

**Sixth Meeting of
the Economic and Employment Council**

***Agenda Item 6 : Report of the Pre-construction Task Force
on land matters***

Purpose

The Pre-construction Task Force has completed the first phase of its work programme which covers land matters. This paper presents the views and recommendations on issues pertaining to land lease and the lease modification system.

Background

2. The Pre-construction Task Force was set up in October 2004 under the Economic and Employment Council Subgroup on Business Facilitation to examine problems encountered by the real estate sector and to make recommendations on ways to improve the operational efficiency of the industry.

3. The work programme of the Task Force covers both land and town planning aspects. The land aspect covers three areas, i.e. simplification of lease conditions, improving the lease modification system, alignment of ordinances and delegation of authorities. Town planning issues will be examined in the second half of 2005.

4. On land matters, the Task Force reckons that the industry is particularly concerned about the long lead-time taken to obtain government approval, and duplication of control because many administrative and technical matters have gone to the title. There are also problems with reaching agreement about land premium.

5. The work of the Task Force has adopted a structured approach by which Members first examine and review a specific topic, to be followed by discussions with the government agencies concerned. To date, the Task

Force has had altogether seven meetings, of these two of them were held with the Lands Department to discuss specific concerns and explore in detail possible improvement to the present land system and one meeting with the Buildings Department to understand the work on alignment of property development parameters. The recent session was a discussion with the Secretary for Housing, Planning and Lands to explore philosophically how the real estate sector and the Government could operate together more efficiently for public good and to create a better economy. This paper presents views of the Task Force on improvement proposals. The views of the Housing, Planning and Lands Bureau and the Lands Department are at **Annex.**

Need to overhaul the land system

6. Unlike other jurisdictions where land is held in freehold title and issues such as town planning and environmental matters are covered in the respective legislation, Hong Kong has a leasehold tenure system in which the Lands Department operates as both landlord and as a protector of public interest.

7. Our land lease system has evolved over time during which various planning and development controls have been expanded to meet community needs and these have been added into lease conditions. The land process dealing with lease modifications is becoming more difficult, and both the applicant and the Lands Department tie up substantial time and resources not just dealing with land matters but engineering and environmental issues which are the responsibilities of other departments. In the past, the simple leasehold system served Hong Kong well even at a time when the pace of development was rapid. There is reason to believe that the current complicated leases are causing a blockage to urban renewal and redevelopment, and this has discouraged investment decisions and slowed down economic development.

8. It is increasingly common that lease modification applications fail because there is no agreement on premium. While there are different reasons for not reaching agreement on premium, the complicated lease conditions and the non-transparent lease modification process are key factors.

9. From a macro point of view, land is an important economic resource and it should not simply be taken as a tool to generate land sales

revenue. There are other economic implications. For example, if the land is not changed to a higher value and better use, less building and related infrastructure will be built, consequently fewer jobs will be created. If handled properly, improved land use will help create jobs in construction and the related industries. It will contribute positively to public good including economic growth and wealth creation.

10. At present, public good is captured and reflected in the land premium. To this end, lease conditions prescribe strict details, and additional premiums are demanded for minor modifications. It is important to note that perceived gains through minor lease modifications are often illusory and may not yield public good. Because of the time, effort and the uncertainty involved, developers endeavour to avoid minor modifications and the community foregoes better aesthetic designs, higher property tax or more employment opportunities. Take a recent joint venture hotel development in Tung Chung for illustration. Developers did not build more hotel rooms because agreement could not be reached with the Government on the lease modification premium. As a result, the hotel has fewer hotel rooms, there is no land premium collected nor is there extra tax or extra jobs. At present, there is no measurement of the cost of collection of the additional premium on minor modifications, both within the Administration and to the community at large, nor the public good foregone. The existing premium system has not reflected the economic costs and benefits in full terms. Difficulties encountered by developers tend to drive them to other jurisdictions to the detriment of Hong Kong.

Specific Recommendations

11. The Task Force considers that the land administration system should be modernized in tune with the development of the economy. Specifically, lease conditions should be simplified and the lease modification process improved for business facilitation. Details of the recommendations are in the ensuing paragraphs.

Simplification of lease conditions

Removing clauses administered for other departments

12. Currently, land leases embrace a wide variety of requirements in addition to land administration issues, e.g. storage of dangerous goods, fire

services installations, provision of water, details of development design, dumping, rock crushing, engineering clauses. The Task Force observes that many ordinances in Hong Kong do not have the required authority in the control of town planning and development, and different departments use the lease system as a means of enforcing their requirements. The Task Force notes that many old leases do not contain the very detailed modern lease restrictions and yet when sites are redeveloped there does not appear to be any material impacts. When the process is completed, it is hard, if not impossible, to differentiate developments under unrestricted leases (which have no development conditions) and those subject to modern complex leases.

13. The Task Force **recommends** that relevant departments control their activities through own authority. If required, amendment to existing legislation should be considered.

Eliminating overlapping roles

14. The Task Force has concerns about the serious overlapping of authorities in development control leading to delay in the development process. For instance, Planning Department, Lands Department and Buildings Department all have control on plot ratios, site coverage and building heights. The Task Force **recommends** that development control functions be clearly allocated among regulatory Government departments to eliminate duplication of authority which brings confusion to the industry⁽¹⁾.

Removal of the Design, Disposition and Height clause

15. The Design, Disposition and Height (DDH) clause covers aspects like site coverage, ceiling heights, building height, stiling, car parking, colour texture and shape of building. Its definition is broad and its exercise is

⁽¹⁾ The following examples serve to demonstrate the problems of duplicated development control leading to a delay –

Example 1 concerns with building height

A recent case has a maximum building height (*say, 115 mPD*) stipulated in the lease, lease modification is needed even for a small increase of 1 to 2 metre in height for architectural design purpose. Such change is very minor in nature and should have been handled in accordance with the minor planning amendment procedures had it not been cited in the lease.

Example 2 concerns car parking and loading/unloading provisions. The planning approval has conditions in accordance with the low end of the range in the Hong Kong Planning Standards and Guidelines (*e.g. 0.5 loading/unloading space per 100 hotel rooms*) while the lease stipulates provisions of the high end (*e.g. 1 loading/unloading space per 100 hotel rooms*). For a 800-room hotel, the planning approval only requires 4 spaces while the lease requires 8 spaces, which represents 100% increase. To comply with lease conditions may trigger a requirement for a major amendment re-submission to the Town Planning Board. Another 2 months are needed to go through the process.

discretionary. In practice, most of these development parameters have been covered in other special conditions except stilting, which requires a submission of building plans for compliance checking. The Task Force considers that the property development industry is mature and it is not necessary to have the DDH clause in Hong Kong today. The Task Force **recommends** that the DDH clause be deleted from the lease conditions.

Removing rigid development controls

16. The Task Force has reservations on the need to put into the lease the many levels of requirements, details and controls. Many clauses should be removed or simply be made subject to the approval of the respective authority. If government requirements change subsequently, there would not be a time lag between the lease conditions and the latest requirements, and there would be no need to undertake minor lease modifications to meet the changing government policies. Besides, development control policies are changed for the reason of public good. A lessee should follow the government policy which is good at the time when a property is developed, without going through the lease modification process.

17. The present system specifies what one could build, thus leading to buildings of a box standard. Any innovative idea of developers could not be implemented without lease modification and the extra time delay. The Task Force **recommends** that these control conditions be removed from the lease except for the safeguarding provision, where appropriate, “to the satisfaction of the (relevant) Director”.

Improving the lease modification process

18. The lease modification process generally takes a long time and, often, there is increasing difficulty to reach an agreement on the premium. The Task Force has identified improvement opportunities in the following areas.

Enquiry system on land matters

19. In most cases, a large amount of money will be at stake in a project development. A land owner may wish to clarify fundamental issues such as the principle for calculating “before-value” with the Lands Department before initiating the formal lease modification process. If a land owner cannot reasonably understand the fundamental issues, uncertainty may

deter their investment desire. The Task Force **recommends** that an early enquiry system on land matters be set up for unusual projects to facilitate land owners in the interpretation of the lease and to establish the criteria that the Government will adopt for premium assessment. The Lands Department should also publish well-established principles in practice notes.

Publication of land instructions

20. Land Instructions of the Lands Department are a set of internal guidelines on land administration including rules for interpretation of lease. The Task Force considers that transparency will make the land process more efficient for the industry and the publication of relevant land instructions (i.e. those that relate to development control issues) can help achieve this end. The Buildings Department has been transforming relevant internal guidelines into professional practice notes and this has facilitated the communication with the industry. The Task Force **recommends** that the Lands Department publish sections of the land instructions for greater transparency.

Imposing fixed time limits

21. The Task Force sees the value of fixed time limits to expedite the lease modification process and to provide certainty to the development lead time. It would also help the Lands Department minimize unnecessary technical reviews from departments and streamline the work process. As observed, the Planning Department is able to receive timely response from departments for S.16 planning applications because there is a statutory time limit and the Buildings Department also approves or rejects building plans with a statutory time limit. The Task Force **recommends** that fixed time limits be introduced for the lease modification process to assist the Lands Department obtain timely returns from other government departments. Initially, time limits could be set based on existing performance pledges and to be revised in the light of experience gained.

Parallel action in processing the lease modification and ordinance-related issues

22. Gazetting takes a long time to process, for instance, six months for gazetting a new road. Until the gazetting is resolved, lease modification could not be completed. Because of the lead time for gazetting, the Task Force **recommends** that gazetting be carried out in parallel with the lease

modification, and all gazette items be processed concurrently. The whole development process would be completed sooner.

Establishing an expert determination system

23. The Task Force **recommends** the introduction of an expert determination system to break the impasse in lease modifications. Such system is particularly valuable when arguments on technical issues have been dragged on for a long period of time⁽²⁾. While this could be an option for the land owner, it should be binding for both the Government and the land owner once chosen. The Task Force considers that the existing Land Tribunal structure is a good forum for resolving the land premium issue. However, the Task Force has concerns that legislative amendments to enable expert determination may take a long time.

Economic Implications

24. There are practical difficulties for a meaningful cost and benefit analysis of the recommendations due to absence of quantifiable details. Nevertheless, the Task Force is confident that the real estate sector, the Government and the community at large will benefit.

25. If lease conditions are simplified, many complications in lease modifications would disappear. A reduced development lead time would speed up cash flow. Developers will be prepared to pay a higher price at land sales since there will not be any negative cost impact arising from subsequent minor lease modifications. An improved land system could result in earlier collection of government tax as developments are completed more quickly. The Lands Department could have more resources and time to focus on key land administration issues. At present, the construction industry accounts for 22% of the total unemployed labour force. The above recommendations would bring jobs sooner and a more active market.

⁽²⁾ The following is a case to illustrate the use of an expert determination system –

The consultant of the developer had carried out investigations and recommended that method A was the best solution for strengthening a retaining wall. Professionals from the Geotechnical Engineering Office however advised the Lands Department that method B or C might be better. The problem was which method should be used for valuation. An expert determination system could help settle the protracted argument and the premium could be agreed at an earlier date.

26. Implementation of the recommendations is not without cost. In addition to the initial costs for revising the land system, there may be some revenue losses in terms of modification premium.

Way Forward

27. Members of the Economic and Employment Council are invited to comment on the recommendations above. The recommendations in this paper are directional only and more effort is needed to work out the technical implementation details when agreement is reached on the direction to go.

Pre-construction Task Force
June 2005

Response of Housing, Planning and Lands Bureau and Lands Department

Need to Overhaul the Processes of Deciding Lease Conditions and Lease Modifications

Housing, Planning and Lands Bureau (HPLB) and Lands Department (LandsD) point out that their aim is to facilitate the planning intention, optimise land uses, meet community needs and promote economic development. In this regard and in relation to the points raised, the following considerations are relevant :

- (a) The lease modification process has not changed in recent years to become more difficult or complicated. Lease conditions are also well understood by developers and proven to be effective;
- (b) Apart from land premium, there could be other factors affecting a developer's decision as to whether or not and when to take forward a particular project. After all, the entire development process is market-driven and it is not uncommon that revisions are made to the scope of a development project during the process of premium negotiation;
- (c) The transparency of the lease modification process has been enhanced significantly in recent years. For example, applicants and their agents are invited to attend the District Lands Conference, at which the application is discussed in detail and decided, and both the Valuation Committee and the Valuation Conference, at which the assessment of the premium payable is discussed and decided. Most developers make use of such opportunities to put forward their case and are very familiar with the processes involved;
- (d) The belief that current complicated leases are causing a blockage to urban renewal appears to be a matter of perception in the absence of any examples to illustrate the point. The difficulties with land assembly and re-zoning in some cases are much more

critical than the lease modification process in the urban renewal process and the Government has difficulty in accepting that allegedly complicated lease terms in themselves hold up urban renewal;

- (e) Government acknowledges that certain minor lease modifications may be technical in nature : these will be processed quickly and only attract an administration fee. If there is a quantifiable enhancement in value as a result of a lease modification, then this enhancement must be captured for the benefit of the public revenue;
- (f) Whilst some lease conditions have evolved over the years in response to various forces, including advances in design and construction techniques, court judgments, recommendations from various parties (e.g. D of Audit, PAC, Consumer Council), public demands, etc, the great majority have served well for the last several decades and are well understood by the industry;
- (g) Increasing complexity may be to some extent inevitable but greater clarity and precision in lease conditions help avoid potential dispute/litigations in the interpretation of rights and obligations of lessors and lessees;
- (h) To capture an increase in value stemming from any change in development parameters is a fundamental principle underlying our land administration policy. LandsD has a responsibility to protect the public revenue; and
- (i) It is important to recognize that the lease conditions are applicable throughout the lease term, not only up to the construction stage and it is necessary to bind future assignees/owners to observe such requirements. Appropriate conditions in the land lease are also essential to protect Government's reversionary interest in the land, upon lease expiry, termination or breach of lease conditions. Practice Notes or other requirements cannot substitute this function.

2. That said, Government is mindful of the benefits that could be brought about by simpler lease conditions, and is conducting an on-going process of examining how conditions could be redrafted or made more flexible, and proposals are being formulated on how certain conditions can be deleted, amalgamated or simplified. Other bureaux/departments affected would need to be consulted and legislative amendments may be necessary before the lease conditions may be changed.

Specific Recommendations

Simplification of lease conditions

Removing clauses administered for other departments

3. It is agreed in principle to simplify lease conditions as far as possible subject to further discussion with bureaux/departments concerned who will need to take legal advice as to how their requirements will be imposed and enforced if not through the lease. This is likely to involve legislative amendments in many cases. **Appendix** shows the views of the concerned departments and the proposed action to be taken on the special conditions. It may be noted that the Planning Department relies on lease conditions in many respects to ensure that a development complies with the Town Planning Ordinance. Many lease conditions serve as safety nets to ensure that Government requirements are met and some of these clauses have premium implications, thus should be retained. The comparison between the outcome of developments under old unrestricted leases and those controlled by modern leases is superficial in that it fails, for example, to acknowledge the benefits of up-dated site specific parking standards, lack of redress against certain issues such as contamination of the land, and the potential frustration of a good planning policy by such old unrestricted leases.

4. Planning permission by the Town Planning Board (TPB) is given on the premise that planning conditions imposed can be effectively enforced. If there is no effective means of control, the TPB may be more reluctant to grant planning permission. To introduce direct enforcement provisions in the main urban areas will require a major revamp of the Town Planning Ordinance and meanwhile, the Planning Department needs to rely on the lease and the Buildings Ordinance to exercise effective control.

Eliminating overlapping roles

5. Different departments have different development control objectives. For example, the Buildings Department approves building plans under the Buildings Ordinance from the perspective of safety, sanitation, etc. while the LandsD reviews building plans from the lease point of view to ensure compliance with development parameters and to safeguard any premium implications. Nevertheless, a working group comprising the Planning Department, the LandsD and the Buildings Department has been set up to examine the scope for alignment of development control parameters. JPN4 on alignment of development control parameter is under preparation, which is the joint effort of the three departments in this regard.

Removal of the Design, Disposition and Height (DDH) clause

6. The DDH clause is very important and necessary. To assist property professionals and developers, the Lands Department has already published a detailed practice note (PN) in 1999 to explain how and when it would exercise discretions. In addition to the issues in the PN, this clause is required to cover hitherto unforeseen matters : an example would be a case where the safety and operation of the new airport would have been prejudiced had the authority of this clause in respect of building height control not been available. The Planning Department also relies on the DDH clause to ensure that the proposed buildings are compatible and in harmony with the surrounding areas in terms of built form.

7. With regard to the Example 2 of footnote (1) on page 4 of the main paper, LandsD indicates that under the Town Planning (Amendment) Ordinance 2004, amendments to an approved development proposal are classified as Class A and Class B amendments. Changes falling within Class A amendments do not require further application to the TPB with effect from 10 June 2005.

Removing rigid development controls

8. The current policy has not generally hindered redevelopment projects. Relevant policies do not frequently change to such extent as perceived by the Task Force. If innovative ideas are not implemented, this is

more likely to be due to statutory requirements or the desire of the developer to maximize the saleable GFA of the development. Being a fundamental principle of the land administration policy, it is necessary to capture increase in land value arising from any change in development parameters. For the benefit of both parties, a balance must be struck between flexibility on one hand and clarity and certainty on the other.

Improving the lease modification process

Enquiry system on land matters

9. Whilst LandsD would usually encourage land owners to seek independent professional advice, for such exceptional cases LandsD is agreeable to exchanging views with land owners on issues relating to the basis of valuation. The scope of application of such a system is illustrated by the specific example raised by the Task Force relating to a grant to a non-profit-making organisation with a very specific, limited and unusual user clause where an early indication of the Government's basis of valuation would assist in deciding the viability of a proposed lease modification. It is common ground that such exceptional cases falling within the ambit of such enquiry facility will be few and best handled on an individual basis.

Publication of land instructions

10. Land Instructions are internal work guidelines for staff of the Department and are not a legal or public document. They provide guidance and reference points to staff on procedure and are not intended to be applied rigidly without having regard to relevant circumstances.

11. Certain sections of the Land Instructions make reference to the history of the issues, legal advice given to the Department in the context of the subject matter as well as other internal meetings and documents of the LandsD. As such it is not appropriate to disclose the information.

12. LandsD will continue to publish Practice Notes and Joint Practice Notes to amplify how provisions in the lease will be applied and to announce revised procedures and practice in various areas of land administration. We will also be pleased to address any specific concerns or clarifications requested by the trade through the issue of Practice Notes where appropriate.

Imposing fixed time limits

13. There is a distinction between lease modification, which is a contractual matter, and the approval of building plans governed by statutory authorities. All details are exhaustively shown on plans, but this is not the case for complicated lease modifications which invariably involve a variety of related issues including planning, engineering, infrastructure and premium implications. Also, the applicant himself often affects the time taken in lease modification by, for example, changing the original proposal. Because of the nature of the work, it would not be possible to have a “deemed approval” for cases which fail to respond within the fixed time limit. LandsD considers that the present departmental performance pledge system, as publicly available in a Lands Department leaflet and on the Department’s web site, is working well.

Parallel action in processing the lease modification and ordinance-related issues

14. We agree to the suggestion and will initiate action on any gazetting requirements once the required level of agreement in principle to proceed with the transaction is available.

Establishing an expert determination system

15. We agree in principle that there is merit in this initial proposal which, as agreed with the Task Force, would apply only to the assessment of the premium payable for a transaction, excluding such matters as legal issues and technical requirements. We will consider the proposal in detail, discussing with the real estate sector and professionals as necessary. Examples of some of the issues and concerns which have arisen upon initial consultation with FSTB and D of J are set out below :

- (a) Any public revenue implications and whether adequate safeguards could be built in to protect Government’s interest;
- (b) The need to establish a “threshold” for invoking the mechanism (i.e. application to a certain category of cases assessed, for

example, by reference to the amount of premium or the time taken in negotiation without reaching agreement);

- (c) The implications associated with authorising a public officer to entrust/delegate his responsibility to protect public revenue to an outside third party and how to guarantee the essential impartiality of that party and his confidentiality in dealing with a public asset;
- (d) Whether the mechanism should be invoked only at the option of developers as proposed by the Task Force; and
- (e) whether there are sufficient impartial experts in the field who can be enlisted.

16. Such potential problems and concerns require full and careful deliberation before a decision can be taken and we are prepared to explore further the feasibility of this initial proposal with the relevant parties.

Economic Implications

17. The opinion that developers will pay more at auction if lease conditions are simplified is an attractive notion which is difficult to prove or disprove. LandsD considers that, in reality, developers will pay a market price which will reflect the certainty provided by the lease conditions on the day and will not anticipate the impact of possible future changes which cannot be predicted or quantified at the time. Also, the comment that the implementation of the recommendations may lead to loss of public revenue is of concern and would need to be fully quantified and assessed.

Departments' initial views on Simplification of Lease Conditions

1	SC (1) Possession	<p><u>Trade</u></p> <p>Retain.</p> <p><u>Government</u></p> <p>No comment as they are land-related matters.</p>
2	SC (2) Formation of Green Area	
3	SC (3) Possession of Green Area	
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	<p><u>Trade</u></p> <p>Delete.</p> <p><u>Government</u></p> <p><i>BD</i> – Deletion will not affect BD's administration.</p> <p><i>LandsD</i> – No strong views, but suggests adding a new General Condition "Compliance with all Ordinances applicable to land, buildings, town planning, sanitation, etc."</p>

9	SC (8)(b) Compliance with Town Planning Ordinance	<p><u>Trade</u></p> <p>Delete.</p> <p><u>Government</u></p> <p><i>PlanD</i> – Retain.</p> <ul style="list-style-type: none"> – 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. <p><i>LandsD</i> – 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.</p>
10	SC (8)(c) Total gross floor area	<p><u>Trade</u></p> <p>Retain.</p> <p><u>Government</u></p> <p>Retain.</p>
11	SC (8)(d) Maximum site coverage	<p><u>Trade</u></p> <p>Retain.</p> <p><u>Government</u></p> <p><i>PlanD</i> – Retain only if there's a specific site coverage requirement.</p>
12	SC (8)(e) Minimum size of residential unit	<p><u>Trade</u></p> <p>Delete.</p> <p><u>Government</u></p> <p>Delete if not appropriate. Generally only control the number of units not the minimum size.</p>

13	SC (8)(f) Height	<p><u>Trade</u></p> <p>Retain (only if specific height control is necessary and not stipulated in OZP).</p> <p><u>Government</u></p> <p><i>PlanD</i> – 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.</p> <p><i>LandsD</i> – 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.</p>
14	SC (8)(f)(i) Exemption for roof top structures	<p><u>Trade</u></p> <p>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.</p> <p><u>Government</u></p> <p><i>PlanD</i> – JPN to promulgate criteria and scale of exemption is agreeable.</p> <p><i>LandsD</i> – Retain.</p> <ul style="list-style-type: none"> – 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	<p><u>Trade</u></p> <p>Retain.</p> <p><u>Government</u></p> <p>Reasons same as SC (8)(b) and (f).</p>

16	SC (8)(h) Design and disposition	<p><u>Government</u></p> <p><i>PlanD</i> – 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.</p> <p><i>LandsD</i> – Reasons same as SC (8)(f).</p>
17	SC (9) Provision of sales office and show flats	<p><u>Trade</u></p> <p>Retain.</p> <p><u>Government</u></p> <p>Retain.</p>
18	SC (10) Recreational Facilities	<p><u>Trade</u></p> <p>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.</p> <p><u>Government</u></p> <p><i>PlanD</i> – Follow BD’s practice. May use JPN to set out the criteria and scale of exemption.</p> <p><i>LandsD</i> – Retain.</p> <ul style="list-style-type: none"> – 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	<p><u>Trade</u></p> <p>Delete</p> <p><u>Government</u></p> <p><i>PlanD</i> – Retain to cater for site specific requests as well as for implementation of planning conditions imposed by the Town Planning Board.</p> <p><i>LandsD</i> – 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).</p>
20	SC (12) Landscaping	<p><u>Trade</u></p> <p>Retain, but to simplify unless there are specific requirements.</p> <p><u>Government</u></p> <p><i>PlanD</i> – 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.</p> <p><i>LandsD</i> – 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.</p>
21	SC (13) Watchman’s office	<p><u>Trade</u></p> <p>Delete. Compliance control through JPN and layout plans.</p>
22	SC (14) Watchman’s Quarters	<p><u>Government</u></p> <p><i>PlanD</i> – A JPN to set out the criteria and scale of exemption is acceptable.</p>
23	SC (15) Owners Corporation Office	<p><i>BD</i> – No strong views.</p> <p><i>LandsD</i> –</p> <ul style="list-style-type: none"> – 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)	<u>Trade</u> Retain. <u>Government</u> Retain.
25	SC (17) Restriction on alienation	<u>Trade</u> Retain. <u>Government</u> Retain.
26	SC (18) Deed of Mutual Covenant	<u>Trade</u> Retain. <u>Government</u> Retain.
27	SC (19) Registration	<u>Trade</u> Retain. <u>Government</u> Retain.
28	SC (20) Restriction on partitioning	<u>Trade</u> Retain. <u>Government</u> Retain.

29	SC (21)(a) Residential parking spaces	<p><u>Trade</u></p> <p>Retain, but simplify to “parking spaces shall be provided to the satisfaction of the director”. All standards and definitions to be covered in JPN.</p> <p><u>Government</u></p> <p><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.”</p> <p><i>LandsD</i> – Retain.</p> <ul style="list-style-type: none"> – 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. <p><i>BD</i> – BO does not have power to require the provision of car parks.</p> <p><i>PlanD</i> – 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.</p>
30	SC (21)(b) Exclusion of floor area for calculation of no. of spaces	<p><u>Trade</u></p> <p>Delete. Details in JPN. GFA exemption through approval of layout plans.</p> <p><u>Government</u></p> <p><i>TransportD</i> – Not concerned. Agreed that JPN could be an option.</p> <p><i>LandsD</i> – 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.</p>

31	SC (21)(c) Variation of parking spaces	<p><u>Trade</u></p> <p>Delete. Requirements in JPN and actual exemption through the Buildings Ordinance.</p> <p><u>Government</u></p> <p><i>TransportD</i> – JPN acceptable provided it specifies the requirements and there is the authority to control.</p> <p><i>BD</i> – No power under BO to require the provision of carpark spaces.</p> <p><i>LandsD</i> – Retain. This clause has premium implications and is necessary to exercise control throughout the lease term.</p> <p><i>PlanD</i> – See comments on SC (21)(a) above.</p>
32	SC (21)(d) Parking space use	<p><u>Trade</u></p> <p>Delete. Requirements in JPN.</p> <p><u>Government</u></p> <p><i>TransportD</i> – Not concerned. JPN could be an option.</p> <p><i>LandsD</i> – Retain.</p> <ul style="list-style-type: none"> – 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	<p><u>Trade</u></p> <p>Delete. Requirements in JPN. Exemption approval through layout plan submission.</p> <p><u>Government</u></p> <p><i>LandsD</i> – Retain. This clause has premium implication.</p>
34	SC (22) Restriction on alienation of car park common areas	<p><u>Trade</u></p> <p>Retain.</p> <p><u>Government</u></p> <p>Retain.</p>

35	SC (23) Deposit of car park plan	<u>Trade</u> Retain. <u>Government</u> Retain.
36	SC (24)(a) Vehicular access	<u>Trade</u> Retain. <u>Government</u> Retain.
37	SC (24)(b) Temporary access	<u>Trade</u> Delete. Temporary access can be approved under SC (24)(a). <u>Government</u> SC (24)(a) and (b) can be combined.
38	SC (24)(c) Construction of run-in	<u>Trade</u> Delete. Control through the Buildings Ordinance. <u>Government</u> <i>BD</i> – 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. <i>LandsD</i> – No objection if BD could exercise effective control. <i>HyD</i> – 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) Non exclusive Right of Way	<u>Trade</u> Retain. <u>Government</u> Retain.

40	SC (25) Set back	<p><u>Trade</u></p> <p>Retain.</p> <p><u>Government</u></p> <p>Retain.</p>
41	SC (26) Cutting Away	<p><u>Trade</u></p> <p>Review if still necessary. Do equivalent powers exist through GEO & Buildings Authority?</p> <p><u>Government</u></p> <p>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.</p>
42	SC (27) No rock crushing	<p><u>Trade</u></p> <p>Delete. The policy intent is not for land administration.</p> <p><u>Government</u></p> <p>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.</p>
43	SC (28) Anchor Maintenance	<p><u>Trade</u></p> <p>Retain.</p> <p><u>Government</u></p> <p>Retain to make it the responsibility of the lessee to continuously monitor the performance of ground anchors within the lot.</p>

44	SC (29) Spoil or debris	<p><u>Trade</u></p> <p>Can this be controlled under the Waste Disposal Ordinance Cap 354 ?</p> <p><u>Government</u></p> <p><i>DSD</i> – Retain.</p> <ul style="list-style-type: none"> - 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. <p><i>LandsD</i> – 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.</p>
45	SC (30) Dumping (Government land)	<p><u>Trade</u></p> <p>Delete. Controlled under the Waste Disposal Ordinance Cap 354 and the Land (Miscellaneous Provisions) Ordinance Cap 28 ?</p> <p><u>Government</u></p> <p>Similar to SC (29).</p>
46	SC(31) Utility services	<p><u>Trade</u></p> <p>No particular views.</p> <p><u>Government</u></p> <p><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”.</p> <p><i>LandsD</i> – Subject to other views, LandsD will consider combination with other SCs to rationalize.</p>
47	SC (32) Damage to public roads	<p><u>Trade</u></p> <p>Delete. Controlled through the Land (Miscellaneous Provisions) Ordinance.</p> <p><u>Government</u></p> <p><i>HyD</i> – No objection to combine with SC (35).</p> <p><i>LandsD</i> –Consideration will be given to consolidate SCs (32) and (35) into one clause.</p>

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

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

57	SC (42) Provision of fire service installations	<p><u>Trade</u></p> <p>Delete. Covered by the Fire Services Ordinance and Buildings Ordinance.</p> <p><u>Government</u></p> <p><i>FSD</i> - 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>.</p> <p><i>BD</i> – FSI requirements for buildings by FSD are regulated under Cap 123 S.16(1)(b) and S.21(6)(d) of BO.</p> <p><i>LandsD</i> – No objection, subject to adequate enforcement and control elsewhere.</p>
58	SC (43) Dangerous Goods	<p><u>Trade</u></p> <p>Delete. Covered by the Dangerous Goods Ordinance.</p> <p><u>Government</u></p> <p>Delete.</p>
59	SC (45) Supervisory and overhead changes	<p><u>Trade</u></p> <p>Retain.</p> <p><u>Government</u></p> <p>Retain.</p>
60	SC (46) Definitions of gross floor area	<p><u>Trade</u></p> <p>Delete. Covered by the Buildings Ordinance and JPN (if necessary).</p> <p><u>Government</u></p> <p><i>LandsD</i> – 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.</p>

Note

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