

Report No. 43 of the Director of Audit — Chapter 6

GRANT OF LAND AT DISCOVERY BAY AND YI LONG WAN

Summary

1. In the 1970s, the Government granted land for holiday resort and residential developments at Discovery Bay and Yi Long Wan of Lantau Island. The Discovery Bay development covers an area of about 6,152,000 square metres and the Yi Long Wan development covers about 28,000 square metres. The Discovery Bay development is still in progress.

Change in concept of the Discovery Bay development

2. *Original development concept.* In December 1973, the Executive Council (ExCo) was informed that the basic concept of the Discovery Bay development was to create a self-contained recreation and leisure community with a wide variety of recreational facilities. In July 1976, ExCo was informed that the user condition restricted the use of the land to the purposes of a holiday resort with limited residential and commercial purposes. Having considered the lease conditions, ExCo advised and the then Governor ordered that the land at Discovery Bay should be granted to a developer (hereinafter referred to as Developer A) for a holiday resort and residential/commercial development at a premium of \$61.5 million. In April 1977, ExCo was informed that the conditions allowed for low density development which, at the maximum, would provide over 401,342 square metres of residential resort accommodation and 140,284 square metres of hotel accommodation.

3. *Change in development concept.* According to the lease conditions, the Discovery Bay site should be developed in accordance with a Master Layout Plan (MLP) which showed Developer A's development proposals for approval by the Government. In September 1977, MLP 4.0 was submitted to the then Secretary for the New Territories, in which Developer A requested that: (a) the hotel gross floor area (GFA) would be reduced from 140,284 square metres to 32,000 square metres; (b) the resort accommodation GFA of 401,342 square metres would be deleted; and (c) housing accommodation GFA of 524,000 square metres would be added. When considering MLP 4.0, the then New Territories District Planning Division of the Town Planning Office said that it was against the change in the concept of the development. In January 1978, the Secretary for the New Territories approved MLP 4.0.

4. In July 1985, the Authorised Person for the Discovery Bay development suggested to the Lands Department (Lands D) that the surplus hotel and commercial GFA should be exchangeable for residential GFA on a one to one basis. He said that his proposal retained the concept of developing a first-home residential community (with access to recreational facilities in a natural environment). He said that as a result of the change of development concept over the past few years, the hotel development could no longer be considered as an integral part of the Discovery Bay development. He requested that maximum flexibility be given to the development. The then Principal Government Land Agent of the Lands D said that the Authorised Person's submission raised the question as to whether the case should be reported to ExCo because the development at Discovery Bay was very much less of a tourist resort and more of a typical residential development. The then Government Land Agent said that it was probably better to refer the case to the then Land Development Policy Committee first, and then to ExCo, if necessary.

5. In October 1985, however, the Development Progress Committee agreed that the proposal to change the overall concept of the development would not require formal approval.

6. Having regard to the significant changes in development at Discovery Bay since 1985, and the fact that the development is still in progress, in August 2004, the Audit Commission (Audit) asked the Administration whether there was a need to seek ExCo's endorsement to the change in concept. In October 2004, the Secretary for Housing, Planning and Lands responded that, since ExCo was aware of the planning intention for Discovery Bay when ExCo approved the Discovery Bay Outline Zoning Plan on 11 March 2003, he did not consider it necessary to seek ExCo's covering endorsement again on the development concept of Discovery Bay. *Audit has recommended that the Director of Lands should, for a land grant for a development involving a particular concept, incorporate effective provisions into the lease conditions or other contract documents.*

Provision of facilities in the Discovery Bay development

7. In 1973, when ExCo agreed that the Discovery Bay development could proceed, ExCo was informed that a public golf course would be built and that 90% of the recreational facilities would be available to the public. According to the lease conditions, the grantee should erect, maintain and keep in use on the site a leisure resort and certain "minimum associated facilities", which should include a public golf course and a cable car system. After approval of MLP 4.0 in January 1978, Developer A applied for the deletion of the public golf course and the cable car system. In February 1982, the then Secretary for City and New Territories Administration approved MLP 5.0, by which the public golf course was deleted. In February 1985, the Director of Lands approved the deletion of the cable car system upon the approval of MLP 5.1.

8. The implications, financial or otherwise, in deleting the public golf course and the cable car system had not been assessed. *Audit has recommended that the Director of Lands should assess the implications of deletion of facilities specified in the lease conditions before approving MLP amendments, having regard to the fact that any deletion may have premium implications.*

Changes in Master Layout Plans and premium implications

9. ***Replacement facilities.*** In 1979, Developer A agreed with the Secretary for the New Territories to replace the public golf course by some active public recreational facilities in the same area or elsewhere within the Discovery Bay site. Audit noted that, in addition to the deletion of the public golf course from MLP 5.0, the area of other recreational facilities also decreased by 8,500 square metres GFA. *Audit has recommended that the Director of Lands should specify the GFA, gross site area and other necessary requirements of the replacement public facilities of a development, before approving the deletion of facilities, especially public facilities, from an MLP.*

10. As far as could be ascertained from the Lands D's records, Audit could not find a list of the specific replacement public recreational facilities, showing the site area and locations, which Developer A should provide. There was also no verification of the specific as-built facilities with those agreed with Developer A to ensure that they had in fact been built. *Audit has recommended that the Director of Lands should keep a proper record of the approved replacement public facilities and use it to verify subsequently that the facilities have in fact been built.*

11. ***Premium on approval of changes made in MLPs.*** The Lands D is empowered to charge premium when approving changes in MLPs. However, other than for the changes made in MLP 5.6, 5.7 and 6.0E1, Audit could not find evidence that any premium had been collected for the changes made in the MLPs prior to 7 June 1994 (including the deletion of the public golf course in MLP 5.0 and the cable car system in MLP 5.1). As far as could be ascertained from the Lands D's records, the reasons for not assessing and/or charging premium for the changes in those MLPs were not documented. *Audit has recommended that the Director of Lands should, on approval of MLP changes, assess the premium implications of such changes and collect the premium, if any.*

Site boundaries of the Discovery Bay and Yi Long Wan developments

12. ***Setting out of site boundaries.*** In September 1975, the Government granted the Yi Long Wan site to a developer (hereinafter referred to as Developer B). In January 1976, the Government set out the Yi Long Wan site boundaries. In September 1976, the Government granted the Discovery Bay site to Developer A. However, up to the time of audit (July 2004), i.e. after a lapse of 28 years after the land grant, the Lands D had not yet

set out the site boundaries of the Discovery Bay development. *Audit has recommended that the Director of Lands should draw up a programme to complete the setting out of boundaries for sites granted but the boundaries of which have not yet been set out.*

13. ***Encroachment on government land at Discovery Bay.*** Since early 1980s, the Lands D has been aware of encroachments at the Discovery Bay golf course. Audit considers it unsatisfactory that some 41,200 square metres of government land had been occupied without authorisation for over 20 years. In December 2003, Developer A settled the rent for 21 years for the occupation of the government land. In July 2004, the Lands D and Developer A entered into a Short Term Tenancy for the encroached government land. *Audit has recommended that the Director of Lands should take timely land control action to remove any encroachment on government land.*

14. ***Encroachment on government land at Yi Long Wan.*** In 1979, the then New Territories Administration found that there was encroachment at the Yi Long Wan site. However, the District Office/Islands had not informed the then Registrar General's Department of the land encroachment problem, before the latter issued the pre-sale consent to Developer B in March 1980. Subsequently, it was found difficult to resolve the site boundary problem as the site was under multiple ownership.

15. In December 1980, while the rectification of the site boundary problem remained unresolved, the District Office/Islands agreed to issue the Certificate of Compliance in return for Developer B's undertaking to pay additional land premium for adjusting the site boundaries. Audit noted that the letter of undertaking had not been vetted by the Registrar General's Department and the District Office/Islands had not sought legal advice before agreeing to the issue of the Certificate of Compliance. In the event, the Registrar General's Department said that it would be difficult to ask Developer B to pay a premium for the extra piece of land. *Audit has recommended that the Director of Lands should seek legal advice prior to issuing the Certificate of Compliance and pre-sale consent, if problems of the site boundary of a development are found.*

Response from the Administration

16. The Administration has accepted the audit recommendations.

November 2004