

Report No. 45 of the Director of Audit – Chapter 3

DEVELOPMENT OF A SITE AT SAI WAN HO

Summary

1. In January 2001, a site at Sai Wan Ho, Hong Kong (the Site), with an area of about 12,200 square metres (m²), was sold by tender to a developer (the Developer) at a premium of \$2,430 million. The lease conditions of the Site required the Developer to provide, on a reimbursement basis, Government Accommodation as follows: (a) a marine police operational area (MPOA), with a net operational floor area of not less than 1,500 m²; and (b) a public transport terminus (PTT) which included a public transport interchange and a cross boundary coach terminus.

Pre-tender enquiries on gross floor area calculation

2. *Pre-tender enquiries not publicised.* In late November 2000, before the close of the tender, a prospective tenderer (not the successful tenderer) sought clarification from the Lands Department (Lands D) on whether the Government Accommodation would be excluded from the gross floor area (GFA) calculation. After consulting with the Buildings Department (BD), the Lands D informed the prospective tenderer that the Government Accommodation “shall be included” in the GFA calculation. While the Lands D recorded enquiries from, and its answers to, prospective tenderers on its file, the Audit Commission (Audit) could not find records showing that the Lands D had publicised them. *Audit has recommended that the Director of Lands should publicise all relevant enquiries and answers given to prospective tenderers relating to GFA calculation before the close of tendering of a land sale.*

Development intensity of the Site

3. *Original maximum domestic GFA of 85,720 m².* In November 1998, the Metro Planning Committee of the Town Planning Board was informed that the Site would be able to produce about 1,000 residential flats, when its agreement to the proposed amendments to the draft Quarry Bay Outline Zoning Plan No. S/H21/9 to rezone the Site from government/institution/community (GIC) to “Other Specified Uses” annotated “Residential cum Public Transport Terminus, Commercial and Community Facilities” was sought. According to the Planning Department (Plan D)’s calculation, this was equivalent to a

maximum permissible domestic GFA of 85,720 m². Later, in response to the Lands D's enquiry about the drafting of the lease conditions, the Plan D recommended a minimum GFA of 80,000 m² for residential purposes to produce about 1,000 residential flats with an average size of 80 m². It has now transpired that the actual development of the Site turned out to be a development of five 61 to 64-storey blocks of 2,020 residential units, with a total domestic GFA of 135,451 m². As the planned population of the Site has been increased, the provision of local open space per person would be reduced in the development. *Audit has recommended that the Director of Planning should, having regard to the need to achieve more effective land use planning and control over population density: (a) as far as practicable, stipulate in the relevant Outline Zoning Plan the maximum GFA that can be supported by the public facilities; and (b) update the Plan D's assessment on the provision of public facilities in the district before the sale of a site.*

Provision of Government Accommodation

4. ***Extension of PTT to Reserved Areas.*** In November 1998, during the planning of the MPOA, the Architectural Services Department (ArchSD) informed the relevant bureau/departments that, based on its assessment, the approximate area of the 71 parking bays of the MPOA was 3,200 m². The departments concerned considered that the ArchSD's assessment of 3,200 m² was excessive. In late November 1998, the Hong Kong Police Force accepted the proposed layout of the MPOA with 1,500 m² of space. The ArchSD also confirmed that "the expected project requirements are achievable". According to the Technical Schedule of the MPOA attached to the lease conditions, the MPOA, with a net operational area of not less than 1,500 m², should have 71 parking bays. After the sale of the Site, the Authorised Person (AP) for the Developer claimed that extra space was required to meet the MPOA requirements specified in the Technical Schedule, and that the PTT had to be extended to "encroach" on areas designated on the Control Drawing as "Proposed Space Reserved for Entrance Lobbies and Other Facilities to Upper Floor" (the Reserved Areas).

5. In view of the need to extend the PTT into the Reserved Areas, in July 2001, the AP asked for bonus areas in return for the dedication of part of the Reserved Areas for public use. On 1 August 2001, the Building Authority agreed to grant bonus areas to the Developer in return for the dedication of part of the Reserved Areas for PTT use. Although the relevant departments had said that the amendments of the layout and the alleged extension into the Reserved Areas stemmed from the AP's own design, the ArchSD said that there were no grounds to reject the AP's proposal because, among other things, the Control Drawing was "not to scale". *Audit has recommended that the Director of Architectural Services should, before the sale of a site where GIC facilities are to be provided by the developer, ensure that the GIC design requirements are, where appropriate, properly drawn to scale in the layout drawings for incorporation into the lease conditions of the site.*

Site classification

6. ***Development intensity increased after change of site classification.*** In January 1999, the BD advised the Lands D that the Site was a Class B site under the Buildings Ordinance. In December 1999, to qualify the Site as a Class C site, the Lands D incorporated a Special Condition in the lease stating that an area (4.5 metres in width along the south-eastern boundary of the Site) of about 194 m² would be demarcated as a non-building area and should be open to public passage at all times. In the circumstances, the Lands D and the prospective tenderers might have considered that the non-building area would have to be excluded from the site area in plot ratio and site coverage calculations. Indeed, the Lands D had excluded this area from the site area calculation when it carried out the reserve price valuation. However, after the sale of the Site, at the Building Authority Conference (BAC) held on 1 August 2001, the Building Authority agreed that the Site was a Class C site without requiring the Developer to demarcate the non-building area within the Site boundary as a street. Consequently, the development intensity of the Site was increased due to the increase in the resultant GFA. *Audit has recommended that the Director of Buildings should, prior to the sale of a site, seek clarification from the relevant government departments to ascertain if there are factors affecting the site classification and consider seeking legal advice to clarify legal ambiguities about site classification before giving advice to other government departments.*

Granting of exemption areas

7. ***Lease conditions silent on whether Government Accommodation should be included in GFA calculation.*** In November 1999, when the draft Special Conditions of the lease of the Site was being prepared, the BD advised the Lands D that the Government Accommodation (i.e. the PTT and the MPOA) should be included in the GFA calculation. However, the information had not been incorporated into the lease conditions. At the expanded BAC (at which two university professors were invited to give their independent views) on 1 August 2001 to determine the AP's application for excluding the Government Accommodation from the GFA calculation, there were diverse views on the issue. After seeking legal advice, the Building Authority decided in October 2001 that the PTT should be excluded from the GFA calculation while the MPOA should be included. *Audit has recommended that the Director of Buildings should: (a) prior to the sale of a site, seek legal advice on issues (such as that relating to the exemption of GFA in this case) on which the legal basis is doubtful before giving advice to other government departments; and (b) establish a set of procedures and criteria for the appointment of external observers to attend the BAC. Audit has also recommended that the Director of Lands should, where appropriate, stipulate explicitly in the lease conditions of a site whether the government accommodation required would be included in the GFA calculation.*

Granting of bonus areas

8. ***Decision to grant bonus areas.*** At the BAC held on 1 August 2001 to discuss the AP's application for bonus areas in return for the dedication of areas for public use, the AP said that the PTT had to be extended to the Reserved Areas on the ground floor as extra space was required for constructing the MPOA. In addition, the Developer proposed to dedicate a strip of land along the south-eastern boundary for public passage to facilitate access to the PTT. Taking into account the views of the BAC members, the Building Authority agreed to grant bonus areas in return for: (a) dedicating a portion of the strip of land at the south-eastern boundary (i.e. Area D1 in Figure 3 in para. 7.2 in the Report), giving public passage to the PTT; and (b) dedicating areas (i.e. Areas D2 and D4 in Figure 3) in the Reserved Areas for use as the PTT. On 1 September 2001, the Building Authority approved the building plans, and granted the bonus areas in return for dedicating the areas for public use.

9. In March 2002, the Lands D expressed its surprise that the Building Authority had approved the dedication of the Reserved Areas. It considered that the grant of bonus areas was premature and should be withdrawn by the Government. At the BAC held on 23 April 2002, the Building Authority upheld his decision made on 1 August 2001. Around that time, the Lands D held further discussions with the relevant departments which opined that the Government did not require a larger MPOA and that the proposal of revising the MPOA layout came from the Developer. The Transport Department had also said that it was the AP's design that affected the size and the layout of the PTT. In June and November 2002, the Legal Advisory and Conveyancing Office of the Lands D considered it doubtful that the Government could charge premium for the full value of the bonus areas as there was no maximum GFA in the lease conditions and any bonus was a statutory matter under the Buildings Ordinance. Subsequently, the Lands D approved the revision of the layout of the Government Accommodation at a premium of \$6 million. *Audit has recommended that for developments involving GIC facilities, the Director of Buildings should, before granting bonus areas in return for dedicating areas for public use, consult and obtain consensus from the relevant government departments, in particular the Lands D. Audit has also recommended that the Director of Lands should, in order to protect the Government's interest arising from the Building Authority's granting of concessions not provided for in the lease conditions, where appropriate, incorporate a maximum GFA clause in the lease.*

Response from the Administration

10. The Administration has generally accepted the audit recommendations.

November 2005