經濟及就業委員會 第六次會議

議程第 6 項:樓宇施工前期小組 有關土地事宜的報告

目的

樓宇施工前期小組已完成其第一階段涵蓋土地事宜的檢討工作計劃。本文件闡述有關土地契約和契約修訂制度的意見和 建議。

背景

- 2. 經濟及就業委員會方便營商小組轄下樓宇施工前期工作小組於二零零四年十月成立,負責研究地產界所遇到的問題,並就可提升業界運作效率的方法作出建議。
- 3. 小組的工作計劃涵蓋土地和規劃事宜,土地事宜涉及三項範疇,即簡化契約條款、提升契約修訂制度、條例的配合和轉授權力。而有關城市規劃事項的研究將會在二零零五年下半年度展開。
- 4. 在土地事宜方面,小組認為業界特別關注目前取得政府批准需時較長,以及因大多行政和技術事項要被載入業權契據而導致的重覆管制問題。此外,業界在補地價達成協議方面亦遇到問題。
- 5. 小組的工作採用分層次的方式進行,委員首先會研究和檢討某個特定事項,繼而與有關的政府機關進行討論。直到目前為止,小組一共舉行了七次會議,其中兩次是與地政總署討論一些特別受關注事項,並詳細探討可行的措施,以提升現行有關土地的制度。小組亦與屋宇署舉行過一次會議,以了解有關統一闡釋物業發展管制參數的工作。在最近一次會議上,小組

與房屋及規劃地政局局長探討地產業和政府可以如何更有效地合作,以促進公眾利益及創造更好的經濟環境。本文件列載小組的改善建議,房屋及規劃地政局及地政總署的回應則載於附件。

全面改革土地制度的需要

- 6. 在某些地域,土地是以永久業權的形式持有,而且對城市 規劃和環境等事宜亦有個別法例作出規定。與前者不同,香港 實行的是批租制度,在這制度下,地政總署的身分既是業主, 又是維護公眾利益。
- 7. 香港的土地契約制度不斷演變。其中有多項為切合社會需要而增加的規劃及發展管制,已被列入契約條款內。涉及契約修訂的土地程序日趨複雜,除土地事宜外,申請人和地政總署亦需花費不少時間和資源處理其他部門所負責的工程及環境事宜。以往,即使在經濟迅速發展的年代,簡單的批租制度已能滿足香港的需要。我們有理由相信,現時複雜的契約正阻礙香港的市區重建及重新發展,而這情況不但不利投資決定,亦拖慢經濟發展。
- 8. 契約修訂申請因雙方無法達成補地價協議而未能成事的情況,日趨普遍。雖然無法達成補地價協議的原因很多,但主要的原因是批地條款複雜和契約修訂程序欠缺透明度。
- 9. 從宏觀的角度來看,土地是重要的經濟資源,不應只被視為賣地收入來源的工具。土地對經濟還有其他影響。例如,如果土地不能轉致較佳用途值和獲更好地運用,樓字興建量則會減少,連帶相關的基礎設施亦無法興建,就業機會會隨之減少。如能妥善處理土地用途,不但有助於為建造業及相關行業創造就業機會,而且會增進社會整體利益,包括經濟增長及創造財富。
- 10. 目前,公眾利益會在土地補價中考慮及反映。為達到此目的,契約條款訂明嚴格的細則,而輕微的契約修訂亦會被要求補繳地價。不過,輕微修訂預計帶來增益往往祇是錯覺,亦未必能為公眾帶來利益。發展商考慮到所需要的時間及工夫,以及不明朗的因素,會盡量避免輕微修訂。因此,公眾便不能享

用更佳的建築設計、得到更高的物業稅收和更多的就業機會。以最近東涌的合資酒店發展計劃為例,發展商因不能就契約修訂補地價問題與政府達成協議,最後不能興建更多酒店房間。結果,酒店減少興建房間,同時不能收取土地的補價、額外稅收和增加職位。現時並沒有任何方法量度就輕微契約修訂而收取額外補價對政府內部和市民大眾的成本代價,以及放棄了的公眾利益。現行的土地補價制度並未完全顧及經濟成本及經濟成本發展商由於上述困難而傾向轉往其他地方發展,這對香港是不利的。

具體建議

11. 小組認為應該把土地行政制度改變以配合現今經濟體系的發展。具體來說,當局應簡化契約條款及改善契約修訂程序, 以方便營商。有關建議的詳情載於以下各段。

簡化批地契約條款

刪除為其他部門執行的條款

- 12. 現在本港的土地契約除涵蓋土地行政事宜外,還訂有其他的規定,例如有關貯存危險物品、消防裝置、供水、發展設計細節、棄置廢物、壓碎岩石和工程方面的條款。小組留意到,本港很多條例都沒有管制城市規劃及發展所需的權力,而不同部門都利用契約制度去執行其規定。專責小組亦察覺到,雖然很多舊批約並沒有訂立很詳細的現代契約限制,但在有關土地重新發展時,也沒有重大影響。事實上,在重新發展過程完成後,已幾乎無法分辨出發展項目是根據無限制批約(即沒有訂明發展條件)還是新的複雜契約完成。
- 13. 小組**建議**各有關部門以各自的權力執行管制。如有需要,應考慮修訂現行法例。

消除角色重疊的情況

14. 小組關注到,在發展管制方面,有關權力重疊導致發展程序延誤的情況十分嚴重。舉例來說,規劃署、地政總署及屋宇署對地積比率、上蓋面積及樓宇高度都有管制。專責小組**建**

議,應把發展管制的職能清晰分配予有關的規管部門,以消除權力重疊對業界造成無所適從的情況⁽¹⁾。

刪除設計、規劃及高度條款

15. 設計、規劃及高度條款涵蓋上蓋面積、樓底高度、樓宇高度、踩高蹺式設計、停車場、顏色結構和建築物形狀。這條款的定義廣泛,而且在行使時會有酌情成分。事實上,除踩高蹺式設計外,這些發展規限大都已列入其他特別條款內,而申請人亦須就踩高蹺式設計提交建築圖則,以供當局查驗。小組認為,物業發展業已經成熟,設計、規劃及高度條款在現今的香港沒有需要。專責小組**建議**從契約條款中刪除這條款。

刪除僵化的發展管制措施

16. 小組對是否需要在契約內訂定不同規定、細節及管制規限的做法有所保留。很多條款都應予刪除,或訂明應由相關部門審批。如有關政府規定隨後修改,契約條款與最新的政府規定在時間方面就不會有差距,因此無須對契約作輕微修訂,以切合不斷轉變的政府政策。此外,發展管制政策是為符合公眾利益的理由而修改。承租人應遵循在物業發展時符合公眾利益的政府政策,而無須進行契約修訂程序。

例 1 (與建築物的高度有關)

在最近一宗個案中,有關契約訂明最高建築物高度(比如說 115 高程基準),即使為了建築設計目的而需要在高度上稍為增加一至兩米,也須修訂有關批地契約。這類修改原是十分輕微,如在契約中沒有引述,則本應按照輕微規劃修訂程序予以處理。

例 2 (與停車位及上落客貨車位的條文有關)

給予規劃許可的條件以《香港規劃標準與準則》的較低標準與準則為依據(例如每 100 個酒店房間須提供 0.5 個上落客貨車位),而有關契約條文訂明依據《香港規劃標準與準則》的較高標準與準則(例如每 100 個酒店房間須提供 1個上落客貨車位)。就一間有 800 個房間的酒店而言,規劃許可僅要求提供四個上落客貨車位,而有關契約則要求八個,相當於 100%的增幅。有關人士如要遵從有關契約條款,則可能須向城市規劃委員會重新遞交圖則,以作重大修改。發展程序因而需要阻延兩個月。

⁽¹⁾ 以下的例子說明由於發展管制工作重疊以致阻延發展程序 -

17. 現行機制嚴格訂明可建建築物的詳情,令建築物都遵從一個僵化的標準建造。發展商如要採用創新意念,就必須修訂契約和花更多時間,令發展項目更延遲落成。小組**建議**,除保障條款外,可在適當情況下刪除這些管制條件,但須"使(有關)署長感到滿意"。

改善修訂契約程序

18. 修訂契約程序一般需時很長,而且越來越難就補地價達成協議。小組在以下幾方面訂出了一些改善方案。

土地事宜查詢制度

19. 在大多數情況下,發展項目都涉及龐大金額。業主往往希望在正式修訂契約程序展開前,與地政總署澄清一些基本問題,例如計算"換地前地價"的原則。如業主對一些基本問題沒有合理的了解,不明確的因素可能會減低他們的投資意欲。小組建議就一些特別項目預早設立土地事宜查詢制度,以便業主了解契約及確定政府用作評估地價的準則。地政總署亦應以作業備考公布一些行之有效的原則。

地政指示的公布

20. 地政總署的地政指示是關於土地行政的內部指引,當中包括詮釋契約的規則。專責小組認為,提高透明度可令土地發展工作更具效率,對業界有利,而公布發展管制的地政指示有助達到這目的。屋宇署已着手把有關的內部指引轉化為專業的作業備考,加強了與業界的溝通。小組**建議**地政總署公布地政指示的有關部分,以提高透明度。

訂立固定時限

21. 小組注意到,訂立固定時限對於加快契約修訂程序以及讓人們確切知道發展所需時間相當有用。此外,訂立固定時限亦會有助地政總署盡量減少由其他有關部門進行的不必要技術性審核,以及有助簡化有關工作程序。小組察覺到,規劃署由於設有法定時限而得以使各有關部門就根據《城市規劃條例》第16 條提出的規劃申請依時作出回覆,而屋宇署也是在有法定時限的情況下批准或否決建築圖則。小組建議,應就契約修訂程

序訂立固定時限,以便地政總署可從其他政府部門獲得適時的回覆。在初時,可根據現行的服務承諾訂立時限,然後再根據所得經驗作出修訂。

處理契約修訂的工作和處理與法例有關事宜的工作同時進行

22. 刊憲程序需時很長。舉例來說,新道路的刊憲程序需時六個月。在刊憲程序未完成時,契約修訂程序亦無法完成。由於刊憲程序需時,小組**建議**,該項程序應與契約修訂程序同時進行,而所有刊憲項目亦應同時予以處理。這樣,整個發展程序便可提早完成。

設立專家裁決制度

23. 小組**建議**引入專家裁決制度,以打破在契約修訂方面的僵局。這制度對處理因技術問題的爭議而造成延宕的情況尤其有用⁽²⁾。雖然這是業主可選用的方案,但一經採用,對政府和業主雙方都應具有約束力。小組認為,現有的土地審裁處是解決地價爭議的適當機關。然而,小組關注到,修訂法例以實行專家裁決制度可能需時很長。

對經濟的影響

- 24. 由於缺乏可量化的詳細資料,就有關建議作有意義的成本和效益分析有實際困難。不過,專責小組深信,有關建議可令地產界、政府以至市民大眾都受惠。
- 25. 如果契約條款得以簡化,修訂契約所涉及的眾多複雜程序就會隨之消失。發展工程所需的時間縮短,發展商會因而加快現金流轉。在政府賣地時發展商會願意付出較高的價格,因為他們明確知道不會因日後契約需作輕微修訂而令其成本增加。

發展商的顧問進行勘探工程,並建議採用方法甲以鞏固護土牆是最佳的解決方法。不過,土力工程處的專業人員向地政總署表示,方法乙或方法丙會是較佳的解決方法。問題是應選用哪個方法進行估值,而專家裁決制度可有助解決曠日持久的爭議,並可加快就地價達成協議。

⁽²⁾ 以下個案可說明專家裁決制度的作用 —

土地制度改善後,發展項目可快些完成,政府亦可早些收取稅項。地政總署可以有更多的資源及時間集中處理重大的土地行政事宜。目前,建造業的失業人口佔總失業人口的 22%,而上述建議將可提早創造職位及令市場更為活躍。

26. 推行上述建議當然需要付出代價。除修訂土地制度的初期成本外,契約修訂補價的收入也可能會減少。

未來路向

27. 請經濟及就業委員會委員就上述建議提供意見。本文件所 載建議只屬方向性,在委員同意有關方向後,還須擬訂技術性 的實施細節。

樓宇施工前期工作小組 二零零五年六月

地政總署及房屋及規劃地政局的回應

需要全面改革決定契約條款及契約修訂的過程

房屋及規劃地政局及地政總署回應時指出,政府的目的 在於實現規劃意向,達致最佳土地用途,迎合社會需要及促進 經濟發展。所述各點,我們應注意以下考慮:

- (甲)契約修訂的機制並沒有於近年變得更困難或複雜,發展 商亦十分了解契約條款,證明條款行之有效;
- (乙)除了地價之外,其他因素亦會影響發展商決定是否及何時進行某項發展。整體而言,整個發展過程是市場作主導的,在商討地價過程期間發展商對發展計劃的規模主動作出修改的情況亦非常普遍;
- (丙)近年來,契約修訂過程的透明度已大大改善。舉例說,申請人及其代理會獲邀請出席涉及有關申請的詳細討論及作決定的地區地政會議,以及討論和決定地價評估的估價委員會及估價會議。大部分發展商均利用這些機會陳述他們的觀點,他們十分熟悉當中的程序;
- (丁)有人認為現行複雜的契約窒礙市區重建,這是沒有實例支持的觀點而已。在某些情況下,市區重建過程中在 匯集土地及改劃用途地帶上遇到的困難,比契約修訂過程中的更關鍵。政府未能接受複雜的契約阻慢市區重建 的說法;
- (戊)政府知道部分輕微的契約修訂是技術性的。我們會很快 地處理這些申請,並祗收取行政費。如契約修訂導致可 被量化的土地增值,當局必須收取這增值以保障公共收 入;
- (己)契約條款多年的變化是回應多方面的結果,包括設計及 建造技術的進步、法庭判決、各方面的建議(如審計署、

立法會賬目委員會、消費者委員會等)、公眾需求等。 絕大部分條款於過往數十年行之有效,業界亦很熟悉各 條款;

- (庚)條款越趨複雜於某程度上是無可避免的,但清楚和精密的契約條款有助避免於解釋出租人和承租人的權利和 義務時可能出現的爭執或訴訟;
- (辛)當局必須收取因修訂發展參數而令土地價值增加的金額,因為這是土地行政政策的基本宗旨。地政總署有責任保障公共收入;及
- (壬)契約條款適用於整段契約期限,而並非祇適用於建築期間。我們有需要約束未來的承讓人或業主去遵守規則。 土地契約中的適當條款保障政府於契約期滿、中止契約 或違反契約條款時於該土地的復歸權益。作業備考或其 他指引不能取代此功能。
- 2. 政府意識到較簡單的契約條款所帶來的好處,並正考慮條款可如何重寫或變得更有彈性。當局正努力提出建議,指出某些條款可被刪除、合併或簡化。其他受影響的政策局或部門需獲諮詢,而在契約條款可作改變前,政府可能要作立法修訂。

具體建議

簡化契約條款

刪除為其他部門執行的條款

3. 地政總署原則上同意盡量簡化批地條款,但需與有關政策局及部門再討論。其他部門可能需要法律意見,解決若不透過契約應如何執行管制其要求的問題。在很多情況下很可能牽涉立法修訂。附錄載述有關部門的意見,以及擬就特別批地條款採取的措施。可見規劃署在很多方面要依賴契約條款去確保發展符合《城市規劃條例》。很多批地條款都是作為安全網,

以確保政府規定獲得遵從,而有些條款則對土地補價會有影響,因而須予保留。把根據無限制批約和根據現代契約完成的發展作比較的論據過於表面。例如這未能說明現代契約能提供視乎地段特定停泊設施的更新標準,而無限制批約則對某些情況(如土地污染)未能提供解決辦法及並未能讓良好的規劃政策得以落實。

4. 政府當局亦解釋,城市規劃委員會(城規會)批准規劃許可時假設規劃管制能有效地實施。若果沒有有效的管制方法,城規會或會較難批准規劃許可。於主要市區範圍內加入直接執行的條款牽涉到對《城市規劃條例》的重大修改。現時,規劃署仍需依賴《建築物條例》及契約條款以進行有效規劃管制。

消除角色重疊的情況

5. 不同部門有不同的發展管制目標。舉例來說,屋宇署會從安全、衛生等角度根據《建築物條例》審批建築圖則,而地政總署則會從契約的角度審核該等圖則,確保發展參數得以遵守及保障任何與地價有關的改變所帶來的補價收益。不過局已成立一個由規劃署、地政總署及屋宇署人員組成的工作小組,以研究如何統一闡釋發展的管制參數的可行範圍。當局正準備公布有關於統一發展管制參數的聯合作業備考4,這是三個部門在這方面工作上的聯合成果。

刪除設計、規劃及高度條款

6. 這條款是十分重要和必須的。於1999年,為幫助地產界專業人仕及發展商,地政總署已公布一分詳細的作業備考,解釋該署會如何及何時行使酌情權。除了處理在作業備考內的問題外,這條款亦能應付不能預見的情況。舉例說,若果來自這條款對樓宇高度限制的規定並不存在,新機場的安全及運作將受到嚴重不利的影響。規劃署亦依賴這條款確保擬建建築物的樓宇體積與周邊環境能夠和諧配合。

7. 有關正文第四頁註釋(1)第二個例子,地政總署提出,根據《2004年城市規劃(修訂)條例》,已批准發展計劃的修訂獲分類為A類及B類修訂,屬於A類修訂的改變由二零零五年六月十日開始並不需再向城市規劃委員會申請。

删除僵化的發展管制規限

8. 現行政策大致上沒有妨礙任何重建計劃。有關政策並未如小組認為般經常轉變。若果有創新意念未獲實現,這很可能是因為法定的要求,或發展商希望將可出售的建築樓面面積最大化。當局必須保障因修訂發展參數而令土地價值增加的金額,這是土地行政政策的基本宗旨。為了雙方面的利益,必須在彈性和清晰與確切性兩者之間取得平衡。

改善修訂契約程序

土地事宜查詢制度

9. 雖然地政總署通常會鼓勵土地擁有人自行尋求獨立專業意見,但在特殊的情況下,地政總署同意就評估地價準則的問題與業主交換意見。小組舉了一例說明該系統應用的範疇。對於一幅向非牟利機構批出的土地,由於其規定土地用途條款是十分特定、有限制及特殊的,政府若能預早向機構示意其評估地價準則,便能幫助其決定擬進行的契約修訂的可行性。各方面均同意這種屬於可利用查詢制度的特殊情況祇會零星出現,並應以個別方式處理。

地政指示的公布

- 10. 地政指示是供地政總署職員用的內部工作指引,而並非法律或公共文件。指示為職員在程序上提供指引和參考,其用意並非不考慮實際情況而缺乏彈性地應用。
- 11. 指示的部分章節涉及有關事項的歷史、就特定課題向地 政總署提供的法律意見、及該署的內部會議及文件等。這些資

料均不適合公開。

12. 地政總署會繼續公布作業備考和聯合作業備考,以說明 契約條款將會如何應用,並宣佈在不同土地行政範疇內已作修 訂的程序及做法。地政總署樂意在適當時候透過公布作業備 考,解決業界關心的問題或作出澄清。

訂立固定時限

13. 契約修訂是屬於合約問題而建築圖則的審批是屬於法定權力所管轄,兩者是有區別的。建築圖則會徹底顯示所有詳細資料,但複雜的修訂契約則並非如此,因處理修訂必定牽涉一連串的問題,包括規劃、工程、基建及地價。況且申請人自己也常常會影響契約修訂所需時間,例如改變原有的建議。鑑於工作的性質,把未能在固定時限內作出回覆的個案"當作獲批准"是不可能的。地政總署認為,現有的署方服務承諾制度已經足夠,有關的服務承諾亦已在小冊子及署方的網頁中公布。

處理契約修訂的工作和處理與法例有關事宜的工作同時進行

14. 政府當局贊同這項建議。祇要有關方面原則上同意進行該項交易,當局可展開任何刊憲要求的程序。

設立專家裁決制度

- 15. 房屋及規劃地政局及地政總署原則上同意這初步建議,但祇適用於評估交易牽涉的地價方面,而並非應用在其他問題,例如法律問題或技術要求(小組亦同意這觀點)。我們會詳細考慮這建議,有需要時會與地產界和專業人士討論。以下是一些經與財經事務及庫務局及律政司初步商討後提出的部分問題及值得關注的地方:
 - (甲) 是否影響公共財政收入,及能否建入足夠保障政府利益的措施;

- (乙) 為此制度設立一"臨界點"(即如何評估應用這制度至哪些指定類別的個案,例如參考地價的價格,或談判而未能達致同意價格的時間);
- (丙) 有關公職人員能否委託或授權其保障公共收入的責任 予外間第三者,及如何保證第三者在處理公共資產時的 中立性及機密性;
- (丁) 是否應如小組建議般祇有發展商才能選擇是否採用專 家機制就地價作裁決;及
- (戊) 於界別內是否有足夠的中立專家可獲列入作裁判者。
- 16. 在作決定前,我們須小心及全面地考慮以上潛在問題與值得關注的地方。我們準備與有關人士研究這初步建議的可行性。

對經濟的影響

17. 有意見認為,若果契約條款獲簡化,發展商於拍賣時會願意付出更高的價錢。這說法很具吸引力,但難以獲證明或遭否定。地政總署認為,發展商實際上會支付一個反映在當時契約能提供的確切性市場價格,而並不會預計未來可能發生的轉變所帶來的影響,因這是在購買土地時無法預料或量化的。另外有評論認為,實施以上建議會帶來公共財政收益上的損失,這是值得關注及需量化及評估的。

房屋及規劃地政局 地政總署 二零零五年六月

Departments' initial views on Simplification of Lease Conditions

1	SC (1) Possession	Trade Retain.
2	SC (2) Formation of Green Area	Government
3	SC (3) Possession of Green Area	No comment as they are land-related matters.
4	SC (4) Restriction on use of Green Area	
5	SC (5) Access to Green Area	
6	SC (6) Building Covenant	
7	SC (7) User	
8	SC (8)(a) Compliance with Buildings Ordinance	Trade Delete. Government BD – Deletion will not affect BD's administration. LandsD – No strong views, but suggests adding a new General Condition "Compliance with all Ordinances applicable to land, buildings, town planning, sanitation, etc."

9	SC (8)(b) Compliance with Town Planning Ordinance	Trade Delete. Government PlanD – Retain. It relies on the building plan approval system and the lease conditions to ensure that a development complies with the Town Planning Ordinance as PlanD has no control over unauthorized
		developments in non-rural areas.Control of change of use under the Buildings Ordinance is not based on town planning consideration.
		 On the assumption that a new clause on "Compliance with all Ordinances applicable to land, buildings, town planning and others" will be added to the General Conditions, no strong views if this SC is removed. May need to seek comments from LACO on the drafting aspect to ensure that the new provision will be enforceable.
		LandsD – There is a need to retain this clause. Similar to SC (8)(a), an alternative could be to consolidate the requirement into a General Condition.
10	SC (8)(c) Total gross floor area	Trade Retain.
		Government Retain.
11	SC (8)(d) Maximum site coverage	Trade Retain. Government PlanD – Retain only if there's a specific site coverage requirement.
12	SC (8)(e) Minimum size of residential unit	Trade Delete.
		Government Delete if not appropriate. Generally only control the number of units not the minimum size.

13	SC (8)(f) Height	Trade Retain (only if specific height control is necessary and not stipulated in OZP). Government PlanD – Need to retain this SC for the same reason as SC (8)(b). Although height control is stipulated under some OZPs, it takes time and resources to review all the existing OZPs in imposing height control, where considered appropriate. In such cases, this SC is relied upon to cater for site-specific circumstances, where necessary. LandsD – Retain. Modification premium is assessed based on the height specified in lease which reflects the OZP restriction. Removing this SC and simply relying on the restriction under OZP will not enable LandsD to collect additional premium if there is any change in height limit due to a change of OZP requirement. This SC may also be used to govern airport height restrictions.
14	SC (8)(f)(i) Exemption for roof top structures	 Trade Delete. Individual approvals could be avoided if a Joint Practice Note is issued to set out the acceptable limits. Any proposal not complying with JPN could be rejected under the layout plan submission or DD&H clause. Government PlanD – JPN to promulgate criteria and scale of exemption is agreeable. LandsD – Retain. Whilst JPN is a way to clarify how departments will consider proposals from lot owners, the provision in lease is required to enable the Director to approve the proposal. The clause also allows the Director the discretionary power to approve proposals not in line with JPN. JPN is not a legal document, not backed by legislation. Therefore, it is in the interest of lot owners to retain this SC with the exemption limits clearly spelt out.
15	SC (8)(g) Maximum number of storeys	Trade Retain. Government Reasons same as SC (8)(b) and (f).

16	SC (8)(h) Design and disposition	Government PlanD – support retaining the clause to cater for site-specific circumstances; to ensure that the proposed buildings are compatible and in harmony with the surrounding areas in terms of built form, and achieving urban design objectives. LandsD – Reasons same as SC (8)(f).
17	SC (9) Provision of sales office and show flats	Trade Retain. Government Retain.
18	SC (10) Recreational Facilities	Trade Delete. The allowable exemption percentage of the residential floor area can be clearly defined in the Joint Practice Note. Control can be through layout plan submission and DD&H clause. Also no reason to control design of the facilities. Government PlanD – Follow BD's practice. May use JPN to set out the criteria and scale of exemption. LandsD – Retain. Maintenance and designation of common areas have already been defined under the DMC clause. Removing this SC will create difficulties for LandsD to identify old leases. This SC provides LandsD the discretion to approve the amount of recreational facilities to be provided. PN 4/2000 has been issued to cover this. The mix of the facilities will need to be examined and approved by LandsD. Leases without such a clause will require lease modification and payment of premium. This was inserted in response to a request from the trade to be specific about the exemption.

19	SC (11) Preservation of Trees	<u>Trade</u> Delete
		Government
		PlanD – Retain to cater for site specific requests as well as for implementation of planning conditions imposed by the Town Planning Board.
		LandsD – Retain. Government's policy is to promote a green environment and to protect trees. Existing and new trees planted by the developer will be subject to control to assist the perpetuation of mature landscaping as far as possible. However, there may be scope to review the approval process of this and SC (12).
20	SC (12)	Trade
	Landscaping	Retain, but to simplify unless there are specific requirements.
		Government
		 PlanD – Too broad at present, and detailed conditions should be included, where appropriate, to reflect site specific requirements. Suggest to work with LandsD to refine this standard clause.
		LandsD – Retain as such clause is included at the request of PlanD. Propose to incorporate more details for site specific cases where some trees need special attention.
21	SC (13)	Trade
	Watchman's office	Delete. Compliance control through JPN and layout plans.
22	SC (14)	<u>Government</u>
	Watchman's Quarters	PlanD – A JPN to set out the criteria and scale of exemption is acceptable.
23	SC (15)	BD – No strong views.
	Owners	LandsD –
	Corporation Office	 Same as SC on recreational facilities, removing this standard SC will create difficulties for LandsD to identify which lease requires modification. It has impact on land premium.
		 This SC specifies exemption and cannot be replaced by JPN. This was incorporated at the request of the trade.
		 LandsD will consider the removal of details of facilities.
		 LandsD, PlansD and BD will review the need for provision of watchman's quarters.
		- PN 5/2000 has been issued to cover owners corporation office.

24	SC (16) No exempt building (Applicable only in N.T. areas)	Trade Retain. Government Retain.
25	SC (17) Restriction on alienation	Trade Retain. Government Retain.
26	SC (18) Deed of Mutual Covenant	Trade Retain. Government Retain.
27	SC (19) Registration	Trade Retain. Government Retain.
28	SC (20) Restriction on partitioning	Trade Retain. Government Retain.

29	SC (21)(a) Residential parking spaces	Trade Retain, but simplify to "parking spaces shall be provided to the satisfaction of the director". All standards and definitions to be covered in JPN.
		Government
		<i>TransportD</i> – No objection to generalize if it is controlled by the Buildings Ordinance. Control on the number of parking spaces is considered necessary. Propose to revise the trade's proposal to "the number of parking spaces to be provided shall be subject to the approval of the director."
		LandsD – Retain.
		 The exact number of spaces to be provided will give certainty to the lot owner. It specifies the use of such spaces for residents only.
		 There is an element of premium in modifying any parking provision.
		BD – BO does not have power to require the provision of car parks.
		PlanD – Need to rely on this clause to require provision of the required number of car parking spaces to meet the Hong Kong Planning Standards and Guidelines and requirements imposed by the Town Planning Board. For new building development subject to planning approval, BO s.16 (1)(d) could be relied upon to ensure that the parking provision is in line with the approved scheme. However, it is necessary to rely on the lease conditions to enforce any subsequent conversion of the car parking spaces into other uses.
30	SC (21)(b)	<u>Trade</u>
	Exclusion of floor area for calculation of no.	Delete. Details in JPN. GFA exemption through approval of layout plans.
	of spaces	Government
		TransportD – Not concerned. Agreed that JPN could be an option.
		LandsD – Retain. This clause is required otherwise the spaces provided will be GFA countable. It specifies that only those spaces provided in accordance with the lease will be qualified for exemption.

31	SC (21)(c) Variation of parking spaces	Trade Delete. Requirements in JPN and actual exemption through the Buildings Ordinance. Government TransportD – JPN acceptable provided it specifies the requirements and there is the authority to control. BD – No power under BO to require the provision of carpark spaces. LandsD – Retain. This clause has premium implications and is necessary to exercise control throughout the lease term. PlanD – See comments on SC (21)(a) above.
32	SC (21)(d) Parking space use	Trade Delete. Requirements in JPN. Government TransportD – Not concerned. JPN could be an option. LandsD – Retain. Removing the dimension from the lease will enable the developer (or his assignees) to make changes to the size of the car park without the need to obtain approval from LandsD. It is also necessary to control the use of such parking space in terms of the permitted users and the vehicles to be parked. There is premium implication.
33	SC (21)(e) Exemption from GFA	Trade Delete. Requirements in JPN. Exemption approval through layout plan submission. Government LandsD – Retain. This clause has premium implication.
34	SC (22) Restriction on alienation of car park common areas	Trade Retain. Government Retain.

35	SC (23) Deposit of car park plan	Trade Retain.
	park pian	
		Government
		Retain.
36	SC (24)(a)	Trade
	Vehicular access	Retain.
		Government
		Retain.
37	SC (24)(b)	<u>Trade</u>
	Temporary access	Delete. Temporary access can be approved under SC (24)(a).
		Government
		SC (24)(a) and (b) can be combined.
38	SC (24)(c)	<u>Trade</u>
	Construction of run-in	Delete. Control through the Buildings Ordinance.
		Government
		BD – BO has no control mechanism to this effect. Even though the legislation could be changed to cover the control of run-in construction, there might be duplication of work between HyD and BD. Change to the Buildings Ordinance is required.
		LandsD – No objection if BD could exercise effective control.
		HyD – BD may take over control. HyD could furnish detailed requirements of the run-in to BD and the latter would consult HyD prior to issue of the occupation permit.
39	SC (special)	<u>Trade</u>
	Non exclusive Right of Way	Retain.
		Government
		Retain.

40	SC (25) Set back	Trade Retain.
		Government
		Retain.
41	SC (26) Cutting Away	Trade Review if still necessary. Do equivalent powers exist through GEO & Buildings Authority?
		Government
		Retain. This SC assigns responsibility for maintenance of slopes (and the necessary slope treatment works, etc.) within and outside the lot which are formed/modified as part of the development or re-development of the lot. BD/CEO do not have equivalent powers. Where a slope (within or outside the lot) is found to be dangerous or liable to become dangerous, the Building Authority could issue Dangerous Hillside Orders under Cap 123 S.27A on the "owner of the land or structure, or on the person who under the terms of a Government lease is under an obligation to maintain the land or structure". This SC is required to ensure the lessee has the maintenance responsibility over the slopes either within the lot or on any adjacent government land formed/modified as part of the development or re-development.
42	SC (27) No rock crushing	Trade Delete. The policy intent is not for land administration.
		Government
		Retain. Purpose of the SC is to protect government royalty. The Government will charge royalty for crushing of rock on site. This is in line with the contracts with the three existing quarry owners. No other legislation to this effect.
43	SC (28)	<u>Trade</u>
	Anchor Maintenance	Retain.
		Government
		Retain to make it the responsibility of the lessee to continuously monitor the performance of ground anchors within the lot.

(第11頁,共14頁)

44	SC (29) Spoil or debris	Trade Con this be controlled under the Weste Disposel Ordinance Con 354.2
		Can this be controlled under the Waste Disposal Ordinance Cap 354?
		Government
		DSD – Retain.
		 The Government should have the right to restore the affected drainage systems urgently at the cost of the lessee if the lessee cannot rectify the situation. Legal advice is needed on how to indemnify Government.
		 Definition of "waste" does not include earth.
		LandsD – Retain. This is an effective means to require removal of illegal dumping by the lessee. Consideration will be given to consolidate SCs (29), (30) and (33) into one clause.
45	SC (30)	Trade
	Dumping	Delete. Controlled under the Waste Disposal Ordinance Cap 354 and
	(Government land)	the Land (Miscellaneous Provisions) Ordinance Cap 28 ?
	ŕ	Government
		Similar to SC (29).
46 SC(31)	` '	<u>Trade</u>
	Utility services	No particular views.
		Government
		<i>DSD</i> – This can be expanded to cover SC(35) – Damage to Nullahs by some minor modifications such as adding "or obstruction" after the word "damage".
		LandsD – Subject to other views, LandsD will consider combination with other SCs to rationalize.
47	SC (32)	<u>Trade</u>
	Damage to public roads	Delete. Controlled through the Land (Miscellaneous Provisions) Ordinance.
		Government
		HyD – No objection to combine with SC (35).
		LandsD – Consideration will be given to consolidate SCs (32) and (35)
		into one clause.

48	SC (33) Dumping (public roads)	Trade Delete.
		Government
		Similar to SC (29).
49	SC (34) Construction of Drains	Trade Review. Is this covered by the Buildings Ordinance?
		Government
		DSD – Concerns about maintaining drainage outside the lot by the lessee, which is not covered by the Buildings Ordinance. Also, indemnity to Government is an issue.
		BD – The Buildings Ordinance and regulations do not contain provisions for indemnifying the Government.
		LandsD – Retain. It relates to drains and channels within and outside the lot. Consideration will be given to combine SCs (34) and (36).
50	SC (35)	<u>Trade</u>
	Damage to Nullahs	Review. Are there statutory powers for DSD & WSD?
		Government
		DSD – Can be covered by SC(31) Utility Services by some minor modifications.
		WSD – No objection to combine this SC with SCs (32) and (37) subject to appropriate wording.
		LandsD – Consideration will be given to consolidate SCs (32) and (35) into one clause.
51	SC (36)	<u>Trade</u>
	Connecting Drains	Delete. Covered by the Buildings Ordinance.
		Government
		BD – Comment same as SC (34).
		DSD – It provides an option for the lessee to carry out the connection work.
		LandsD – Consideration will be given to combine SCs (34) and (36) into one clause.

52	SC (37) Foundations	Trade Delete Consequence Deciding a Continuous
		Delete. Covered by the Buildings Ordinance.
		Government
		DSD - Can be covered by SC (31) Utility Services by minor modification.
		LandsD – Consideration will be given to combine this SC with SCs (32) and (35).
53	SC (38) Filtered Water Supply	<u>Trade</u>
		Delete. Covered by the Waterworks Ordinance.
		Government
		<i>WSD</i> – Delete for cases where no problems are expected to provide a filtered water supply.
		LandsD – No strong views.
54	SC (39) Salt Water	Trade
		Delete. Covered by the Waterworks Ordinance.
		Government
		WSD – Delete for cases where no problems are expected to provide a salt water supply for flushing.
		LandsD – Same as SC (38).
55	SC (40) Restriction on use of water supply	Trade
		Delete. Covered by the Waterworks Ordinance.
		Government
		WSD – Delete since Cap 102A R13 has a similar restriction clause.
56	SC (41) Access for Fire Service Appliances	<u>Trade</u>
		Delete. Covered by the Fire Services Ordinance.
		Government
		FSD – Retain. Maintenance of Emergency Vehicular Access (EVA) is a problem. No legislation to require the owner to maintain a clear unobstructed access to EVA.

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57	SC (42) Provision of fire service installations	Trade Delete. Covered by the Fire Services Ordinance and Buildings Ordinance. Government
		FSD - This concerns fire service installations outside the buildings but within the lot. No objection to delete if BD can control. Concern about if the definition of <u>owner</u> in the legislation is same as <u>purchaser</u> .
		BD – FSI requirements for buildings by FSD are regulated under Cap 123 S.16(1)(b) and S.21(6)(d) of BO.
		LandsD – No objection, subject to adequate enforcement and control elsewhere.
58	SC (43) Dangerous Goods	Trade Delete. Covered by the Dangerous Goods Ordinance.
		Government
		Delete.
59	SC (45) Supervisory and overhead changes	<u>Trade</u>
		Retain.
		Government
		Retain.
60	SC (46) Definitions of gross floor area	<u>Trade</u> Delete. Covered by the Buildings Ordinance and JPN (if necessary).
		Government
		LandsD – Retain. This SC serves both to define the term GFA, thereby giving certainty, and provides the owner with the benefits of exemptions under the lease. LandsD may consider incorporating all exemptions within the lease into this SC to simplify and consolidate all such references to one SC.

Note

For entries shaded, there is a difference between views of trade and government departments.