaser that the BD had no objection to his proposal (see para. 4.15 above).

#### **Further request from Purchaser to treat the Siu Sai Wan site as a Class C site**

4.17 In May 1998, the BD received a request from the Purchaser asking the BD to consider the Siu Sai Wan site as a Class C site under the B(P)R without the provision of the two 4.5-metre wide internal streets (see para. 4.15 above). The Purchaser said that his legal advice was that the Siu Sai Wan site was a Class C site.

4.18 The main reasons in support of the Purchaser’s request were as follows:

- (a) the Special Conditions of the Conditions of Sale of the Siu Sai Wan site contemplated a development in accordance with all respects of the BO, and any regulation/amending legislation made thereunder. **The Conditions did not specify any maximum GFA to be built, and as such, the development was controlled by the regulations under the BO;**
- (b) according to the Explanatory Statement attached to draft OZP No. S/H20/6, the site was zoned for private residential development, with a public transport interchange and a public car park at the lower floors. The Statement further stated that suitable planning and development controls would be exercised through lease conditions;
- (c) **the Conditions of Sale did not specify any maximum GFA;**
- (d) the Purchaser understood that the USD would landscape the open space on the eastern and northern boundaries of the site as a promenade;
- (e) the Government had allocated the land of the newly completed Siu Sai Wan Sports Ground to the USD on the basis that it should not be used for any purpose other than for the Siu Sai Wan Sports Ground. The as-built drawings clearly showed the land immediately abutting on the site as a walkway for crowd dispersal (minimum 10-metre wide); and
- (f) the open space on the two sides of the site would be considered as streets as the intended use (i.e. for passage) was included in the definition of the word “street” in the BO and the B(P)R.

4.19 *Comments from the Plan D and the Lands D.* On 1 June 1998, in order to address the Purchaser's request, the BD asked the Plan D, the Lands D and the USD to confirm whether their previous comments on the issue were still valid. In response, on 3 June 1998, the Plan D said that:

- (a) there was no classification of site and plot ratio restrictions specified in the Explanatory Statement and Notes of draft OZP No. S/H20/6 and the ODP for this development which had been zoned Residential (Group A). Therefore, any development restrictions of the site should be in compliance with the lease conditions, the BO and any regulation/amending legislation made thereunder; and
- (b) the classification of the site in relation to the layout of roads and the development density was a matter governed by the BO, and should be dealt with by the BD.

The Lands D had no particular comments. The USD said that its previous comments were still valid and had no further comments.

4.20 *BD sought advice from the Department of Justice.* On 24 June 1998, the BD sought advice from the Department of Justice as to:

- (a) whether the walkway for crowd dispersal within the site of the Siu Sai Wan Sports Ground could be treated as a street in the context of the B(P)R for site classification purpose; and
- (b) whether the open space, which abutted on the north-eastern and south-eastern boundaries of the site, could be treated as a street in the context of the B(P)R.

4.21 *Department of Justice's views.* In reply, on 17 July 1998, the Department of Justice said that:

- (a) **the walkway appeared to be similar in nature to a footpath or passage, and was within the definitions of "street". The definitions of "street" were not only limited to public streets but also private streets. The fact that the walkway lay within the Siu Sai Wan Sports Ground did not affect the position;**
- (b) the open space/promenade, if and when it was formed, would provide access to the seafront and the proposed pier and would fall within the definitions of "street" if it was not less than 4.5 metres wide. The BD should look at the existing state of the land and decide if it could be considered as a street within the definitions for the purpose of site classification under the B(P)R. Since the open space/promenade had not been formed,

and plans for its formation had not been finalised and might be subject to change, such open space/promenade was not a street; and

- (c) **for the reasons stated in insets (a) and (b) above, the Siu Sai Wan site was not a Class C site as claimed by the Purchaser.**

4.22 On 20 July 1998, the BD again sought advice from the Department of Justice. The BD said that:

- (a) if the walkway was taken as a street, the site would become a Class B site and would enjoy a higher plot ratio under the B(P)R; and
- (b) it was permissible under the Permanent Land Allocation for the USD to change the layout within the site of the Siu Sai Wan Sports Ground in future. If the layout was changed, the position of the walkway (used for crowd dispersal) might be altered. The BD's concerns were that:
  - (i) the BA had no power in preventing the USD from deleting the walkway in future. If the walkway was deleted, the permitted plot ratio of the site might be exceeded as the site would revert back to the Class A classification; and
  - (ii) in compliance with the B(P)R, the proposed buildings on the Siu Sai Wan site could be erected along the common boundary of the Sports Ground, with windows facing the walkway. Theoretically, the USD could in future build a structure on the walkway which would block all the window openings of the buildings of the site facing the walkway.

4.23 On 21 July 1998, the Department of Justice replied that:

- (a) the BA should look at the existing state of the walkway in deciding whether or not it was a street;
- (b) it could not see how the two points mentioned by the BD in paragraph 4.22(b) above were relevant to the question; and
- (c) the walkway was a street within the meaning of the term as defined in the BO and the B(P)R.

4.24 ***BD sought further advice from the Department of Justice.*** On 31 July 1998, the BD requested the Department of Justice to review the case of the Siu Sai Wan site in light of a previous court decision on the definition of “street” under the BO. In reply, the Department of Justice said that in deciding whether an area of land was a street within the meaning of the term as defined in the BO and the B(P)R, the BA should consider the facts and circumstances of the case at the time and not the possibility of development in the future. If a public or private right of way existed over the land, that would be a relevant fact to be taken into account. On 25 September 1998, after obtaining additional information from the USD on the usage of the walkway, the Department of Justice advised the BD that it appeared that the public had a right of way over the walkway and the walkway was a street for the purpose of the B(P)R.

### **BA finally agreed to treat the Siu Sai Wan site as a Class C site**

4.25 On 10 November 1998, a Building Authority Conference (BAC — Note 18) was held to discuss the classification of the site. Having examined the background to the case and the information provided, the BAC made the following observations and comments:

- (a) in considering whether the walkway for crowd dispersal could be regarded as a street for the purpose of the B(P)R, it was necessary to consider whether the use of the area as a walkway would be of permanent nature;
- (b) the walkway was within the land allocated to the USD and was developed as the Siu Sai Wan Sports Ground. As the Sports Ground and the walkway were managed by the USD which could not unilaterally change the use of the land without going through the necessary procedures and obtaining the consent of the then Urban Council, it was very unlikely that the use of the walkway would be altered in future; and
- (c) although the strip of land adjoining the north-eastern and a portion of the south-eastern boundaries of the lot was zoned as open space, the land had not yet been formed and allocated. It was not certain whether such area would be used as a promenade eventually.

4.26 **In view of the foregoing, the BAC advised and the BA agreed to “grant modification in treating the site as a Class C site” under the BO, provided that:**

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**Note 18:** *The BAC provides a forum for the BA to take decisions or give advice on any issues arising from the administration of the BO which require his personal direction. The issues include: (a) decisions of the BC; (b) formal appeals to the Appeal Tribunal against the decisions of the BA; and (c) appeals against or requests for review of the decisions of the Assistant Directors and Deputy Director of the BD. The Chairman of the BAC is the Director of Buildings. Its members include the Deputy Director, the Assistant Director/Support, the Assistant Director (case officer) and an Assistant Director of the BD.*

- (a) a street, i.e. the approved 4.5-metre emergency vehicular access, was maintained alongside the south-eastern boundary (see para. 4.16 above); and
- (b) the area of the street was excluded from the calculation of the site area.

**On 24 November 1998, the BA's decision was conveyed to the Purchaser.**

4.27 Upon receipt of the decision, the Purchaser agreed to provide a street at the south-eastern boundary of the site and exclude the area of this street from the calculation of the site area. He submitted building plans which treated the Siu Sai Wan site as a Class C site. On 31 July 1999, the BA approved the building plans. Subsequently there were a number of amendments to the building plans. The BA approved the latest building plans on 7 February 2001. **Because of the change in the 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 (see Note 14 to para. 4.1 above).**

#### **Increase in GFA subsequent to classifying the site as a Class C site**

4.28 As a result of the change in the site classification, under the B(P)R, the maximum plot ratio permitted for domestic uses at 10 and that for non-domestic uses at 15 for Class C sites were adopted in the building plans. According to the latest building plans approved on 7 February 2001, the total GFA of the as-built development of 268,903 square metres was made up of:

- the GFA for domestic use of 223,914 square metres, i.e. a plot ratio of 8.819; and
- the GFA for non-domestic use of 44,989 square metres, i.e. a plot ratio of 1.772 (Note 19).

The BA issued the Occupation Permit for the new buildings on the Siu Sai Wan site on 11 April 2001.

4.29 A comparison of the GFA and plot ratio used by the Lands D for setting the reserve price (before the site was sold in March 1997) with those shown in the building plans approved by

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**Note 19:** *This is the ratio between the actual non-domestic GFA of the Siu Sai Wan site (44,989m<sup>2</sup>), and the area of the site (25,592m<sup>2</sup>) after deducting the area (201m<sup>2</sup>) of the street provided by the Purchaser at the south-eastern boundary of the site (see Figure 2 in para. 4.4 above).*

$$44,989m^2 \div (25,592m^2 - 201m^2) = 1.772$$

the BA is at Table 3 below. It can be seen from Table 3 below that the change in the classification from Class A to Class C resulted in an additional GFA of 41,985 square metres (see para. 4.27 above).

**Table 3**  
**Comparison of GFAs and plot ratios before and after**  
**the change in classification of the Siu Sai Wan site**

	<b>Development figures used by the Lands D for setting the reserve price in March 1997</b>	<b>Development figures in building plans approved by the BA on 7 February 2001 (Note 3)</b>
Site classification	Class A	Class C
No. of streets provided by the Purchaser	—	1
Domestic GFA	179,382m <sup>2</sup>	223,914m <sup>2</sup>
Non-domestic GFA (Note 1)	47,536m <sup>2</sup>	44,989m <sup>2</sup>
<b>Total GFA</b>	<b>226,918m<sup>2</sup></b>	<b>268,903m<sup>2</sup></b>
Domestic plot ratio	7.009 (Note 2)	8.819
Non-domestic plot ratio	1.857	1.772

*Source: Records of the BD and the Lands D*

*Note 1: According to the Notes attached to draft Chai Wan OZP No. S/H20/6 of 24 September 1993, commercial uses were permitted as of right in the lower three floors, including the basements of the building.*

*Note 2: When the Lands D set the reserve price in March 1997, the maximum GFA clause had not been included in the Conditions of Sale. The plot ratio restriction of 6.5 as advised by the Director of Planning in May 1996 (see para. 3.4 above) had not been applied. In its assessment, the Lands D therefore assumed that the plot ratio for the domestic part of the development would be 7.009.*

*Note 3: This is the date of approval of the latest building plans.*

4.30 The increase in the GFA of 41,985 square metres (see para. 4.27 above) as a result of the change in classification of the Siu Sai Wan site could have had significant financial implications. According to the Lands D's assessment of September 2001, if the additional GFA had been included in setting the reserve price before the auction in March 1997, the reserve price of the Siu Sai Wan site would have been increased from \$6,300 million by \$1,018 million to \$7,318 million (Note 20).

#### **Audit observations on the change in classification of the Siu Sai Wan site**

4.31 The classification of a site determines its permitted plot ratio under the B(P)R. The permitted plot ratio in turn determines the development potential (i.e. the total GFA) and the value of a site. **The higher the development potential of a site, the higher would be the prices which prospective purchasers are prepared to offer in the public auction. Consequently, in land auction, the classification of a site is essential information indicating its development potential.**

4.32 According to the B(P)R, the number of streets on which a site abuts determines its classification (i.e. Class A, Class B or Class C). For the Siu Sai Wan site, there were different views as to how many streets it abutted on and what its classification should be. As mentioned in paragraph 4.5 above, the Lands D considered that the site was a Class A site, and had, before the auction, determined the reserve price of the site on such a basis. Moreover, prior to the date of auction of the site, enquiries had been made by prospective purchasers about its classification, the domestic GFA, and the development density (see para. 4.6 above).

4.33 After the auction of the Siu Sai Wan site, there were still uncertainties about its classification, as follows:

- (a) in April 1997 the Purchaser considered the site as a Class C site (see paras. 4.7 to 4.9 above). However, the initial decision of the BD was that it was not a Class C site (see para. 4.12 above);
- (b) the Purchaser then proposed to the BD that he would provide two internal streets within the site so that the classification could be changed from Class A to Class C. The BD agreed with his proposal (see paras. 4.15 and 4.16 above);
- (c) in May 1998, the Purchaser requested the BD to reconsider the site as a Class C site, but without providing the two internal streets. The Purchaser considered that an existing walkway of the Siu Sai Wan Sports Ground and open space adjoining the site could be considered as streets under the definition of the BO and the B(P)R (see paras. 4.17 and 4.18 above); and

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**Note 20:** *According to the Lands D, the amount of \$7,318 million was a notional assessment for illustration purpose.*

- (d) after obtaining legal advice from the Department of Justice, the BD subsequently agreed to “grant modification in treating the site as a Class C site”, provided that a 4.5-metre emergency vehicular access was maintained alongside the south-eastern boundary of the site. **The walkway within the Siu Sai Wan Sports Ground at the north-western boundary of the site was treated as a street (see paras. 4.20 to 4.26 above).**

4.34 It can be seen from paragraph 4.33 above that the Purchaser and the government departments concerned had different views on the definition of a street, and hence the classification of the Siu Sai Wan site. Audit considers that:

- (a) the Government’s planning objective in the Metroplan to “thin out” the population could not be achieved (as mentioned in PART 3). More than 3,000 residential flats have been built on the site, instead of 1,940 flats as shown in the Siu Sai Wan ODP No. D/H22A/2 (see para. 3.6(a) above). Despite the fact that the Explanatory Statement of draft OZP No. S/H20/6 had stated that suitable planning and development controls would be exercised through lease conditions (see para. 4.4 above), the Conditions of Sale of the Siu Sai Wan site were silent on the site classification and the maximum GFA. In the event, as a result of the change in the site classification 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 (see para. 4.27 above);
- (b) the maximum plot ratio permitted and the maximum GFA of the development of the site was essential information for the prospective purchasers to consider before the auction;
- (c) whether the walkway and open space of the adjoining sites of the Siu Sai Wan site could be considered as streets according to the BO and the B(P)R should have been clarified before the auction of the site. This is because this would affect the classification of the site; and
- (d) the reserve price of the Siu Sai Wan site would have been increased by \$1,018 million, if the additional GFA had been taken into account (see para. 4.30 above).

4.35 Audit notes that the BD has not issued any specific guidelines on the provision of streets by developers within their sites. In June 2001, Audit invited the Director of Buildings’ attention to the different interpretations of streets in the B(P)R. In reply, the Director of Buildings said that, while the definition of streets under the B(P)R was not exhaustive and could be open to interpretation, the definition had been clarified in precedent cases and the building professionals were, on the whole, clear about its application. Nevertheless, he would consider introducing an amendment to the B(P)R in this respect as soon as possible. He also said that he would issue a Practice Note for Authorised Persons on the principles of definition of streets and the provision of streets within private sites to clarify the situation.

## **Audit recommendations on the change in classification of the Siu Sai Wan site**

4.36 **Audit has 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 streets under the BO) about the classification of the site;**
- (b) **take prompt action to amend the B(P)R to remove uncertainties about the definition of streets;**
- (c) **issue a Practice Note for Authorised Persons on the principles of definition of streets 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 BA; 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.**

4.37 **Audit has also recommended that the Director of Lands should, prior to the auction of a site, seek advice from the BA on the classification of the site to be sold.**

### **Response from the Administration**

4.38 The **Director of Buildings** agrees with the audit recommendations as mentioned in paragraph 4.36 above. He has said that:

- (a) he will 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;

- (b) the BA can give a definitive ruling on the classification of a site specific to a development proposal only upon submission of building plans for the proposed development when all information relating to site classification, including any specific building proposal from the developer, is available. If there are uncertainties at the time of land sale concerning the effect of the then prevailing circumstances or available information which may affect the classification of a site, he will clarify the uncertainties as far as possible, but without any prejudice to the subsequent decision of the BA. This is because there could be changes in circumstances, including any specific proposal from the developer, that may affect the classification of a site after the land sale; and
  
- (c) it is the standing practice of the BD on completion of the building development and before the BA issues an occupation permit, to check if an approved internal street provided for the purpose of site classification has indeed been constructed.

4.39 The **Director of Lands** agrees with the audit recommendation that, prior to the auction of a site, he will seek clarification from the BA on the classification of the site to be sold for the purpose of assessing the reserve price (see para. 4.37 above).

4.40 The **Secretary for the Treasury** supports the audit recommendations as mentioned in paragraphs 4.36 and 4.37 above from the revenue protection angle. Given the fact that the classification of a site is an essential piece of information that reflects a site's development potential and that it has a direct bearing on the land premium, the higher the development potential of a site, the higher will be the prices at which prospective purchasers are prepared to offer in a public auction.

## **PART 5: PROVISION OF RETAIL CARPARKING SPACES NOT SPECIFIED IN THE CONDITIONS OF SALE OF THE SIU SAI WAN SITE**

5.1 This PART examines the provision of additional carparking spaces (retail carparking spaces) in the development of the Siu Sai Wan site, which had not been stipulated in the Conditions of Sale of the site. Audit considers that there is room for improvement concerning the provision of carparking spaces in new developments.

### **Provision of carparking spaces in the Conditions of Sale**

5.2 Special Condition No. 36(a) of the Conditions of Sale of the Siu Sai Wan site stated that the Purchaser was required to construct not less than 336 spaces for parking of private cars in a public car park. **The Special Condition further stated that, for the avoidance of doubt, the public car park should be taken into account for the purpose of calculating the GFA of the buildings to be constructed on the site.**

5.3 As regards other parking facilities, Special Condition No. 37 stated that spaces should be provided for the parking of private motor vehicles at the scale of provision of one parking space for four residential flats (i.e. the domestic car park). According to the latest approved building plans, 3,098 residential flats would be constructed. Hence, 775 domestic carparking spaces should be provided.

5.4 Special Condition No. 37 did not state explicitly whether the GFA of the domestic car park would be taken into account in calculating the GFA. In March 1997, before the auction of the site, the Purchaser submitted a written enquiry to the Lands D asking whether the domestic carparking spaces to be provided under Special Condition No. 37 were to be included in the GFA calculation. **The Lands D said that the domestic carparking spaces could be excluded from the GFA calculation if the Director of Lands was satisfied that such areas were constructed solely for the parking of motor vehicles (see para. 2.24(a) above).**

### **Provision of retail carparking spaces not specified in the Conditions of Sale**

5.5 Apart from the public car park and the domestic car park, the Conditions of Sale of the Siu Sai Wan site did not require the provision of other types of carparking spaces. On 25 June 1997, pursuant to Special Condition No. 3(a) of the Conditions of Sale, the AP for the development of the site submitted Master Layout Plans for the proposed development to the

Director of Lands for approval. According to the Development Schedule (Note 21) attached to the Master Layout Plans, the AP proposed that, in addition to the public car park and the domestic car park, 103 private carparking spaces, called retail carparking spaces, would also be provided. The Conditions of Sale, however, did not provide for the provision of such retail carparking spaces. The AP remarked on the Development Schedule that the retail carparking spaces were provided in accordance with the HKPSG, which stipulated that a minimum of one retail carparking space should be provided for every 200 square metres of retail GFA.

5.6 *Lands D's approval.* On 5 November 1998, a committee of the Lands D, called Building Committee III (BC III — Note 22) held a meeting to discuss the Master Layout Plans submitted by the Purchaser. The BC III considered that the Master Layout Plans were acceptable subject to the following conditions:

- (a) the domestic car park and retail carparking spaces should be distinguished on the plan;
- (b) prior approval should be obtained from the Director of Lands on the proposed form of the podium; and
- (c) an approval fee should be paid for the provision of the retail carparking spaces.

In November 1998, the Lands D informed the AP of the above decision.

5.7 In January 1999, the AP informed the Lands D that the number of proposed retail carparking spaces would be reduced from 103 to 90 so as to match with the revised retail GFA as per the latest approved building plans. In June 1999, the Chief Estate Surveyor/Valuation of the Lands D asked the DLO/HKE to confirm that the 90 retail carparking spaces:

- (a) were not part of the public car park as defined under the lease;

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**Note 21:** *In accordance with Practice Note for Authorised Persons, Surveyors and Registered Structural Engineers No. APSRSE 1/94 issued by the Lands D, a submission should be accompanied by a Development Schedule indicating the extent of compliance with the lease conditions.*

**Note 22:** *BC III is chaired by the Deputy Director/Specialist of the Lands D. Its members include an Assistant Director of the Architectural Services Department, the Assistant Director/New Buildings of the BD, an Assistant Director of the Highways Department, the Chief Engineer, Traffic Engineering Division of the Transport Department, the Technical Secretary of the Plan D and the Senior Estate Surveyor/Building Plan of the Lands D. Its terms of reference are to consider building plans, master layout plans and routine building matters.*

(b) were not GFA countable; and

(c) could be disposed of individually.

5.8 In reply, the DLO/HKE confirmed that the 90 retail carparking spaces were provided in accordance with the HKPSG and did not form part of the public car park as defined under the lease. Concerning the question of whether or not such retail carparking spaces were GFA countable, the DLO/HKE said that the Director of Lands did not have to exercise his discretion to exempt these carparking spaces from the GFA calculation (Note 23). There was no other restriction on the disposal of these car parks apart from the usual “restriction on alienation before compliance”.

5.9 In July 1999, the Valuation Committee (Note 24) of the Lands D decided that the Purchaser should be charged an approval fee of \$6.6 million together with an administrative fee of \$0.1 million for the provision of the 90 retail carparking spaces. According to the Lands D, the approval fee arose from the revision made to the form of the podium structure. The approval fee was assessed with reference to the enhancement in the value of the site attributable to the provision of the retail carparking spaces. It was the difference between the assessed market land value before and after the grant of approval for the provision of the 90 retail carparking spaces. On 30 July 1999, the Purchaser accepted the offer and paid the approval and administrative fees.

5.10 In October 1999, in reply to enquiries from the Purchaser’s solicitors, the Lands D said that there was no restriction under the lease for the Purchaser to assign, sell or lease the 90 retail carparking spaces. In December 1999, the Legal Advisory and Conveyancing Office of the Lands D informed the Purchaser’s solicitors that the retail carparking spaces should be identified and distinguished from the domestic car park. The retail carparking spaces should not be used for any purpose other than for the parking of licensed motor vehicles by the occupants of the commercial accommodation of the Siu Sai Wan site, or by their bona fide visitors and invitees.

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**Note 23:** *In July 2001, in response to Audit’s enquiries, the Lands D said that no exemption was required because no maximum GFA was specified in the Conditions of Sale.*

**Note 24:** *The Valuation Committee is responsible for the assessment of premium, where the premium does not exceed \$50 million. The Valuation Committee is chaired by the Assistant Director/Valuation of the Lands D. Its members include the Chief Estate Surveyor/Valuation, the Senior Estate Surveyor/Valuation (Secretary) and the Estate Surveyor responsible for the assessment of the premium.*

## **Audit observations on provision of retail carparking spaces**

5.11 In addition to the provision of the public transport interchange, the public car park (see para. 3.10 above) and the domestic car park as required in the Conditions of Sale of the Siu Sai Wan site, Audit noted that the Lands D had also approved the inclusion of 90 additional retail carparking spaces in the site development, and charged the Purchaser an approval fee of \$6.6 million (see para. 5.9 above). Such a requirement for the provision of retail carparking spaces was not stipulated in the Conditions of Sale of the Siu Sai Wan site. In June 2001, Audit asked the Lands D about the basis and the rationale for exempting the 90 retail carparking spaces from the GFA calculation. The Lands D replied that as there was no maximum GFA limit under the lease conditions, it was not necessary for him to consider the question of GFA exemption for the 90 additional retail carparking spaces. **For the sake of clarity, Audit considers that in future, the Lands D should specify in the Conditions of Sale of a site the provision of all types of carparking spaces, including retail carparking spaces required by the HKPSG, which will be built in the development.**

## **Audit recommendations on provision of retail carparking spaces**

5.12 **Audit has recommended that the Director of Lands should:**

- (a) **specify in the Conditions of Sale of a site the requirement for the provision of different types of carparking spaces, including retail carparking spaces, if this is considered essential for the development of the site, so that prospective purchasers are in a better position to assess their bids before the auction;**
- (b) **state clearly in the Conditions of Sale of the site whether the floor area for the provision of carparking spaces, including retail carparking spaces, required by the HKPSG would be taken into account by the Government in determining the GFA of the development so as to avoid ambiguities; and**
- (c) **for future guidance in similar cases, include in the Lands Administration Office Instruction of the Lands D 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.**

## **Response from the Administration**

5.13 The **Director of Lands** agrees with the audit recommendations on the provision of retail carparking spaces as mentioned in paragraph 5.12 above. He has said that:

- (a) he will rely on the advice received from concerned departments concerning the provision of carparking spaces. If they do see the need for the provision of different types of carparking spaces, a mandatory requirement for making a minimum provision will be specified in the Conditions of Sale;
- (b) if the provision of different types of carparking spaces is not a mandatory requirement, no reference will be made in the Conditions of Sale. Any proposal for such provision at the initiation of the developer, subsequent to the land sale, will be given careful consideration in consultation with the concerned departments, having regard to the circumstances prevailing and the merits of the case;
- (c) for cases where mandatory requirements are specified and the Conditions of Sale contains a maximum GFA, the floor area for the provision of retail carparking spaces would be taken into account in determining the GFA of the development; and
- (d) he will review the existing instruction with the aim of making any necessary amendments along the lines of Audit's recommendation.

5.14 The **Commissioner for Transport** has said that it is more appropriate to specify the ratio of provision, instead of the number of carparking spaces, in the Conditions of Sale.

### Chronology of key events

- September 1991            The Executive Council approved the Metroplan Selected Strategy.
- May 1996                 The Director of Planning informed the DLO/HKE that pursuant to the recommendation of the Metroplan and the HKPSG, the maximum plot ratio for the domestic part of the development of the Siu Sai Wan site should be set at 6.5, with about 1,940 flats on the site.
- June 1996                The DLO/HKE circulated a set of draft Special Conditions of the Conditions of Sale of the Siu Sai Wan site to the relevant government departments for comments.
- July 1996                The District Planning Officer/Hong Kong of the Plan D said that according to the Explanatory Statement of approved Siu Sai Wan ODP No. D/H22A/2, a maximum population of 5,210 and 1,940 flats were recommended for the Siu Sai Wan site development. Furthermore, according to the Explanatory Statement of draft Chai Wan OZP No. S/H20/6, the inclusion of a public transport interchange and a public car park required planning permission from the TPB.
- August 1996             The Transport Department applied for the TPB's permission for the inclusion of a public transport interchange and a public car park in the development of the Siu Sai Wan site.
- September 1996         A DLC meeting was held to consider the sale of the Siu Sai Wan site by public auction, the basic terms and the draft Special Conditions for the site.
- September 1996         According to the Lands D's records of the meeting, the representative of the Plan D said that, in view of the emergency vehicular access problem as discussed in the meeting, the maximum residential GFA of a plot ratio of 6.5 might not be achievable. He had no objection to the deletion of the maximum residential GFA. The maximum GFA would then be governed by the B(P)R.
- September 1996         The DLC approved the sale of the Siu Sai Wan site by public auction, the basic terms and the Special Conditions. The DLC also agreed that the clause which specified the maximum total GFA for private residential purposes should be deleted.

- November 1996                      The TPB granted a permission under section 16 of the Town Planning Ordinance for the public transport interchange and the public car park.
- March 1997                            A written enquiry was submitted to the Lands D asking whether the domestic carparking spaces were GFA countable. The Lands D confirmed that the domestic carparking spaces could be excluded from the GFA calculation if the Director of Lands was satisfied that such areas were constructed solely for the parking of motor vehicles.
- March 1997                            A committee of the Valuation Conference of the Lands D approved the reserve price of the Siu Sai Wan site of \$6,300 million on the basis that it was a Class A site. The GFA for the domestic part of the development of the site was 179,382 square metres and that for the non-domestic part was 47,536 square metres.
- March 1997                            The Siu Sai Wan site was sold by public auction in the sum of \$11,820 million. The price was significantly higher than the Lands D's reserve price of \$6,300 million.
- April 1997                            The Purchaser of the Siu Sai Wan site held a meeting with the BD to discuss about the development of the site. The Purchaser informed the BD that building plans would be prepared on the basis that the site was a Class C site under the B(P)R.
- April 1997                            The Purchaser informed the Director of Lands that he was preparing a submission to the BD to seek confirmation under the B(P)R of the classification of the site for plot ratio calculation purpose.
- April 1997                            The Director of Lands said he had no objection to the Purchaser's proposal as the Conditions of Sale were silent on this aspect.
- May 1997                                A BC of the BD discussed the site classification of the Siu Sai Wan site. The BC agreed that the site was abutting only on one street and that it was a Class A site under the B(P)R.

- May 1997                      The Purchaser wrote to the BD. The Purchaser proposed to provide two internal streets of 4.5 metres wide within the site: one street along the north-western boundary, and another street along a portion of the north-eastern boundary. It would then abut on three streets (i.e. the two proposed internal streets and Siu Sai Wan Road). Sixty percent of the boundary of the site would abut on these three streets. The site would then become a corner site.
- May 1997                      The BC agreed that the Siu Sai Wan site was a Class C site.
- June 1997                     The AP submitted Master Layout Plans for the proposed development of the Siu Sai Wan site to the Lands D and marked in the Development Schedule attached thereto that 103 retail carparking spaces would be provided.
- May 1998                     The BD received a request from the Purchaser to consider the Siu Sai Wan site as a Class C site under the B(P)R without the need to provide streets of 4.5 metres wide.
- June 1998                    The BD sought advice from the Department of Justice concerning the classification of the Siu Sai Wan site under the B(P)R.
- July 1998                    The Department of Justice advised the BD that the BA should look at the existing state of the walkway in deciding whether it was a street, and that the walkway was a street within the meaning of the term as defined in the BO and the B(P)R.
- November 1998              BC III considered that the Master Layout Plans submitted by the Purchaser were acceptable subject to the conditions that the domestic car park and the retail carparking spaces should be distinguished on the plan; that prior approval should be obtained from the Director of Lands on the proposed form of the podium; and that an approval fee should be paid for the provision of the retail carparking spaces.
- November 1998              The BA agreed to “grant modification in treating the site as a Class C site” under the BO, provided that a street, i.e. the approved 4.5-metre emergency vehicular access, was maintained alongside the south-eastern boundary and excluded from the calculation of the site area.

- November 1998                      The BA informed the Purchaser of the BA's decision.
- January 1999                      The AP informed the Lands D that the number of proposed retail carparking spaces would be reduced from 103 to 90 so as to match with the revised retail GFA as per the latest approved building plans.
- June 1999                         The DLO/HKE confirmed that the 90 retail carparking spaces were provided in accordance with the HKPSG and did not form part of the public car park as defined under the lease.
- July 1999                         The Valuation Committee of the Lands D decided that the Purchaser should be charged an approval fee of \$6.6 million together with an administrative fee of \$0.1 million for the provision of the 90 retail carparking spaces.
- July 1999                         The Purchaser accepted the offer and paid the approval and administrative fees.
- October 1999                      The DLO/HKE informed the Purchaser's solicitors that there was no restriction under the lease on the assignment, sale or lease of the 90 retail carparking spaces.
- February 2001                      The BA approved the building plans of the Siu Sai Wan site development. According to the latest approved building plans, the GFA for the domestic part of the development was 223,914 square metres and that for the non-domestic part was 44,989 square metres.
- April 2001                         The BA issued the Occupation Permit for the new buildings on the Siu Sai Wan site on 11 April 2001.

### Acronyms and abbreviations

AP	Authorised Person
BA	Building Authority
BAC	Building Authority Conference
BC	Building Committee
BC III	Building Committee III
BD	Buildings Department
BO	Buildings Ordinance
B(P)R	Building (Planning) Regulations
DLC	District Lands Conference
DLO/HKE	District Lands Officer/Hong Kong East
GFA	Gross Floor Area
HKPSG	Hong Kong Planning Standards and Guidelines
HKSAR	Hong Kong Special Administrative Region
Lands D	Lands Department
LDC	Land Disposal Committee
m <sup>2</sup>	Square metres
ODP	Outline Development Plan
OZP	Outline Zoning Plan
Metroplan	Metroplan Selected Strategy
Plan D	Planning Department
TPB	Town Planning Board
USD	Urban Services Department