

**Economic and Employment Council
Pre-construction Task Force**

Simplification of Lease Conditions

Background:

1. The lease document has become increasingly complex as over the years various planning and development controls have been incorporated into the conditions. Most of these controls however have already been covered in statutes under the jurisdiction of various Government Departments, and repeating them in the lease is an unnecessary duplication of statutory controls.
2. One example of duplication is the definition of Gross Floor Area. The adoption of more than one definition by different Departments has greatly increased the workload for the Lands Department, causing delay to approval and much frustration on developers.
3. Moreover, many positive obligations relating to subjective design issues are included in the lease conditions which should more appropriately be dealt with through departmental practice notes and the Buildings Ordinance.
4. Little consideration has been given on “value” when deciding on whether to introduce new procedures. The cost of collecting minor modification premia is disproportionate to the sum collected, and frequently the delay in processing minor lease modifications discourages developers from incorporating new incentives such as the recent Green Building incentives.

Solution:

Leases should be simplified wherever possible. Redundant lease conditions should be deleted where statutory controls already exist. Attached is a typical lease with proposed amendments on the basis that many of the development conditions are or could be controlled either through joint practice notes or statutory powers. (Appendix)

Simplification of Lease Conditions

NKIL6196: Sold at Public Auction 15 April 2002

This lot was sold with the “benefit” of 46 Special Conditions, a large number of which serve no practical purpose and can be deleted because they are either:

1. Duplications of existing statutory requirements that cannot be contracted out of. It is worth noting there are no ‘environmental’ clauses because EPD acts under relevant statutory powers.
2. Design development controls that may be “temporary” in that they relate to only the first development and do not run with the land or are development “standards” that vary from time to time as Government policy changes. In either case control could be effectively implemented through the issue of joint practice notes (JPN) issued by the Lands, Planning and Buildings Departments.

A summary of recommendations is set out below:

SC (1)	Possession	Retain
SC (2) – (5)	Green Area	Retain
SC (6)	Building Covenant	Retain
SC (7)	User	Retain
SC (8)(a)	Compliance with Buildings Ordinance	Delete – statutory control
(b)	Compliance with Town Planning Ordinance	Delete – statutory control
(c)	Total gross floor area	Retain
(d)	Height	Retain (only if specific height control was necessary and not stipulated in OZP)
(d)(i)	Exemption for roof top structures	Individual approvals could be avoided if a joint practice note were issued to set out limits that would be acceptable.
(d)(ii)	Exemption from height for BD exempt structures.	Delete. Rely on BD to determine GFA. Refer to SC(46) below.
(e)	Design and Disposition	Retain (usually DD&H)

SC (9)	Provision of sales office and showflats	Retain <ul style="list-style-type: none"> - assume necessary to avoid breach of SC (7) & (8) - recommend issue of guidelines for developers to comply with to avoid specific approval process.
SC (10)	Restriction on partitioning	Retain
SC (11)	Recreational Facilities	Delete. Recreational facilities can be exempted from GFA by the Building Authority. Control through the issue of JPN and approved under DD&H.
SC (12)	Preservation of Trees	Retain
SC (13)	Landscaping	Retain
SC (14)	Watchman's office	Delete. Compliance through a JPN with GFA exemption through Buildings Ordinance.
SC (15)	Watchman's Quarters	Delete. Compliance through a JPN with GFA exemption through Buildings Ordinance.
SC (16)	Owners Corporation Office	Delete. Compliance through a JPN with GFA exemption through Buildings Ordinance.
SC (17)	Restriction on alienation	Retain
SC (18)	DMC	Retain
SC (19)	Registration	Retain
SC (20)(a)	Parking Space	Retain – but simplify to “Parking Spaces shall be provided to the satisfaction of the Director”. All standards and definitions to be covered in a JPN.
(b)		Delete – included in JPN.
(c)		Delete – included in JPN – actual exemption through Buildings Ordinance.
(d)		Delete – included in JPN.

SC (21)	Deposit of car park plan	Retain
SC (22)(a)	Vehicular access	Retain
(b)	Temporary access	Delete – temporary access can be approved under (a).
(c)	Construction of run-in	Delete – controlled through Buildings Ordinance.
SC (23)	Non exclusive Right of Way	Retain
SC (24)	Set Back	Retain
SC (25)	Cutting Away	Review if still necessary. Do equivalent powers exist through GEO & Buildings Authority?
SC (26)	Green Hatched Black Area	Retain
SC (27)	Maintain Existing footpath	Retain
SC (28)	No rock crushing	Review – can this be controlled through EPD?
SC (29)	Spoil or debris	Review – can this be controlled under Waste Disposal Ordinance CAP354?
SC (30)	Anchor Maintenance	Retain
SC (31)	Dumping (Government land)	Delete – controlled under Waste Disposal Ordinance CAP354 and Land (Miscellaneous Provisions) Ordinance CAP28.
SC (32)	Utility Services	Retain
SC (33)	Damage to public roads	Delete – controlled through Land (Miscellaneous Provisions) Ordinance.
SC (34)	Dumping (public roads)	Delete – as for SC (31).
SC (35)	Construction of Drains	Review – is this covered by the Buildings Ordinance.

SC (36)	Damage to Nullahs	Review – are there statutory powers for DSD & WSD?
SC (37)	Connecting Drains	Delete – covered by the Buildings Ordinance.
SC (38)	Foundations	Delete – covered by the Buildings Ordinance.
SC (39)	Filtered Water Supply	Delete – covered by the Waterworks Ordinance CAP102.
SC (40)	Salt Water	Delete – covered by the Waterworks Ordinance.
SC (41)	Restriction on use of water supply	Delete – covered by the Waterworks Ordinance.
SC (42)	Access for Fire Service Appliances	Delete – covered by the Fire Services Ordinance CAP95.
SC (43)	Provision of fire service installations	Delete – covered by the Fire Services Ordinance CAP95 and Buildings Ordinance CAP123.
SC (44)	Dangerous Goods	Delete – covered by the Dangerous Goods Ordinance CAP295.
SC (45)	Supervisory and overhead changes	Retain
SC(46)	Definition of gross floor area	Delete – covered by the Buildings Ordinance and JPN (if necessary).