



地政惠民 廿載耕耘  
Twenty Years of Quality Service



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我們矢志努力不懈，提供盡善盡美的土地行政服務。  
We strive to achieve excellence in land administration.

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**Urgent By Fax & By Post**

17 December 2002

Clerk  
Public Accounts Committee  
Legislative Council  
Legislative Council Building  
8 Jackson Road, Central  
Hong Kong  
(Attn : Mr. Colin CHUI)  
[Fax: 2537 1204]

Dear Sir,

**The Director of Audit's Report on the  
Results of value for money audits (Report No. 39)**

**Chapter 8: Small house grants in the New Territories**

With reference to your letter of 9 December, 2002, the information requested by the Public Accounts Committee (PAC) is as follows:-

- (a) *whether Heung Yee Kuk had been consulted on the three-year moratorium on removal of the restriction on alienation for small house grants under the village expansion area schemes which was introduced by the Lands Department after the 1987 audit review (paragraph 2.7 of the Audit Report refers)*

Yes, Heung Yee Kuk (HYK) had been consulted on the issue. At the 7th 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.

- (b) *the moratorium period in the moratorium clause which is proposed to be included in the conditions of small house building licences, land exchange and private treaty grants not under the village expansion area schemes (paragraph 2.24(a) of the Audit Report refers)*

At the liaison meeting between the then Secretary for Planning and Lands and HYK in January 2002, a moratorium period of 5 years from the date of issuing the certificate of compliance was proposed for all small house grants i.e. those approved under Free Building Licences, Land Exchange and Private Treaty Grants including those not granted within village expansion areas. The proposed period is considered long enough to achieve the intended effect of preventing potential abuse of the small house applications. The proposed measure is being discussed by the Working Group on Prevention of Abuses of Small House Policy which comprises representatives of the Lands Department and HYK.

- (c) *regarding the statistics on removal of restriction on alienation from 1997-98 to 2001-02 in Table 2 of the Audit Report, statistics for 2002-03 as at the present date*

Additional statistics are provided below:-

<u>Period covered</u>	<u>Certificate of Compliance issued</u> (No.)	<u>Approved cases of removal of restriction on alienation</u> (No.)	<u>Premium Collected</u> (\$ million)
Apr 2002 - Nov 2002	575	275 (this figure includes cases where certificates of compliance were issued prior to April 2002)	156

- (d) *as the Law Society had informed the Lands Department that it was conducting an investigation into the matter of whether the solicitors in the case mentioned in paragraph 2.13 had acted with any impropriety in preparing the conveyancing legal documents (paragraph 2.17 of the Audit Report refers), whether the Lands Department will follow up the matter with the Law Society; if so, please provide PAC with the outcome of the Law Society's investigation as soon as it is available*

The Law Society informed the Lands Department (Lands D) in November 2001 (in response to a follow up letter from Lands D 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 Lands D to the Law Society that it 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".

Following enquiry from PAC on 9 December 2002, Lands D requested an update from the Law Society. The Law Society has advised that it will not be able to disclose information relating to the investigation by its Conduct Section as the Personal Data Privacy Ordinance precludes disclosure of such information to third parties and of information on any resulting disciplinary prosecutions (the proceedings for which are, by law, held in camera). On the issuing of a general notification, the Society has now requested Lands D to identify how Lands D envisages that the legal profession might address the problem of the sale of small house rights. Lands D will render the assistance requested by the Law Society.

- (e) ***how the New Territories District Land Offices (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, against the NTDLOs of Tsuen Wan and Tuen Mun for using the old declaration forms which did not contain the additional declaration (paragraphs 2.19 and 2.20 of the Audit Report refer)***

The NTDLOs were informed of the inclusion of the additional clause in the declaration form by a memo from the Lands D Headquarters setting out Land Administration Office Instruction Amendment No. 7/2001. This is the established procedure for issuing guidelines and instructions and NTDLO staff are required to observe the instructions promptly. The additional clause is applicable to applications involving private land. A copy of the new declaration form is at Appendix for PAC's reference.

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 applies to private land only, there is no material difference between using the old form and the new form in these cases. DLO/TW upon receipt of Audit's enquiry had immediately withdrawn the old forms. 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 have not yet been interviewed, they will be required to declare on the new form upon interview. The other two applicants had been interviewed and declared using the old form. DLO/TM will make arrangement with the two applicants for a new declaration. DLO/TM had also instructed case officers to examine all small house applications in hand to ensure the new declaration form is used.

Lands D considered that the nature and potential consequences of the oversight were not such that disciplinary action was warranted. A reminder has been issued to all NT District Lands Officers personally that they should take steps to ensure that prompt action is taken upon receipt of such instructions from Lands D Headquarters.

***(f) a detailed response to the Audit's recommendations in paragraph 3.13 of the Audit Report***

D of Audit's recommendation in para. 3.13(a)(i), (iii), (iv) and (v) are very similar and will be consolidated and incorporated into a new procedure for indigenous villager (IV) status checking which is now being formulated by Lands Department in consultation with HYK. In this respect, HYK has counter-proposed the waiving of the Village Representatives (VR) and Rural Committee (RC) Chairmen/Vice-Chairmen's statutory declaration on the applicant's I.V. status. Lands D has responded to HYK that if the applicant could not obtain VR or RC Chairman's declaration on his I.V. status, we would conduct a thorough checking on his I.V. status including the checking of family tree/clan's book, ownership of private lots in the New Territories dated-back to the Block Government Lease, inscriptions appeared in Chi Tong and on ancestral graves, etc. These checks will take time and lengthen the processing period for small house applications.


To meet D of Audit's recommendation in para. 3.13(a)(ii), Lands D will stipulate the requirement of checking birth certificates in the LAOI.

Regarding para. 3.13(a)(vi), the type of information that may be obtained from District Offices of the Home Affairs Department (HAD) are those on TSO/TONG properties and this would be useful in those cases where the applicants cannot provide ownership of a Block Government Lease lot except a TSO/TONG property. Lands D is discussing with HAD the procedures for the provision of such information and will finalize them in the LAOI as soon as possible.

Regarding para. 3.13(b), LACO has 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 has a deterrent effect. However, to meet D of Audit's recommendation, Lands D will 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 willfully 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."**

Yours sincerely,

A handwritten signature in black ink, appearing to read 'P. Lau', with a stylized flourish at the end.

(Patrick Lau)  
Director of Lands

c.c. Secretary for Housing, Planning and Lands  
Secretary for Financial Services and the Treasury  
Director of Audit

**\*Note by Clerk, PAC: Appendix not attached.**