

# **AUDIT OF THE AMENDMENT TO TOWN PLANNING DATA OF A COMPANY'S PLOTS AND THE ISSUANCE OF THE PLANNING PERMIT FOR THE CONSTRUCTION OF A HIGH-RISE BUILDING IN LIMASSOL DISTRICT**



**AUDIT OFFICE OF THE REPUBLIC  
SPECIAL REPORT no. MOI/01/2021**



**19 April 2021**

**AUDIT OF THE AMENDMENT TO TOWN PLANNING DATA OF A  
COMPANY'S PLOTS AND THE ISSUANCE OF THE PLANNING PERMIT FOR  
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**AUDITED ENTITIES**

**Ministry of Interior**

**Department of Town Planning and Housing**

## 1. Executive Summary

We carried out this compliance audit, after a letter of complaint was submitted to our Office, dated 16.10.2017, by the then President of the Movement of Ecologists-Citizens' Cooperation. In the said letter, there is a reference to a complaint by an anonymous citizen, which was also submitted to our Office on 17.10.2017, "for ex gratia illegal derogations for a building in Limassol and for political coverage by the authorities of the Republic of Cyprus".

The building is a multi-storey development of residential flats, shops and leisure/entertainment facilities, within five plots on coastal avenue A, in Municipality A, within the boundaries of Limassol Local Plan (LLP). The plots were bought by the owner company in 2007 at a price of about €20 million. According to LLP 2006, which was in force at the time of purchase, part of the plots belonged to the Tourist Zone T1b, where Tourism and Housing development was allowed (with building coefficient (BC) for houses 0,45:1 and a maximum of 2 floors) and part of them belonged to the Commercial Zone Cz, where the allowed usage was based on the Activities Axis IV (with development coefficients similar to the neighboring Tourist Zone previously mentioned). The town planning regime of the plots was initially upgraded during the revision of LLP in 2011, with the upgrade of the BC in the Tourist Zone T1b from 0,45:1 to 0,60:1. Then, during the finalization of the LLP in 2013, the plots were integrated in the Tourist Zone T1b1a, with an increase of the BC from 0,60:1 to 0,80:1 and the allowable use in the Commercial Zone Cb was expanded, by the amendment of the Activities Axis from Category IV to I.

In 2009, the company submitted an application at the Department of Town Planning and Housing (DTPH) for the issue of a planning permit, which was granted in 2011, with no. LIM/X/2009 regarding the construction of a 12-storey building. After a series of amendments, permit no. LIM/X/09/D was submitted for approval on 2.10.2017, which was granted on 4.10.2017, regarding a 29-storey building, as shown in the table below:

Town Planning Permit No.	LIM/X/2009	LIM/X/2009/A		LIM/X/09/B	LIM/X//09/C	LIM/X/09/D
		Initial plans	Revised plans			
Date of Submission/ Acceleration	23.12.2009	25.4.2012	20.4.2015/ 25.11.2015	20.1.2016	16.6.2017	2.10.2017
Date of permit granting	1.3.2011	-	26.11.2015	16.3.2017	18.9.2017	4.10.2017
Allowed BC	0,45:1	0,60:1	0,80:1	0,80:1	0,80:1	0,80:1
Allowed floors no.	2	3	3	3	3	3
Approved floors no.	12	12	25	25	29	29

The project's foundation stone was laid on 6.10.2017 and the Building Permit was granted by Municipality A as at 27.11.2017.

Our audit was divided into the following units.



The main audit findings are summarized as follows:

## 1.1 Amendment of the plots planning data

### 1.1.1 Integration of the company's plots in a zone with BC 0,80:1

At the revision of the 2011 LLP, the company's plots were initially upgraded from BC 0,45:1 to 0,60:1, through the upgrade of the BC for the whole zone where they belonged. Subsequently, during the stage of submitting objections, the company applied for the integration of its plots in a zone with BC 1:1, while Municipality A suggested the upgrade of BC of their zone to 0,80:1. During the finalization of LLP 2013, the company's and the Municipality's requests were partly satisfied. As a result, the BC of the development's plots plus one intermediate, was increased from 0,60:1 to 0,80:1, benefiting exclusively their owners.

**Our Office, recommended: (a) The planning decisions should not be taken in order to satisfy the owners of specific plots and (b) At the stage of objections examination, any changes in decisions that had been previously examined should be avoided, except in cases of omissions or errors, as stipulated in the procedure.**

As we were informed by the DTPH, **(a)** the modification of the building terms regarding the residence use resulted through the examination of the Local Authority's requests and **(b)** the evaluation of the objections is always based on thorough investigation and supporting documentation, ensuring the public interest as opposed to any private interest.

### 1.1.2 Composition of the Objections Committee

The participation of the Mayor of the Local Authority during the amendment procedure for the LLP 2011, as a member of the Common Council and as a member of the Objections Committee (OC) is considered as not appropriate and possibly not legal, since the decisions' impartiality is not ensured.

**We recommended that both the issue of composition of OC, as well as the issue of the participation of the Mayor/Community Councilor during the examination of the objections of their Municipalities/Community Councils are reevaluated.**

As we were informed, the Department re-assesses the composition and operation of OC as a whole, following a relevant decision of the Supreme Court on 12.6.2018.

## **1.2 Granting of the planning permit no. LIM/X/2009 and its subsequent amendments**

### **◆ Planning permit no. LIM/X/2009/A, dated 26.11.2015**

With the submission of the amendment plans on 20.4.2015 and after the DTPH carried out the relevant consultations with the relevant Authorities, following the company's request on 25.11.2015 for acceleration, the permit LIM/X/2009/A was granted on 26.11.2015. The completion of the study, the approval and granting of the town planning permit no. LIM/X/2009/A within one day raises questions whether such time was sufficient to carry out all the pending procedures.

As informed by the DTPH, the study of the application starts from the date of submission of the application and it is updated according to new data that may arise meanwhile.

### **◆ Planning permit no. LIM/X/2009/D, dated 4.10.2017**

On 2.10.2017, an application was submitted for modifications on the third floor of the building that had been approved by the planning permit LIM/X/2009/C, dated 18.9.2017, in order to settle an excess of 389 m<sup>2</sup> in the allowable building area, for which a condition for a BC transfer from listed buildings was imposed, before the issuance of the building permit. On 4.10.2017, the Town Planning Authority approved and granted the town planning permit no. LIM/X/2009/D on the same day. We note that, on 6.10.2017 the foundation stone of the project was laid.

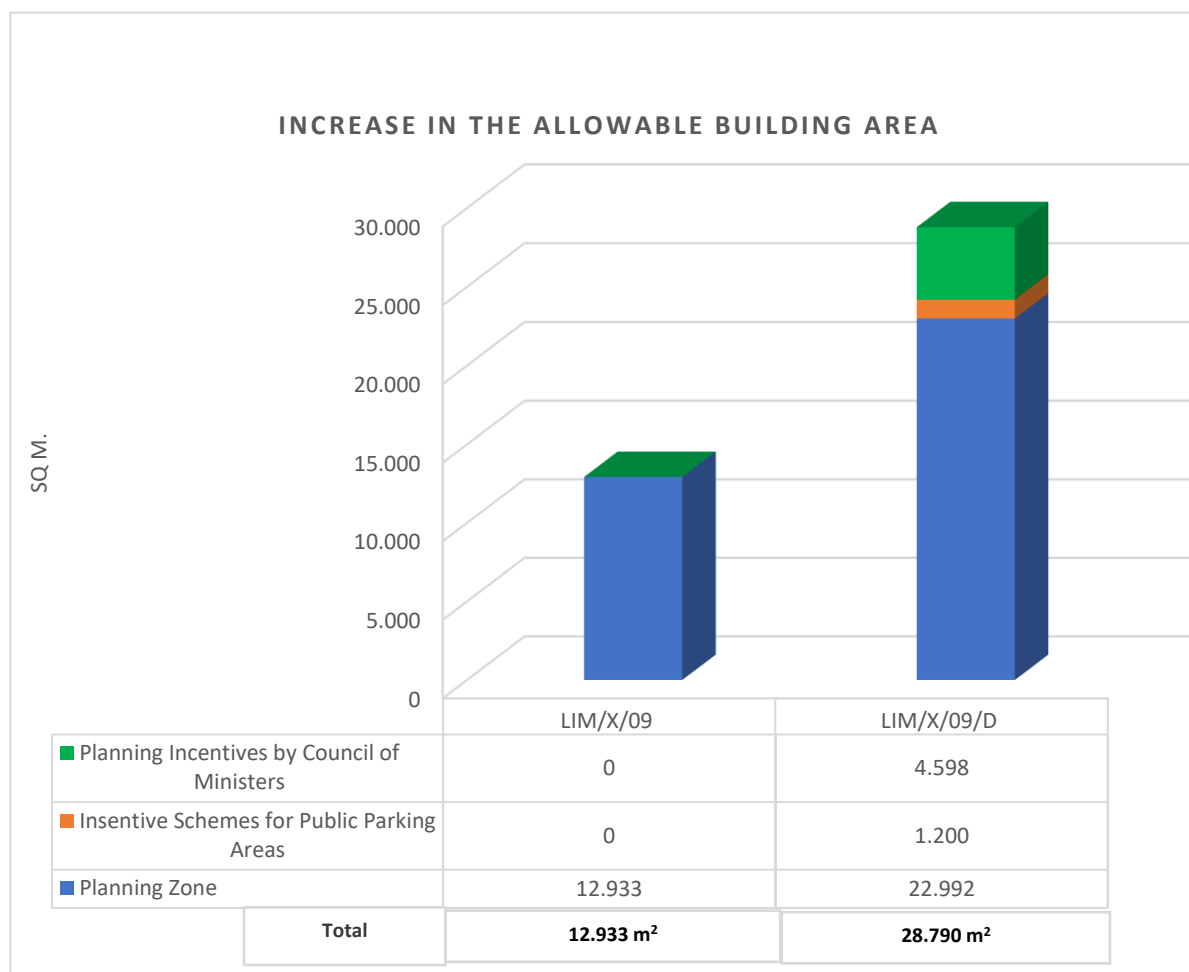
As informed by the DTPH, because the procedures for transferring BC from a listed building are time-consuming, in view of the ceremony for the laying of the foundation stone, the company submitted a new application regarding the abolition of parts of the building, that are taken into consideration for the calculation of the BC. The Town Planning Authority had full calculations of the development coefficients and after examining the above request, granted the planning permit LIM/X/2009/D, abolishing the term for BC transfer.

**We recommended that the Department should handle all applications with the same effectiveness, based on a permits issue time monitoring system, ensuring transparency and equal treatment. Additionally, we believe that the Government Authorities should not give the impression that they act under private entrepreneurs' demand.**

### 1.3 Increase in the allowable building area

The increase in the allowable building area of the development, when comparing the initial at the time of purchase of the plots (with BC 0,45:1) and the one arising from the increase of the BC approved by the amendment permit LIM/X/09/D, dated 4.10.2017 (with BC 0.80:1 and granting of town planning incentives), is at 15.857 m<sup>2</sup>. Taking into account that the estimated land value of the development by the Lands and Survey Department on 1.1.2018, was approximately €30 millions, it turns out that, if the company's plots were not benefitted by the zone upgrade and the granting of incentives, for ensuring the increase of the building area of the development by 15.857, based on the above scenario, the purchase of an additional land of an estimated value of €37 million would be required, as analysed below:

Allowable building area				
	Initial (2007)	Final (LIM/X/09/D, dated 4.10.2017)	Increase in the building area	Estimated benefit
	m <sup>2</sup>	m <sup>2</sup>	m <sup>2</sup>	€mil
<b>BC based on Town Planning Zones (net plot area x BC)</b>	12.933	22.992	10.059	23
<b>Planning incentives for the recovery of the development activity (20%)</b>	–	4.598	4.598	11
<b>Incentive Scheme for Public Parking Areas</b>	–	1.200	1.200	3
<b>Total</b>	<b>12.933</b>	<b>28.790</b>	<b>15.857</b>	<b>37</b>



The above benefit estimation arising from the additional building area is considered rational, since according to the non-audited financial data found in the application files, the expected benefit, is estimated at about €40 millions.

In our Office's opinion, although the amounts arising from the examined development data, are considered as a preliminary indication of the magnitude of the benefit due to planning upgrade and the provision of incentives, however, this is still oversized, no matter how it is justified.

**Taking into account the total number of private land owners that significantly benefit from the amendment of the Development Plans, the State should consider promoting enactment of instruments, such as the imposition of re-zoning gains tax. Also, when granting significant development rights, through planning incentives, it should be scientifically documented whether this is in the public interest and does not promote enrichment opportunities to specific categories of entrepreneurs. Our Office recommends the re-assessment of the said incentives.**

As we were informed by the DTPH, the increase of the allowable building area arises from the upgrade of the BC of the planning zones from 0,45 to 0,80:1 and the need of using the BC without increasing the coverage and sealing percentage of the land.

## 1.4 Licensing of high-rise buildings

- ◆ Questions arise **(a)** for the legal framework, on which the Town Planning Authority based the acceptance of a 29-storey high building, outside the specified areas provided by LLP where buildings with up to 13 floors are allowed and **(b)** for the way of ensuring the effective protection of the environment, since the submission of a preliminary environmental study, which is required in the case of high buildings within the specified by LLP areas, was not requested.
- ◆ The great flexibility in implementing the DTPH Director's discretion, resulted in approving the erection of a building with 26 floors above the allowable by the LLP.
- ◆ The issuance of an Order by the Minister of Interior, for the evaluation procedure of the applications for high-rise buildings, which was provided by the Framework for Clarifying the General Principles and Conditions for High Buildings specified by DTPH on 25.4.2018, is still pending, despite granting a significant number of permits for high-rise buildings until now.

**As arises from the licensing under examination, as well as from the trend noted in the last years for building high-rise building all over Cyprus, our Office recommended (a) the enactment of a special legislative framework for high-rise buildings, to be considered as a priority by the DTPH and (b) to specify the allowable deviation limit from the Local Plans provisions, when the Town Planning Authority is exercising its discrete power for recommending an increase of height/floors number.**

As we were assured by the DTPH, the approval for exceeding the maximum allowed number of floors which is provided in LLP 2011, was granted at the discretion of the DTPH Director. The DTPH also noted that the Local Authority's agreement was also secured. Additionally, during the examination of the application no. LIM/X/2009/A, the opinion/terms of the Environmental Department were secured and a term was set in the planning permit, providing that the terms set by the Environmental Authority will be implemented.

## 1.5 Commencement of the project's works and attendance of the Municipal Council of the Competent Building Authority at the inauguration/laying the foundation stone event, before the issuance of building permit.

**1.5.1** The presence of the Municipal Council at the laying the foundation stone ceremony of the project, before the issuance of the building permit, does not conflict with the provisions of the relevant permit legislation. However, all actions should be in agreement with the sense of justice imposed by the Principles of Good Administration, provided by the General Principles of Good Administration Law.

**We recommended that the administrative instruments always act according to the Principles of Good Administration, within the appropriate legal framework.**



**1.5.2** During the examination of the town planning permit no. LIM/X/2009/C by the DTPH, it was observed via a satellite photo, dated 11.4.2017, that the works of the development had started, while the building permit was granted by Municipality A on 27.11.2017. The allegation given by Municipality A that the works that were being executed regarded testing soil works for purposes of structural study, does not seem to be valid, since the structural study is part of the documents submitted for purposes of issuing the building permit, an application that had been submitted long before.

**We recommended that the Competent Building Authorities systematically carry out the indicated supervisions and in cases of violations to implement the relevant legislation. Also, we suggested that, in case that the Town Planning Authority notices at the planning permit examination stage, that the development works have started, the Competent Building Authority should be informed, so as to take the necessary actions.**

As we were informed by the Director General of the Ministry of Interior, a relevant circular will be sent out to all the Building Authorities.