

## Chapter 4

### Small house grants in the New Territories

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Audit conducted a review of the Lands Department's implementation of the small house policy in the New Territories and identified areas where improvements could be made.

#### **Need to improve the implementation of the small house policy**

2. The Committee noted that in the present review, Audit made the same observation as in its 1987 audit review, that the problem of indigenous villagers selling their small houses soon after the issue of the certificates of compliance (CCs) still existed. Audit found that in 53 cases, the indigenous villagers applied for permission to sell their small houses within an average of three days after the issue of the CCs. Nearly all of the flats of the 53 small houses were sold in about five months after the removal of the restriction on alienation. Audit considered that many indigenous villagers were cashing in on their eligibility for the small house concessionary grants, which the Government considered to be a valuable privilege especially in a rising property market. In June 2001, the Court of Appeal drew the Lands Department's attention to the issue of alleged illegal agreements on small house grant applications. The Lands Department noted the problem and had taken some actions to address it.

3. The Committee wondered:

- whether the problems above constituted an abuse of the privilege to develop small houses, as indigenous villagers were cashing in on their eligibility for concessionary grants; and
- whether these problems arose from omission of actions which should have been taken by the Lands Department.

4. **Mr Michael SUEN Ming-yeung, Secretary for Housing, Planning and Lands,** responded at the public hearing of 9 December 2002 that the crux of the problems was that, according to estimates of the Heung Yee Kuk (HYK), at present about 240,000 indigenous male villagers were entitled to build small houses. However, there was insufficient land to meet the demand. Instead of taking the approach suggested by Audit for addressing the problems, he said that it was his intention to pursue within the tenure of his office a review of the small house policy and related issues in a comprehensive manner, and he hoped to resolve the associated problems once and for all within that time scale.

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5. In this connection, the Committee asked about the timetable for the review and whether it would be completed within one year.

6. The **Secretary for Housing, Planning and Lands** responded, vide his letter of 30 December 2002 in *Appendix 50*, that the small house policy review involved a number of complex and inter-related issues, such as the optimal use of land resources, and various environmental and transport infrastructural matters associated with small house developments. The Housing, Planning and Lands Bureau (HPLB) intended to review the small house policy in a comprehensive manner and identify suitable options for resolving those problems associated with the policy. It would consult stakeholders along the way and try to reach some tentative conclusions with them for further consultation with the community. It would do its best to expedite the review but given the complexity of the issues involved, this phase of the work was unlikely to be completed within one year.

7. The Committee considered that the undertaking given in the above letter fell far short of that given as part of the Secretary for Housing, Planning and Lands' evidence at the public hearing. The Committee asked whether it was still his objective to review the small house policy within his tenure of office and resolve the associated problems once and for all.

8. In his letter of 29 January 2003 in *Appendix 51*, the **Secretary for Housing, Planning and Lands** reaffirmed his intention and hope as stated at the public hearing of 9 December 2002.

9. The **Secretary for Housing, Planning and Lands** also pointed out in his letter of 29 January 2003 that the undertaking in his letter of 30 December 2002 was an outline of the practical first steps which he intended to take in order to give effect to his intention. He had also given his assessment that this phase of the work was unlikely to be completed within one year.

10. Regarding the scope of the comprehensive review of the small house policy, the Committee asked:

- as the Committee in its Report No. 10 of January 1988 had recommended that a review of the question of granting land to male heirs of indigenous villagers who were no longer residents in Hong Kong be conducted, about the results of the review conducted thereafter;

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- whether the above issue of granting land to male indigenous villagers who were no longer residents in Hong Kong would be revisited in the present review; and
- whether the present review would cover the question of whether the entitlement to build small houses in the New Territories under the policy was one of the lawful traditional rights and interests of the indigenous inhabitants of the New Territories which were protected by the Hong Kong Special Administrative Region under Article 40 of the Basic Law.

11. In his letter of 30 December 2002, the **Secretary for Housing, Planning and Lands** responded that:

- subsequent to the release of the Committee's Report No. 10, the Administration conducted a review of the practice of granting land to male indigenous villagers who were no longer residents in Hong Kong;
- the Administration then was of the view that the small house policy did not exclude male indigenous villagers who resided overseas from applying for small house grants. The Administration also took the view that if the overseas indigenous villager did not intend to return shortly to reside in his house, his application would be accorded low priority in the face of other applications with more pressing housing needs. This arrangement for processing applications from overseas indigenous villagers had remain unchanged;
- the issue of granting land to male indigenous villagers who were no longer residents in Hong Kong would be included in the present review; and
- the present review would encompass the question of whether the various arrangements for land grant applications under the small house policy was one of the lawful traditional rights and interests of the indigenous inhabitants of the New Territories which were protected by the Hong Kong Special Administrative Region under Article 40 of the Basic Law.

12. The Committee asked about the role of the HYK in the Administration's comprehensive review of the small house policy.

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13. The **Secretary for Housing, Planning and Lands** responded that the HYK was a statutory advisory body established under the Heung Yee Kuk Ordinance. The Administration would consult the HYK on matters affecting indigenous villagers in the New Territories such as the small house policy. Notwithstanding the need for consultation, the Administration did not need to seek the agreement of the HYK. If the Administration and the HYK had different views on a matter, the Administration would try to resolve them.

14. The Committee noted that the Director of Lands generally agreed with Audit's recommendations for improving the current arrangements regarding small house administration.

15. In response to Audit's recommendations on implementation of the existing small house policy, the Secretary for Housing, Planning and Lands had said in paragraph 2.27 of the Audit Report that while it was not an abuse for villagers to dispose of their small houses built under building licence or through land exchange soon after the issue of the CC, he agreed that the problem deserved his attention. He was exploring appropriate measures to address this issue.

16. The Committee noted that the "no abuse" response of the Secretary for Housing, Planning and Lands was contrary to the then Director of Buildings and Lands' response to the 1987 audit review that the problem of indigenous villagers selling their village houses built on sites granted under the small house policy, thereby abusing the scheme, had been with the Government for many years.

17. The Committee was very concerned that soon after the issue of the CCs, some indigenous villagers sold their small houses built under building licences or through land exchanges, notwithstanding the fact that in their applications for small house grant to the Lands Department, they had declared that they had never made and had no intention to make any private arrangements for their rights under the small house policy to be sold to other individuals or developers. It asked:

- whether Audit's recommendations on implementation of the existing small house policy and prevention of abuse would not be taken forward by the Administration pending the outcome of the comprehensive review of the policy; and
- whether the sale of small houses by indigenous villagers constituted an abuse of the small house policy.

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18. **Mr Patrick LAU, Director of Lands**, responded that:

- the Lands Department agreed with the majority of Audit's recommendations on implementation of the existing small house policy. In fact, some of the recommendations had already been implemented. On some other recommendations which involved legal issues, the Lands Department was seeking legal advice. As regards the remaining recommendations, the Lands Department had already started consulting the HYK. The consultation would be conducted in sincerity with a view to reaching consensus on how to implement Audit's recommendations. Hence, before the outcome of the comprehensive review of the small house policy was available, the Administration would implement some of the measures which were recommended by Audit and adopt appropriate measures to preclude people from taking improper actions due to imperfections in the present policy;
- the existing small house policy allowed the inclusion, in the conditions of small house grants, of provisions on alienation upon completion of the small houses. Except for private treaty grants which had a perpetual restriction on alienation, other types of small house grants did provide flexibility for alienation;
- as shown in Table 1 of the Audit Report, the Administration imposed restrictions on alienation for different types of small house grants under the small house policy, which also gave flexibility for alienation for some types of grants. If the alienation of small houses was in accordance with the terms of these restrictions, it was difficult for the Administration to take the view that there was abuse of the small house policy by the villagers concerned; and
- if illegal agreements on the sale of small houses were made, the Administration would take action against the parties concerned so long as it could adduce evidence to prove its case. The Lands Department decided not to take any action against the relevant parties in the case of alleged sale of small house prior to the issue of the CC because, as explained in the Audit Report, neither the Government nor the villager was involved in the agreements. The parties involved in the agreement did not have interest in the land of the small houses concerned. The Lands Department could not reject the application unless the indigenous villager, to whom the building licence of the small house was granted, was a party to the agreement or proved to be involved in the agreement.

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19. **Mr LAM Kwok-cheong, Ex-officio Executive Councillor, HYK**, said that:

- notwithstanding the hiccups in the implementation of the small house policy, the HYK generally considered that there were no big problems. The small house policy had all along been implemented on the right track. But the objectives of the policy had not yet been achieved. This was due to the substantial number of indigenous villagers and insufficient land. As the policy only allowed small houses to be built in existing village areas within 300 feet from the edge of the last house built before December 1972, it restricted the land available. Implementation of the policy should continue with a view to achieving the objectives;
- the small houses were basically for meeting the housing needs of the indigenous villagers themselves. But some indigenous villagers did not have the means to pay and were unable to secure bank loans for the building expenses. They therefore sold one of the flats of their houses in order to secure funds for the building expenses. As regards the sale of small houses after their completion, indigenous villagers who owned the land and built the small houses were free to sell their small houses without the need for payment of premium after the five-year restriction on alienation. The sale of small houses within the five-year period was, however, subject to the payment of a premium. Cashing in was unlikely as it was difficult to sell small houses in the present property market; and
- the HYK considered that there was no abuse of the small house policy. The question of abuse arose from a few court cases of irregularities in that the alleged false declaration had been made by an indigenous villager in the application for a building licence under the small house policy to the effect that the indigenous villager declared that he was the owner of the subject lot when in fact the beneficial ownership of the lot belonged to the developer. If the declaration was proved to be false, the parties concerned should be brought to justice. Nevertheless, these irregularities should not be considered as an abuse of the small house policy.

20. The Committee noted from paragraph 1.3 of the Audit Report that, apart from the “300 feet” limit, small houses built by virtue of the small house policy were also subject to a height limit of three storeys or 8.23 metres. It wondered whether these limits had aggravated the problem of insufficient land supply.

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21. The **Secretary for Housing, Planning and Lands** responded that:
- villages at the proximity of the urban area might have more well-developed infrastructural facilities but those in the remote area did not;
  - from the practical point of view, there were doubts on whether the height limit of all the villages could be relaxed. From the planning point of view, the arrangement of houses would not be harmonious and would give rise to other problems if there were houses of over three storeys among low-rise three-storeyed houses; and
  - regarding the “300 feet” limit, the village expansion area scheme was already in place to provide more land for building small houses.
22. The Committee further asked how the problem of insufficient land for indigenous villagers and their male descendents to build small houses could be addressed.
23. The **Ex-officio Executive Councillor, HYK**, said that in view of the constraints on the land supply, the HYK had, after conducting a detailed study, suggested to the Administration that a pilot scheme to relax the height limit of small houses be implemented in Tsing Yi. The HYK was awaiting the Administration’s response to the suggestion.
24. The **Secretary for Housing, Planning and Lands** responded that the Administration would not decide on the HYK’s suggestion, before the conclusion of the comprehensive review of the small house policy.
25. The **Director of Lands** added that there were technical problems, such as environmental and transport infrastructural matters, to be resolved if the present height limit of three storeys for small houses was relaxed. All these problems had to be addressed in consultation with the HYK.
26. The Committee noted that following the Court of Appeal’s referral of the case of alleged illegal agreements to the Lands Department, the Lands Department raised with the Law Society in July 2001 its concern about whether the solicitors had acted with any impropriety in preparing the conveyancing legal documents. In reply, the Law Society informed the Lands Department that an investigation into the matter was in progress. The Committee was not satisfied that no follow-up actions had been taken since July 2001.

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The Committee asked at the public hearing of 9 December 2002 whether the Lands Department had followed up the matter with the Law Society.

27. The **Director of Lands** responded, vide his letter of 17 December 2002 in *Appendix 52*, that:

- the Law Society informed the Lands Department in November 2001 (in response to a follow-up letter from the Lands Department regarding the concerns raised in July 2001 with the Law Society) that an investigation by the Conduct Section of the Law Society was underway and that it was considering whether to recommend the issue of a general notification to the Society's members. This was in response to a suggestion from the Lands Department to the Law Society that the Society should consider issuing a general notification to its members as to how to conduct themselves if instructed to prepare Declarations of Trust and other documents related to the so-called "development schemes"; and
- following enquiry from the Committee at the hearing of 9 December 2002, the Lands Department requested an update from the Law Society. The Law Society advised that it would not be able to disclose information relating to the investigation by its Conduct Section as the Personal Data Privacy Ordinance precluded disclosure of such information to third parties and of information on any resulting disciplinary prosecutions (the proceedings for which were, by law, held in camera). On the issuing of a general notification, the Law Society had requested the Lands Department to identify how the Lands Department envisaged that the legal profession might address the problem of the sale of small house rights. The Lands Department would render the assistance requested by the Law Society.

28. The Committee further asked about the Administration's response to the view of the United Nations Committee on the Elimination of Discrimination against Women that the small house policy was unfair.

29. The **Secretary for Housing, Planning and Lands** responded that there were problems in checking female indigenous villager status as, unlike male indigenous villagers, the clan book did not record the descendents of female indigenous villagers since 1898. Moreover, extending the eligibility for small houses to female villagers would also give rise to the problems of land demand and of substantial increase of eligible villagers. He had not yet started to prepare the Administration's response to the United Nations Committee's view. In doing so, he would make reference to his predecessor's explanation of the problems.



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30. The Committee noted from paragraph 2.16 of the Audit Report that after the 1987 audit review, the Lands Department introduced in the small house grant conditions under the village expansion area schemes a three-year moratorium on removal of the restriction on alienation. In other words, the Lands Department would not permit the assignment of small houses in such areas within three years after the issue of the CC. The Committee asked whether the HYK had been consulted on the moratorium period.

31. The **Director of Lands**, vide his letter of 17 December 2002, affirmed that the HYK had been consulted on the issue. At the Seventh Meeting of the Small House Policy Working Group held on 1 October 1987, HYK representatives supported the imposition of a 3-year moratorium on removal of restriction on alienation for small house grants under the village expansion area schemes.

32. In response to the Committee's request for an update of the statistics on removal of restriction on alienation set out in Table 2 of the Audit Report provided, the Director of Lands provided, vide his letter of 17 December 2002, the following updated statistics:

<u>Period covered</u>	<u>CC issued</u>	<u>Approved cases of removal of restriction on alienation</u>	<u>Premium collected</u>
	(No.)	(No.)	(\$ million)
April - November 2002	575	275	156
		(this figure included cases where CCs were issued prior to April 2002)	

33. The Committee also noted from paragraph 2.24(a) of the Audit Report that, in reply to Audit's enquiry, the Lands Department pointed out that the Government had recently suggested to the HYK that a moratorium clause, which was similar to the existing one for PTGs under the village expansion area schemes, should be included in the conditions of small house building licences, land exchanges and PTGs not under the village expansion area schemes.

34. Upon the Committee's enquiry about the views of the HYK on the Government's suggestion, **Chairman of HYK**, vide his letter of 18 December 2002 in *Appendix 53*, made the following response:

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- the HYK understood that the Government's proposal was made as a result of certain comments made in three High Court cases on the specific issue of the making of alleged false declaration by an indigenous villager in the application for a building licence under the small house policy to the effect that the indigenous villager declared that he was the owner of the subject lot when in fact the beneficial ownership of the said lot belonged to the developer;
- the HYK was of the view that these cases were in fact independent and isolated cases and as such they should be dealt with by the Administration under the existing law. The interest that was being enjoyed by the indigenous villagers pursuant to the grant of small houses under the small house policy was in fact one of the lawful traditional rights and interests of the indigenous inhabitants in the New Territories protected by Article 40 of the Basic Law and the same had been duly confirmed by the Court of Final Appeal. Accordingly, the HYK considered that it would be manifestly inappropriate for the Government to use moratorium as a "cut-off" method to attempt to solve the problem;
- the HYK would strongly object to any proposal that purported to vary the existing small house policy on the ground that the same would seriously contravene Article 40 of the Basic Law; and
- the Government and the HYK had already set up a Working Group to discuss the issue relating to the prevention of abuse of the small house policy. The Working Group held its first meeting on 28 November 2002 and would hold a second meeting sometime in mid-January 2003 for further discussion and study of the matter.

35. Having noted the HYK's views, the Committee asked about the Administration's comments on the HYK's view that "it would be manifestly inappropriate for the Government to use moratorium as a 'cut-off' method to attempt to solve the problem".

36. The **Director of Lands** responded, vide his letter of 6 January 2003 in *Appendix 54*, that when this issue was raised by the Administration at its liaison meeting held on 10 January 2002 with the HYK, the HYK's comments were similar to those made by the Chairman of HYK in his letter of 18 December 2002 to the Committee. The HYK considered that Government should only take action on the three court cases; and objected to further restrictions on the assignment of small houses. At that time the HYK did not wish to discuss the issue further without details of the three court cases involving

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malpractices in the assignment of small house developments and statistics on abuses. Subsequently, copies of the court judgements were provided to the HYK and the matter would be further discussed at the next Lands Department and HYK Working Group meeting to be held in January 2003. The Lands Department would not be able to give detailed comments on the HYK's views expressed in the above letter to the Committee until after that meeting.

37. In response to the Committee's enquiry about the moratorium period in the proposed moratorium clause, the **Director of Lands** pointed out, vide his letter of 17 December 2002, that at the liaison meeting between the then Secretary for Planning and Lands and the HYK in January 2002, a moratorium period of 5 years from the date of issuing the CC was proposed for all small house grants, i.e. those approved under free building licences or through land exchanges or PTGs irrespective of whether or not they were granted within village expansion areas. The proposed period was considered long enough to achieve the intended effect of preventing potential abuse of the small house applications. The proposed measure was being discussed by the Working Group on Prevention of Abuses of Small House Policy which comprised representatives of the Lands Department and the HYK.

38. The Committee noted from paragraph 2.19 of the Audit Report that the Lands Department included an additional clause in the villager's declaration form for small house grant application with effect from October 2001. However, the New Territories District Lands Offices (NTDLOs) of Tsuen Wan and Tuen Mun had not used the new declaration forms until Audit's enquiry in July 2002. In this connection, the Committee asked how the NTDLOs were informed of the inclusion of an additional clause in the villager's declaration form for small house grant application and the disciplinary action, if any, that had been taken against the NTDLOs of Tsuen Wan and Tuen Mun for using the old declaration forms.

39. The **Director of Lands** responded, vide his letter of 17 December 2002, that:

- the NTDLOs were informed of the inclusion of the additional clause in the declaration form by a memo from the Lands Department Headquarters setting out Lands Administration Office Instruction (LAOI) Amendment No. 7/2001. This was the established procedure for issuing guidelines and instructions and NTDLO staff were required to observe the instructions promptly. The additional clause was applicable to applications involving private land;

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- in the DLO/Tsuen Wan (DLO/TW), since the introduction of the additional clause, 24 applications for small house were received in old declaration forms. All the cases involved government land only. As the additional clause in the new form applied to private land only, there was no material difference between using the old form and the new form in these cases. The DLO/TW, upon receipt of Audit's enquiry, had immediately withdrawn the old forms. The DLO/TW also reminded officers handling small house applications to pay special attention to the declaration form submitted by the applicants to ensure that the new form would be used;
- in the DLO/Tuen Mun (DLO/TM), 14 applicants had submitted their applications in old declaration forms and all of them involved private land. As 12 of them had not yet been interviewed, they would be required to declare on the new form upon interview. The other two applicants had been interviewed and declared using the old form. The DLO/TM would make arrangement with the two applicants for a new declaration. The DLO/TM had also instructed case officers to examine all small house applications in hand to ensure the new declaration form was used; and
- the Lands Department considered that the nature and potential consequences of the oversight were not such that disciplinary action was warranted. A reminder had been issued to all NT District Lands Officers personally that they should take steps to ensure that prompt action was taken upon receipt of such instructions from the Lands Department Headquarters.

### **Need to improve the checking of indigenous villager status**

40. The Committee noted that the Lands Department did not keep a list of eligible indigenous villagers who were entitled to the small house grant. A small house grant applicant had to submit a declaration, signed either by a village representative (VR) of his village or by a chairman/vice-chairman of the relevant rural committee (RC), certifying that he was an indigenous villager. Besides such a declaration, the applicant did not have to submit any other evidence to substantiate the indigenous villager status. Audit considered that it was important for the Lands Department to ensure that the small house grant was only given to genuine indigenous villagers.

41. According to paragraph 3.13 of the Audit Report, Audit had recommended that the Director of Lands should take prompt action to incorporate in the LAOI:

- criteria for determining whether a small house grant application was a simple or complex case;

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- the requirements that officers in the NTDLOs responsible for processing small house grant applications should always check the applicant's Birth Certificate with a view to confirming the relationship between the applicant and his father;
- procedures for verifying the indigenous villager status of the small house grant applicant if his indigenous villager status was in doubt;
- the criteria under which a small house grant application was classified as a doubtful case;
- detailed procedures for the checking of doubtful cases; and
- the type of information which should be obtained from the District Office of the Home Affairs Department (HAD) for checking the doubtful cases.

42. In response to the Committee's request for a detailed response to Audit's recommendation, the **Director of Lands** stated, vide his letter of 17 December 2002, that:

- the first and third to fifth items above were very similar and would be consolidated and incorporated into a new procedure for indigenous villager status checking which was now being formulated by the Lands Department in consultation with the HYK. In this respect, the HYK had counter-proposed the waiving of the VRs and the RC Chairmen/Vice-Chairmen's statutory declaration on the applicant's indigenous villager status. The Lands Department had responded to the HYK that if the applicant could not obtain the VR or the RC Chairman's declaration on his indigenous villager status, it would conduct a thorough checking on his indigenous villager status including the checking of the family tree/clan book, ownership of private lots in the New Territories dated-back to the Block Government Lease, inscriptions appearing in Chi Tong and on ancestral graves, etc. These checks would take time and lengthen the processing period for small house applications;
- regarding the second item, the Lands Department would stipulate the requirement of checking birth certificates in the LAOI; and
- regarding the last item, the type of information that might be obtained from District Offices of the HAD were those on TSO/TONG properties and this would be useful in those cases where the applicants could not provide ownership of a Block Government Lease lot except a TSO/TONG property.

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The Lands Department was discussing with HAD the procedures for the provision of such information and would finalise them in the LAOI as soon as possible.

43. Audit also recommended that the Director of Lands should, in consultation with the Legal Advisory and Conveyancing Office (LACO), specify clearly the penalty for making a false declaration in the declaration form and relevant legal documents for the small house grant applications so as to deter false claims of the indigenous villager status.

44. In response to this recommendation, the **Director of Lands** pointed out in the same letter that the LACO had advised that the statement in the existing declaration, that “I understand that if I make false or incomplete declarations, I may render myself liable to prosecution by the Government of the HKSAR”, already had a deterrent effect. However, to meet the recommendation, the Lands Department would insert in the application form a warning note as follows:

“Note : Under Section 36(a) of the Crimes Ordinance, Cap. 200, any person who knowingly and wilfully makes a statement false in material particular in a statutory declaration shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 2 years and to a fine.”

### Scope for improvement in the processing of small house grant applications

45. The Committee noted that the Legislative Council (LegCo) and some District Council Members had raised concern over the long waiting time for villagers applying for the small house grants. In June 2002, the then Secretary for Planning and Lands informed the LegCo Panel on Planning, Lands and Works that, due to the large number of the small house grant applications, there was on average a three-year waiting time before the Lands Department could commence working on an application.

46. The Committee shared the concern over the long waiting time before the Lands Department could commence processing a small house grant application and asked about the reason for it.

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47. The **Director of Lands** responded that the waiting time arose from manpower constraints. Owing to the constraints, there was a backlog in the processing of existing small house applications. New applications would therefore have to put on the waiting list pending availability of manpower to process these applications. The waiting time of three years represented an average of the different waiting times for applications processed by the nine NTDLOs. The NTDLOs of Tai Po, North and Yuen Long had a large number of applications. The waiting time for some applications processed by these three NTDLOs might be longer than five years.

48. The **Ex-officio Executive Councillor, HYK** said that:

- the HYK was very concerned about the processing of the large number (over 14,000) of outstanding small grant applications. While the Lands Department had pledged that it might be possible for execution of straightforward cases to take place within 170 working days from the commencement date of processing of small house grant applications, the HYK was shocked that there was an average initial waiting time of three years before the commencement;
- the Lands Department explained that the waiting time arose from shortage of manpower to process the applications. With a view to starting the ball rolling some small house applicants had made use of the contracting out service introduced by the Lands Department. The Lands Department, however, did not have the manpower to undertake its processing work; and
- the Lands Department should include waiting time in its performance pledge for the small house grants or even conduct a comprehensive review of the performance pledge.

49. In response to the Committee's enquiry about how the problem of long waiting time should be addressed, the **Secretary for Housing, Planning and Lands** said that he was very dissatisfied with the long waiting time before commencement of processing of small house grant applications. This problem, however, related to the entire system on small house grants and would continue if the Administration could not resolve the problems relating to the small house policy in the comprehensive review. The Administration would address the problem as soon as possible.

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50. On the measures to shorten the waiting time, the **Director of Lands** said that:

- the Lands Department had been exploring ways to deploy or spare manpower to process small house grant applications. As the staff of the Lands Department could only start to process applications on the waiting list after they had completed the vetting work of the applications in hand, more manpower could be made available to process the wait-listed applications if the vetting work could be expedited;
- in fact, the Lands Department had in the past explored ways to resolve the problem of long waiting time for processing small house grant applications. For instance, the Lands Department had, as mentioned in the Audit Report, adopted a workshop approach which was most effective for dealing with some straightforward cases. The approach was not very effective in dealing with non-straightforward cases of which there was a backlog;
- the Lands Department also introduced in 1998 a pilot scheme of contracting out the survey and legal work involved in small house grant applications. The villagers had to pay a fee of \$22,000 each for the service. However, the service could only shorten the processing time by a few months. The HYK and the villagers considered that the service was not cost-effective and did not support the pilot scheme. The contracting out was therefore discontinued in 1999; and
- nevertheless, the Lands Department would explore other new ways, such as streamlining the processing procedures, to shorten the waiting time.

51. The Committee understood that lawyers' business in conveyancing was not as good as that in 1998 and other government departments, when contracting out their work, would decide on the fee through tender. The Committee asked whether the Administration would reconsider outsourcing the work involved in small house grant applications and decide on the fee through tender, with a view to expediting the processing work. The **Director of Lands** replied in the affirmative.

52. According to Table 5 of the Audit Report, 30 months were required for consulting the relevant government departments in processing non-straightforward cases of small house grant applications. The Committee enquired about the reason for the long processing time.



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53. The **Director of Lands** responded that the processing time of 30 months included:

- the time required for relevant government departments to give views or impose requirements on issues such as sewage disposal, fire service, drainage and slopes; and
- the time required for applicants to seek clarifications on and respond to these views or requirements. They might need to engage experts to prepare technical reports in making their response.

54. In response to the Committee's enquiry about the HYK's view on the processing time, the **Ex-officio Executive Councillor, HYK** said that he did not know how the processing time of 30 months was drawn up. The processing time only applied to individual cases but not across the board. He said that the HYK noted that complex issues might be involved in non-straightforward cases. Nevertheless, he was inclined to agree that the processing time appeared to be long and should be shortened if possible.

55. According to paragraph 6.23 of the Audit Report, Audit had recommended that the Director of Lands should take prompt action to:

- expedite the processing of small house grant applications so as to reduce the long waiting time;
- devise a small house grant applications standard reply letter for use by all the NTDLOs and incorporate it in the LAOI;
- amend the LAOI to require all the NTDLOs to display notices of the application dates of the small house grant applications which are being processed, and of the average waiting time and processing time for the small house grant applications;
- include in the performance pledge for the small house grants the initial waiting time of the small house grant applications for straightforward cases;
- refine the Lands Department's performance pledge on the processing of small house grant applications in such a way that ambiguity and misunderstanding will not arise; and

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- ensure that consistent wording is used in the Lands Department's performance pledge and in the information pamphlet: "The New Territories small house policy — How to apply for a small house grant".

56. At the Committee's request, the **Director of Lands** informed the Committee of the current progress made by the Lands Department in implementing these recommendations. He said that:

- on the first recommendation, the processing work was affected by external factors which were mentioned in paragraph 6.6 of the Audit Report and were beyond the Lands Department's control. For instance, the villagers might be required by the relevant government department to submit slope stability reports from authorised persons or qualified engineers. The time needed for preparing the reports was beyond the Lands Department's control;
- on the second recommendation, the Lands Department had prepared three draft standard reply letters and would finalise the drafting with a view to using them in early 2003;
- on the third recommendation, the Lands Department was in the process of finalising the display notices of the small house grant applications which were being processed. It, however, had reservations on the display of notices of the average waiting time and processing time for the small house grant applications;
- the fourth recommendation was still being considered by the Lands Department; and
- on the last two recommendations, the Lands Department would, after completing the review of small house grant processing procedures and guidelines, revise the wordings which were used in the Lands Department's performance pledge and in the information pamphlet to make them consistent. After such revision, ambiguity and misunderstanding would not arise.

57. The Committee asked whether the Administration would consider making indigenous villagers eligible for Home Ownership Scheme (HOS) flats in order to reduce the number of small house grant applications, thereby shortening the waiting time and making use of the vacant HOS flats arising from the cessation of sale of HOS flats indefinitely from 2003 onwards.

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58. The **Secretary for Housing, Planning and Lands** responded that these HOS flats would not be sold. The Administration would consider the Committee's suggestion, taking into consideration the fact that these flats would only be rented out and the justifications for making indigenous villagers eligible for renting HOS flats.

59. **Conclusions and recommendations** The Committee:

### **Need to improve the implementation of the small house policy**

- expresses serious concern that:
  - (a) soon after the issue of the Certificates of Compliance (CCs), some indigenous villagers sold their small houses built under building licences or through land exchanges, notwithstanding the fact that in their applications for small house grant to the Lands Department, they had declared that they had never made and had no intention to make any private arrangements for their rights under the small house policy to be sold to other individuals or developers; and
  - (b) despite the Lands Department's introduction of a new declaration form for small house grant applications in October 2001, the New Territories District Lands Offices (NTDLOs) of Tsuen Wan and Tuen Mun had not used the new form until Audit's enquiry in July 2002;
- acknowledges that the Secretary for Housing, Planning and Lands has agreed that the problem of villagers disposing of their small houses built under building licences or through land exchanges soon after the issue of the CCs deserves his attention;
- acknowledges that the Secretary for Housing, Planning and Lands:
  - (a) has undertaken to pursue within the tenure of his office the review of the small house policy and related issues in a comprehensive manner; and
  - (b) hopes to resolve the problems associated with the policy once and for all within the above time scale;

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- acknowledges that the Director of Lands has agreed to:
  - (a) provide in the Lands Administration Office Instruction (LAOI) additional procedures for carrying out further investigations when information on possible breach of licence conditions, misrepresentation by indigenous villagers or abuse of the small house policy is received; and
  - (b) ensure that all NTDLOs use the up-to-date forms for processing small house grants;
- notes that:
  - (a) the Lands Department has raised its concern with the Law Society on whether the solicitors in the court case referred to in paragraph 2.13 of the Audit Report had acted with any impropriety in preparing the conveyancing legal documents; and
  - (b) the Director of Lands will assist the Law Society in its consideration of issuing a general notification to solicitors on how to conduct themselves if instructed to prepare Declarations of Trust and other documents related to the so-called “development schemes” in order to address the problem relating to the sale of small house rights;
- urges the Director of Lands and the Secretary for Housing, Planning and Lands to take prompt action to include a moratorium clause on the removal of the restriction on alienation in the conditions of small house grants made by building licences, land exchanges and private treaty grants (PTGs) not under the village expansion area schemes; and in doing so, to consult the Legislative Council and the parties concerned;

### **Need to improve the checking of indigenous villager status**

- expresses dismay that:
  - (a) building licences were issued to villagers of a village which was not on the Approved List; and
  - (b) there was lack of proper control over the keeping of the Small House Register;

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- urges the Director of Lands to expeditiously:
  - (a) formulate, in consultation with the Heung Yee Kuk, a new procedure for checking indigenous villager status, which will consolidate and incorporate:
    - (i) criteria for determining whether a small house grant application is a simple or complex case;
    - (ii) procedures for verifying the indigenous villager status of the small house grant applicant if his indigenous villager status is in doubt;
    - (iii) the criteria under which a small house grant application is classified as a doubtful case; and
    - (iv) detailed procedures for the checking of doubtful cases;
  - (b) stipulate in the LAOI that officers in the NTDLOs responsible for processing small house grant applications should always check the applicant's Birth Certificate with a view to confirming the relationship between the applicant and his father;
  - (c) discuss with the Home Affairs Department (HAD) the procedures for the provision in the HAD's District Offices of information on TSO/TONG properties for checking the doubtful cases and finalise them in the LAOI; and
  - (d) insert in the application form a warning note as follows: "Note: Under Section 36(a) of the Crimes Ordinance, Cap. 200, any person who knowingly and wilfully makes a statement false in material particular in a statutory declaration shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 2 years and to a fine.";
- acknowledges that the Director of Lands has, in respect of the management control over the keeping of the Approved List of recognised villages and the Small House Registers, agreed that:
  - (a) the criteria for inclusion of additional villages in the Approved List will be specified clearly in the LAOI;
  - (b) the small house grants will only be made to eligible indigenous villagers of recognised villages included in the Approved List;

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- (c) the NTDLOs will keep complete and accurate Small House Registers; and
- (d) a thorough check of the Small House Registers kept by the NTDLOs will be carried out with a view to reconciling/rectifying any discrepancies/errors found;

### **Premium computation inconsistent with the grant conditions**

- expresses concern that the computation of premium to be paid to the Government for the removal of the restriction on alienation is inconsistent with the conditions of small house building licences and land exchanges;
- urges the Director of Lands to:
  - (a) amend the small house building licence/land exchange conditions to reflect the Government's intention of using a discounting factor for the calculation of the premium on the removal of the restriction on alienation; and
  - (b) specify the computation method clearly in the building licence/land exchange conditions so that all parties concerned know exactly how the premium on the removal of the restriction on alienation is computed;

### **Scope for improvement in the processing of small house grant applications**

- expresses dismay that there is a waiting time of three to five years before the Lands Department can commence processing a small house grant application;
- recommends that the Director of Lands should reconsider outsourcing the work involved in small house grant applications and decide on the fee through tender, with a view to expediting the processing work;
- acknowledges that the Director of Lands has agreed to take prompt action to:
  - (a) expedite the processing of small house grant applications;
  - (b) devise a small house grant application standard reply letter for use by all the NTDLOs and incorporate it in the LAOI;
  - (c) amend the LAOI to require all the NTDLOs to display notices of the dates of the applications being processed, and of the average waiting time and processing time for the small house grant applications;

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- (d) include in the performance pledge for the small house grants the initial waiting time of the small house grant applications for straightforward cases;
- (e) refine the Lands Department's performance pledge on the processing of small house grant applications in such a way that ambiguity and misunderstanding will not arise; and
- (f) ensure that consistent wording is used in the Lands Department's performance pledge and in the information pamphlet: "The New Territories small house policy — How to apply for a small house grant"; and

### **Follow-up actions**

- wishes to be kept informed of:
  - (a) the progress of the comprehensive review of the small house policy;
  - (b) the additional procedures provided in the LAOI for carrying out further investigations when information on possible breach of licence conditions, misrepresentation by indigenous villagers or abuse of the small house policy is received;
  - (c) the progress in addressing the problem of villagers disposing of their small houses built under building licences or through land exchanges soon after the issue of the CCs;
  - (d) the progress of the actions taken to address the problem relating to the sale of small house rights;
  - (e) the progress of the Administration's proposal to include a moratorium clause on the removal of restriction on alienation in the conditions of small house grants made by building licences, or through land exchanges or PTGs not under the village expansion area schemes;
  - (f) the progress in formulating a new procedure for checking indigenous villager status;
  - (g) the progress in drawing up and incorporating in the LAOI the procedures for the provision of information in the HAD's District Offices for checking doubtful cases of small house grant applications;

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- (h) the progress in implementing the recommendations on the management control over the keeping of the Approved List of recognised villages and the Small House Registers;
- (i) the actions taken by the Administration to address the issue of premium computation being inconsistent with the grant conditions; and
- (j) the progress in implementing the recommendations on expediting the processing of small house grant applications.