

CHAPTER 3

**THE GOVERNMENT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION**

CAPITAL WORKS RESERVE FUND

GOVERNMENT SECRETARIAT

Planning and Lands Bureau

GOVERNMENT DEPARTMENT

Lands Department

Modification of lease conditions

**Audit Commission
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MODIFICATION OF LEASE CONDITIONS

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MODIFICATION OF LEASE CONDITIONS

Summary and key findings

A. **Introduction.** Leases are contracts between the Government and the lessees (i.e. the site owners). The leases may contain terms and conditions that restrict the use and the extent of development of a site. If an owner wishes to use or develop a site differently from that permitted by the existing lease conditions, a modification of the lease conditions is required. A premium equivalent to the difference in land value between the development permitted under the existing lease conditions and that permissible under the new lease conditions is usually payable for the grant of lease modifications. In 1999-2000, land revenue arising from lease modifications was about \$5,600 million (para. 1.1).

B. **Audit review.** Audit has recently conducted a review to examine the efficiency and effectiveness with which the Director of Lands has administered the modification of lease conditions and to ascertain whether there is room for improvement. The main audit findings are summarised in paragraphs C to H below (para. 1.3).

C. **Improvements made to lease modification procedures.** Before 1 April 1999, the owner's acceptance of the Lands Department's letter of Formal Basic Terms Offer with assessed premium (hereinafter referred to as the Formal Offer) of lease modification did not constitute a binding contract. However, the amount of the accepted premium was fixed during a 6-month "premium validity period" and the owner was not required to pay any deposit. During the 6-month "premium validity period", the owner could opt to complete the lease modification or ask for a reduction in the premium as stated in the accepted Formal Offer depending upon the prevailing property market conditions. In a test check of 100 randomly selected lease modification cases processed during the period 1997 to 1999, Audit found that, in five cases, the owners accepted the Formal Offer but subsequently asked for and succeeded in obtaining a total reduction of \$322 million in the accepted premium (paras. 2.10 to 2.12).

D. Following his acceptance of Audit's recommendations, the Director of Lands promulgated new procedures with effect from 1 April 1999 to plug the procedural loophole. The acceptance of the Formal Offer by the owner will constitute a binding contract between the owner and the Government. On the acceptance of the Formal Offer, the Director of Lands will send to the owner a demand note (to be paid within 14 days) for payment of 10% of the accepted premium as a deposit. The 6-month "premium validity period" was also abolished (paras. 2.13 and 2.14).

E. Audit welcomes the Director of Lands' prompt action to plug the procedural loophole. However, Audit has noted that there is still room for further improvement in the lease modification procedures (para. 2.15).

F. **Time for payment of the 10% deposit.** Under the current payment procedures, the Lands Department allows the owner to pay the 10% deposit within 14 days. However, if the owner withdraws from the lease modification transaction during the 14-day period without paying the 10% deposit, the Government's interest will not be adequately protected. As the amount of deposit involved is significant, Audit considers that it should be paid immediately upon the owner's acceptance of the Formal Offer. This is in line with the procedures for the payment of deposit for the sale of land by public auction or tender (para. 2.16).

G. **Lease modification of a site in Kwun Tong.** Of the five cases (mentioned in para. C above) in which the owners had obtained reduction in the accepted premium under the lease modification procedures before April 1999, Audit found that there was a case of serious delay in completing the lease modification. This case concerns the lease modification for a Kwun Tong industrial site. The owner initiated the lease modification process in late 1993. However, the entire process took more than five years and the lease modification was not completed until May 1999 (paras. 2.20 and 2.23).

H. Prior to the payment of the modification premium and completion of the lease modification, the construction of the 23-storey industrial/office building on the Kwun Tong site had been completed in December 1997. As this constituted a breach of the lease conditions of the site, the Director of Lands should have taken appropriate lease enforcement action, including re-entering the site, so as to protect the Government's interest. Furthermore, the Director of Buildings, as the Building Authority, is unable to render assistance in such cases because, under the existing Buildings Ordinance (Cap. 123), there are no provisions to enable him to use the breach of lease conditions as grounds for withholding the approval of building plans or for refusing the issue of Occupation Permit (paras. 2.52 to 2.54).

I. **Audit recommendations.** Audit has made the following main recommendations that the Director of Lands should:

- (a) require the owner to pay the lease modification deposit immediately upon his acceptance of the Formal Offer (para. 2.19(a));
- (b) take prompt lease enforcement action when the development on a site is in breach of lease conditions (para. 2.55(a)); and
- (c) as a long-term solution, in conjunction with the Secretary for Planning and Lands and the Director of Buildings, consider taking appropriate action, which may include making changes to the legislation, so as to empower the Building Authority to withhold the approval of building plans and to refuse the issue of Occupation Permit to buildings which are in breach of lease conditions (para. 2.55(b)).

J. **Response from the Administration.** The Administration has generally agreed with the audit recommendations (paras. 2.56 to 2.58 and 3.8).

PART 1: INTRODUCTION

Background

1.1 Land in Hong Kong can be leased from the Government by way of leases, grant, extension, exchange, etc. Leases are contracts between the Government and lessees (i.e. site owners). A lease may contain terms and conditions that restrict the use and the extent of development of a site. If an owner wishes to use or develop a site differently from that permitted by the existing lease conditions, a modification of the lease conditions is required. It is the Government's policy to allow modifications of old lease conditions which severely restrict the development permitted on sites in order to allow redevelopment that complies with current town planning requirements. An application for modification of lease conditions of a site sold by auction or tender is normally not entertained within five years from the date of the sale (Note 1). A premium, which is the difference between the land value of the development permitted under the existing lease conditions and that permissible under the new lease conditions, is usually payable to the Government for the grant of lease modifications (Note 2). In 1999-2000, government revenue arising from lease modifications was about \$5,600 million.

1.2 The Director of Lands is responsible for granting modifications of lease conditions. The Director of Lands grants lease modifications in the following ways:

- (a) **Modification Letter.** A Modification Letter is used for the modification of lease conditions of sites held in single ownership;
- (b) **No Objection Letter.** The modification of lease conditions by a No Objection Letter is used where a lot has been subdivided into equal undivided shares with exclusive rights to the use and occupation of various units, and a modification is to be made in respect of one unit only. In such cases, it is not practicable to modify the lease conditions by the usual Modification Letter. A No Objection Letter requires only the acceptance of the owner of the unit concerned; and

Note 1: *In exceptional cases, approval may be given by the responsible Assistant Director or the Land Administration Meeting of the Lands Department for the lease modification of a site sold within the five-year period.*

Note 2: *Where a minor lease modification has been approved by the District Lands Officer of the Lands Department under delegated authority and he has considered that there is no enhancement in land value arising from such a minor modification, no modification premium is charged.*

- (c) **Exchange.** The modification of lease conditions by Conditions of Exchange is applicable to exceptional cases which involve any of the following circumstances:
 - (i) a readjustment of lot boundaries or an amalgamation of lots;
 - (ii) the imposition of complex development lease conditions; and
 - (iii) complex title or legal conveyancing problems.

The modification of lease conditions by a Modification Letter can be completed more speedily. The Lands Department (Lands D) prefers to process applications for lease modification by means of a Modification Letter as far as possible.

Audit review

1.3 Audit has recently conducted a review:

- (a) to examine the efficiency and effectiveness with which the Director of Lands has administered the modification of lease conditions; and
- (b) to ascertain whether there is room for improvement in the administration of the modification of lease conditions.

PART 2: LEASE MODIFICATION PROCEDURES

2.1 This part examines the lease modification procedures of the Lands D. The audit revealed that there is room for improvement in the lease modification procedures.

Lease modification application

2.2 The District Lands Offices (DLOs) of the Lands D process applications for lease modifications. The preparation work for lease modification usually involves the following activities:

- (a) ***Checking of land status.*** The Estate Surveyor of the DLO checks the respective District Plans (Note 3) to ascertain whether there are any restrictions or encumbrances on the use of the site affecting the lease modification;
- (b) ***Checking of title.*** The Legal Advisory and Conveyancing Office (LACO) of the Lands D checks the title deeds obtained from the owner to ascertain that the owner has ownership of the site;
- (c) ***Consultation.*** The Lands D passes copies of the application to other government departments concerned for comments;
- (d) ***Drafting of new lease conditions.*** The Estate Surveyor of the DLO drafts the new lease conditions and forwards them to LACO for consideration; and
- (e) ***Preparation for premium assessment.*** The Estate Surveyor of the DLO collects data for premium assessment, conducts a site visit and examines comparable land transaction records.

Approval of lease modification

2.3 The Lands D has set up the District Lands Conference (DLC — Note 4) in the DLOs to approve applications for lease modification. For this purpose, the DLO submits a paper to the DLC for consideration. The paper includes details of the site, the terms and conditions of the proposed

Note 3: *District Plans are detailed land use plans. They include Outline Zoning Plans and Development Permission Area Plans which show land use and major road systems, and Outline Development Plans and Layout Plans which show greater details of land use.*

Note 4: *The DLC is chaired by the Assistant Director/Regional. Its members include the respective District Lands Officer, the case officers and representatives from other government departments concerned. For complex cases, the owner may be invited to attend the DLC to provide clarification of his application.*

development, comments from other government departments and the draft revised lease conditions. Following the approval of the application by the DLC, the Estate Surveyor prepares a letter detailing the provisional basic terms of the modification and the draft revised lease conditions for acceptance by the owner. At this stage, the letter on provisional basic terms does not include any assessment of the premium for the lease modification. If the DLC disapproves the application, the owner will be advised of the reasons for the disapproval.

Assessment of modification premium

Principle of assessment of modification premium

2.4 As mentioned in paragraph 1.1 above, a premium is usually payable for a modification of the lease condition. In assessing the premium, the general principle is that the premium should be equal to the difference between the land value of the development permitted under the existing lease conditions and that permissible under the new lease conditions. A premium is payable where the modification of the lease conditions enhances the value of the lot. The valuation is normally done by a direct comparison of the land value under the existing lease conditions with that under the new lease conditions.

Procedures for assessment of modification premium

2.5 During the processing of an application for lease modification by the DLC, the DLO concerned concurrently starts the preparation work for the assessment of the premium. Upon the owner's acceptance of the letter on the provisional basic terms, the DLO makes an assessment of the premium and submits the assessment to the Valuation Section of the Lands D for initial checking. Meanwhile, the owner is invited to provide any information which he considers relevant to the assessment of the premium, such as any deductible cost, within two weeks from the date of issue of the letter on the provisional basic terms.

2.6 **Valuation Committee.** The Valuation Committee of the Lands D is responsible for, among other things, the assessment of premium, where the premium does not exceed \$50 million. The Valuation Committee is chaired by the Assistant Director/Valuation of the Lands D. Its members include the Chief Estate Surveyor and the Senior Estate Surveyor of the Valuation Section. The subject Estate Surveyor responsible for the assessment of the modification premium may also be invited to join as a member. For the assessment of modification premium where the amount exceeds \$50 million, the Committee may carry out some preliminary discussion of the assessment prior to referring the case to the Valuation Conference for approval.

2.7 **Valuation Conference.** The Valuation Conference of the Lands D is responsible for, among other things, the assessment of premium, where the premium exceeds \$50 million. The Valuation Conference is chaired by the Deputy Director/Specialist of the Lands D. Its members include the Assistant Director/Valuation, the Chief Estate Surveyor and the Senior Estate Surveyor of the Valuation Section. If necessary, the subject Assistant Director/Regional and the Senior Estate Surveyor responsible for the assessment of the modification premium may be invited to join as members. The Valuation Conference also considers appeal cases. For appeal cases, the Deputy Director/General of the Lands D may chair the Valuation Conference, where appropriate.

2.8 **Formal Offer of the basic terms of lease modification.** After the Valuation Committee or the Valuation Conference has approved the modification premium, the letter of Formal Basic Terms Offer with assessed premium (hereinafter referred to as the Formal Offer), in which the premium and the formal basic terms of the lease modification are specified, is issued to the owner for acceptance. A final draft of the legal documents for the modification, together with appropriate plans, will also be sent to the owner for acceptance.

2.9 **Premium exceeding \$100 million.** For cases where the modification premium exceeds \$100 million, the Director of Lands is informed of the details of the modification within 24 hours after the owner's acceptance of the Formal Offer.

Audit's preliminary study on the procedures for acceptance of the Formal Offer

2.10 In January 1999, Audit conducted a preliminary review of the lease modification procedures. Audit noted that at that time the procedures for issuing the Formal Offer of lease modification for the owner's acceptance were as follows:

- (a) an owner was required to accept the Formal Offer of the basic terms of lease modifications, including the amount of the premium, within one month;
- (b) **the amount of the accepted premium would be fixed for six months from the date of the Formal Offer.** If the lease modification legal documents were not executed and the modification premium was not paid on or before the expiry of the 6-month "premium validity period", the Government had the right either to review the premium or to withdraw the offer;
- (c) the owner was required to pay an administrative fee (Note 5), which was non-refundable;
- (d) if the owner did not accept the assessed premium, he might appeal. Such appeal cases would be considered by the Government on condition that the administrative fee was paid on or before the due date. The premium would be reassessed as at the date of consideration of the appeal and the premium might be increased or decreased; and
- (e) in the Formal Offer letter, the Lands D informed the owner that:
 - (i) the Offer was not intended to create any legal obligations; and

Note 5: *An administrative fee is a scaled fee calculated according to the assessed land value under the new lease conditions. The purpose of the fee is to cover the cost of services provided by the Lands D. The fee is subject to an upper limit of \$140,000.*

- (ii) the Government would not accept that any such legal obligations had been created unless and until the documentation necessary to give legal effect to the modification transaction had been duly executed and registered in the Land Registry.

Audit observations and recommendations on lease modification procedures

2.11 **Audit considered that the procedures before April 1999 were unsatisfactory because there was no binding contract between the Government and the owner upon the latter's acceptance of the Formal Offer. Under such circumstances, during the 6-month period, the owner could opt to complete the lease modification or ask for a reduction in the premium if the prevailing property market conditions were unfavourable.** In January 1999, Audit invited the Director of Lands' attention to the following inadequacies in the lease modification procedures:

- (a) when the property market conditions were favourable (i.e. in a rising market), the owner would be willing to pay the accepted modification premium without delay so as to secure the lease modification. However, when the property market was unfavourable (i.e. in a falling market), even though the owner had already accepted the Formal Offer, he might:
 - (i) opt not to complete the remaining process of the lease modification and refuse to pay the modification premium; or
 - (ii) ask the Lands D for a reduction in the accepted premium even though it had already been stated in the accepted Formal Offer; and
- (b) after the owner had accepted the Formal Offer, the premium was in effect "frozen" throughout the 6-month "premium validity period" to his benefit because he was not required to pay the Government any deposit.

2.12 In a test check of 100 randomly selected lease modification cases processed during the period from 1997 to 1999, Audit found that, in five cases, the owners had accepted the Formal Offer but subsequently asked for, and succeeded in obtaining, a reduction in the accepted premium. The total amount of reduction in the premium was \$322 million (see Table 1 below for details).

Table 1

Five lease modification cases processed during the period 1997 to 1999 where the accepted premium was subsequently reduced

	Site Location				
	Tin Hau	Cheung Sha Wan	Pokfulam	Kwun Tong (Note 1)	Kwai Chung
(a) Date of acceptance of the Formal Offer by owner	2.6.1997	10.7.1997	21.8.1997	20.11.1997	22.4.1998
(b) Amount of accepted premium in the Formal Offer	\$262 million	\$38 million	\$137 million	\$33 million	\$785 million
(c) Date of appeal against the accepted premium	10.11.1997 and 9.11.1998	5.12.1997	19.1.1998 and 4.6.1998	24.3.1998	1.6.1998 and 6.7.1998
(d) Date of execution of lease modification document	7.9.1999	27.7.1998	29.5.1999	28.5.1999	17.7.1998
(e) Amount of finally accepted modification premium	\$113 million	\$22 million	\$69 million	\$19 million	\$710 million
(f) Reduction in premium (Note 2) [(b) - (e)]	\$149 million	\$16 million	\$68 million	\$14 million	\$75 million
(g) Percentage reduction in premium (f)/(b) × 100%	57%	42%	50%	42%	10%
(h) Period between (a) and (d)	2 years and 3 months	1 year	1 year and 9 months	1 year and 6 months	2½ months

Source: Lands D's records

Note 1: In this case concerning the Kwun Tong site, the Occupation Permit had been issued prior to the completion of the lease modification (see paragraphs 2.20 to 2.55 for observations). For the other four cases, no Occupation Permit had been issued prior to the completion of the lease modification.

Note 2: The total reduction in premium for the five cases was \$322 million.

2.13 In order to plug the procedural loophole mentioned in paragraph 2.11 above as soon as possible, in January 1999 Audit *recommended* to the Director of Lands that he should:

- (a) promptly take action to protect the Government's revenue from the modification of leases, in particular during the times when market prices of land may fluctuate;
- (b) ask the owner to pay a deposit upon the acceptance of the Formal Offer; and
- (c) shorten the premium validity period of six months, if such a validity period was still considered necessary.

New procedures with effect from 1 April 1999

2.14 The Director of Lands accepted Audit's recommendations as mentioned in paragraph 2.13 above and promulgated new procedures for the issue of the Formal Offer of lease modification for the owner's acceptance. The new procedures, effective from 1 April 1999, are as follows:

- (a) the 6-month "premium validity period" was abolished;
- (b) the acceptance of the Formal Offer by the owner will constitute a binding contract between the owner and the Government;
- (c) on the acceptance of the Formal Offer, the Director of Lands will send a demand note (to be paid within 14 days) to the owner for payment of 10% of the accepted premium as a deposit;
- (d) the lease modification transaction will normally be completed within three calendar months from the date of the owner's acceptance of the Formal Offer; and
- (e) if the owner fails to complete the lease modification transaction and pay the balance of the premium within three calendar months from the date of the owner's acceptance of the Formal Offer, it will constitute a breach of contract and without prejudice to any other remedies available to the Government, the deposit paid will be forfeited.

The Director of Lands issued a Practice Note for Authorised Persons, Surveyors and Solicitors in March 1999 and a departmental technical circular concerning the above new procedures in April 1999.

Further audit observations and recommendations on lease modification procedures

2.15 As mentioned in paragraph 2.14 above, following Audit's preliminary review, the Director of Lands has promulgated new procedures concerning the acceptance of the Formal Offer. Audit welcomes the Director of Lands' prompt action to plug the procedural loophole. However, Audit has noted that there is still room for further improvement in the lease modification procedures.

Time for payment of the 10% deposit

2.16 Upon the owner's acceptance of the Formal Offer, there is a binding contract between the owner and the Government concerning the lease modification. Under the current procedures, the Lands D allows the owner to pay the 10% deposit within 14 days from the date of issue of the demand note (see paragraph 2.14(c) above). However, this payment procedure is not consistent with that for the payment of a deposit for the sale of land by public auction or tender. For the sale of land by public auction, the purchaser has to pay the deposit (usually about 10% to 20% of the estimated sale price) upon signing the Memorandum of Agreement. For the sale of land by tender, the tenderer has to submit the deposit (usually 10% to 20% of the estimated sale price) together with his tender. **For the modification of lease, if the owner withdraws from the lease modification transaction during the 14-day period without paying the 10% deposit, the Government's interest would not be adequately protected. As the amount of deposit involved is significant, Audit considers that it should be paid immediately upon the owner's acceptance of the Formal Offer so as to protect the Government's interest.**

Director of Lands' participation

2.17 As mentioned in paragraphs 2.3, 2.6 and 2.7 above, the Director of Lands is not a member of the DLC, the Valuation Committee and the Valuation Conference. When the modification premium exceeds \$100 million, the Director of Lands will be informed of such a transaction after the owner's acceptance of the Formal Offer (see paragraph 2.9 above). **As mentioned in paragraph 2.14(b) above, under the new procedures, there is a binding contract between the owner and the Government upon the owner's acceptance of the Formal Offer. However, if the Director of Lands disagrees with any of the terms of the lease modification or the premium assessed, he cannot make any changes by that time. This situation is unsatisfactory, particularly if there are important points of principle involved or when the amount of premium assessed is considered to be significant. In Audit's view, for cases involving important points of principle or a significantly high amount of premium, the Chairman of the Valuation Conference should consider informing the Director of Lands of the particulars prior to sending the Formal Offer to the owner for acceptance.**

2.18 In this connection, Audit noted that in a lease modification case for a site in West Kowloon, the Director of Lands chaired a Valuation Conference held in January 2000 to assess the premium. In the Valuation Conference, a modification premium of \$2,400 million was approved for the site. Audit welcomes the Director of Lands' personal participation in this case. However,

in the Lands D's procedures for the assessment of modification premium (see paragraphs 2.5 to 2.9 above), there is no requirement for the Chairman of the Valuation Conference to consider inviting the Director of Lands to participate personally in the Valuation Conference under special circumstances. **Audit considers that it will strengthen the Lands D's management control over the approval of premium if, under special circumstances, the Chairman of the Valuation Conference is required to consider whether the Director of Lands should be invited to participate personally in the Valuation Conference. The Chairman's considerations and his decision as to whether the Director of Lands would be invited to participate personally in the Valuation Conference should also be included in the minutes of the Valuation Conference meeting.**

2.19 **Audit has *recommended* that the Director of Lands should:**

- (a) **require the owner to pay the lease modification deposit immediately upon his acceptance of the Formal Offer; and**

- (b) **include in the procedures a requirement that, for lease modification cases involving important points of principle or a significantly high amount of premium, the Chairman of the Valuation Conference should:**
 - (i) **inform the Director of Lands of the important points of principle involved, the premium assessed and the terms of the lease modification, before making a Formal Offer to the owner for acceptance;**

 - (ii) **put on record the reasons for not informing the Director of Lands of the premium assessed and the terms of the lease modification, before making a Formal Offer to the owner;**

 - (iii) **invite the Director of Lands to participate personally in the Valuation Conference for the approval of the modification premium; and**

 - (iv) **put on record the reasons for not inviting the Director of Lands to participate personally in the Valuation Conference for the approval of the modification premium.**

Lease modification of a site in Kwun Tong

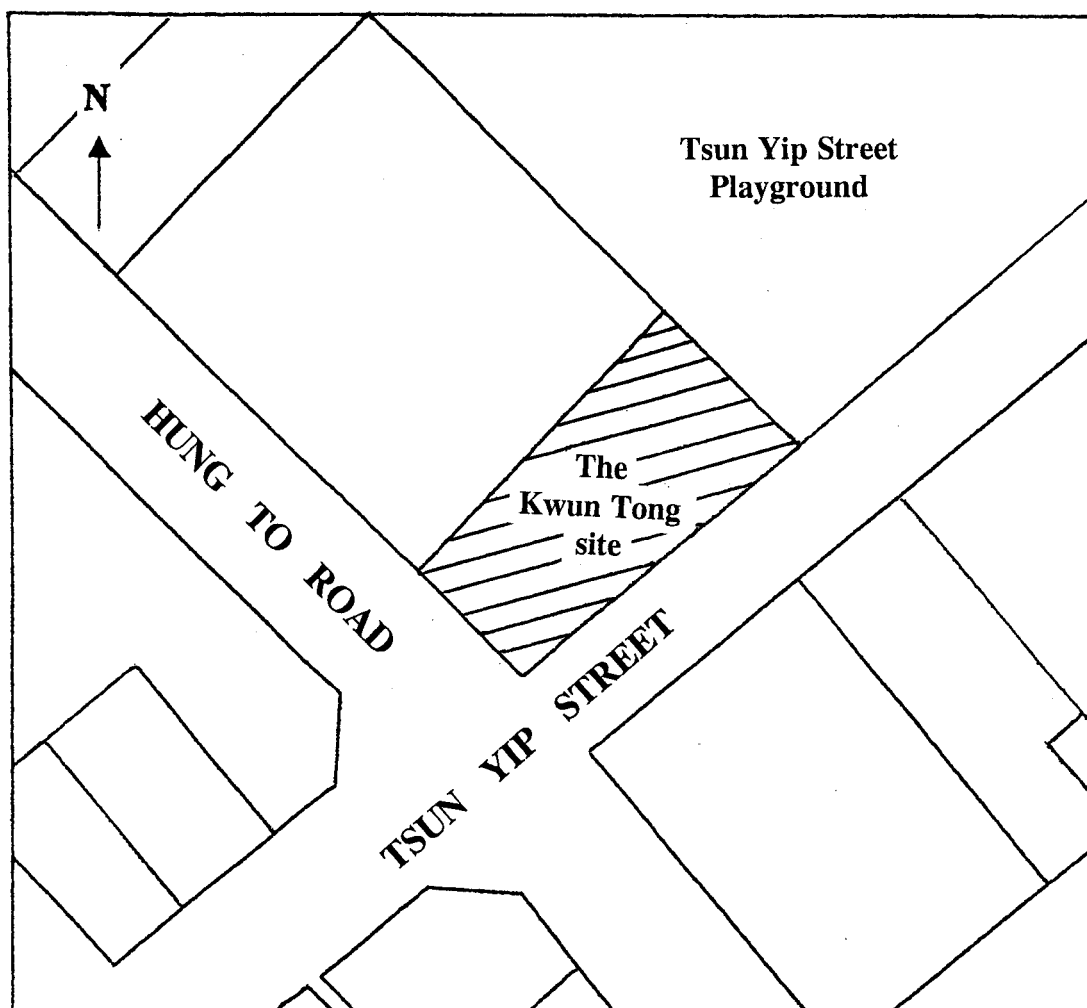
2.20 Among the five lease modification cases listed in Table 1 (see paragraph 2.12 above), the audit revealed a case of serious delay, which illustrates the unsatisfactory situation which existed under the procedures prevailing before April 1999. This case involved an industrial site in

Kwun Tong. In this case, the building works had been completed and the Occupation Permit had already been issued for about 16 months prior to the completion of the lease modification and the payment of the modification premium. Details are described in paragraphs 2.21 to 2.55 below.

2.21 In 1962, a site in Kwun Tong (hereinafter referred to as the Kwun Tong site) was sold by public auction. According to the lease conditions of the Kwun Tong site, the site should be used only for industrial purposes and the height of any structure thereon should not exceed 51.82 metres above the Hong Kong Principal Datum (Note 6). In 1965, a 10-storey factory building was constructed on the site. Figure 1 below shows the location of the site.

Figure 1

Location of the Kwun Tong site



Source: Lands D's records

Note 6: *It is the level to which all land surveys in Hong Kong are referenced.*

Application for lease modification to relax the building height restriction of the Kwun Tong site

2.22 In 1993, an agent for the owner of the Kwun Tong site (hereinafter referred to as the Agent) applied to the Director of Lands for a modification of the building height restriction in connection with a redevelopment of the site. The Agent requested a lease modification that would permit an increase in the height of the building from 51.82 metres (under the lease) to 86.9 metres above the Hong Kong Principal Datum.

2.23 In January 1994, the Director of Lands commenced processing the lease modification for the Kwun Tong site. The entire process took more than five years and the lease modification was not completed until May 1999. Such a prolonged period in processing had occurred because, under the lease modification procedures adopted before 1 April 1999, the Formal Offer was not a binding contract. The owner was not required to pay a deposit upon acceptance of the Formal Offer. The owner could refuse to complete the lease modification and to pay the modification premium thereafter without any penalty being imposed by the Government. When the property market was unfavourable (i.e. in a falling market), the owner would find that it would be financially more beneficial for him:

- (a) to refuse to complete the lease modification by not paying the modification premium; and
- (b) to ask for a reduction in the accepted premium even though it was already stated in the Formal Offer (see paragraphs 2.11 to 2.13 above for details).

The key events of the lease modification for the Kwun Tong site are summarised in Table 2 below.

Table 2

Key events of the lease modification for the Kwun Tong site

Date of Formal Offer	Modification premium assessed (\$ million)	Date of acceptance of Formal Offer	Date owner refused to execute Modification Letter	Owner's reasons for the refusal
<i>(a) Modification to delete the height restriction</i>				
1.11.1994	15	30.11.1994	2.3.1995	The owner proposed to change the use of the site from "Industrial" to "Industrial/Office".
<i>(b) Modification to allow an industrial/office development and to delete the height restriction</i>				
19.4.1996	32	26.4.1996	16.9.1996	Financial reasons
21.10.1997	33	20.11.1997	24.3.1998	Financial difficulty
21.12.1998	19	19.1.1999	N/A (Note)	N/A

Source: Lands D's records

Note: In April 1999, the owner paid the modification premium of \$19 million. In May 1999, the owner executed the Modification Letter.

In October 1993, the owner applied for a modification of the lease to delete the height restriction. Again in March 1995, he applied for a modification of the lease to allow an industrial/office development (Note 7). However, as the owner did not pay the accepted premium of \$32 million in September 1996, the Lands D considered that the lease modification application was withdrawn. **Subsequently, the owner reapplied twice for the lease modification, in January 1997 and April 1998. In December 1997, a new building for the redevelopment was completed on the**

Note 7: For an industrial/office development, any building or part of any building being erected should not be used for any purpose other than for (a) industrial or godown or both; (b) offices ancillary and directly related to an industrial (or godown) operation; or (c) any combination of (a) and (b).

site. On 24 December 1997, i.e. about 16 months prior to the payment of the premium and the completion of the lease modification, the Building Authority (Note 8) issued an Occupation Permit for the new building. It was only in April 1999 that the owner paid the reduced modification premium of \$19 million. In May 1999, the owner executed the Modification Letter and completed the lease modification.

Requirements of the Buildings Ordinance

2.24 Under section 14 of the Buildings Ordinance (Cap. 123), no person should commence or carry out any building works or street works without having first obtained from the Building Authority:

- (a) his approval in writing of documents (such as building plans) submitted to him in accordance with the regulations; and
- (b) his consent in writing for the commencement of the building works or street works shown in the approved plan.

2.25 The Building Authority has to collate comments of the interested government departments, such as the Lands D, the Fire Services Department and the Planning Department on the development proposals. According to the Buildings Department's Practice Note for Authorised Persons and Registered Structural Engineers No. 30 currently in force, the Building Authority will make every effort to ensure that a consensus among them is reached. Where the comments relate to matters governed by the Buildings Ordinance, the Building Authority will arbitrate and take decisions according to the policies and procedures he adopts to enforce environmental, health and safety standards for buildings and building works. For all other comments relating to matters not governed by the Buildings Ordinance, Authorised Persons may approach the relevant government departments direct. **Section 16(1) of the Buildings Ordinance lists out the grounds on which the Building Authority may refuse to give his approval of the building plans. However, the Building Authority cannot refuse to give his approval of the building plans because the lease conditions have not been complied with.**

2.26 After the building plans submitted to the Building Authority have been processed, the Building Authority will issue to the Authorised Persons and the owners his letters of approval or disapproval in which the comments of other government departments concerning the building plans are incorporated. Adverse comments concerning fundamental issues falling within the purview of the Buildings Ordinance are included (such as density, safety, health and fire safety) as disapproval items in letters of disapproval.

Note 8: *Under the Buildings Ordinance, the Building Authority is the Director of Buildings.*

Submission of building plans for redevelopment of the Kwun Tong site to the Building Authority

2.27 In September 1993, an Architect, who was the Authorised Person (hereinafter referred to as the AP — Note 9) for the owner, sought the Building Authority's approval of the building plans for the redevelopment of the Kwun Tong site. In the same month, the Buildings Department forwarded a set of the building plans to the District Lands Officer/Kowloon East (DLO/KE) of the Lands D for his consideration. In December 1993, the DLO/KE informed the Building Authority that the plans were not acceptable as the proposed building height would exceed that permitted under the lease.

2.28 In January 1994, the Building Authority informed the AP that he was satisfied with the building plans of the Kwun Tong site. In giving his approval for the building plans, the Building Authority reminded the AP that it was the AP's responsibility to ensure full compliance with the Buildings Ordinance. The Building Authority said that the approval should not be deemed to confer any title to land or to act as a waiver of any terms in any lease or licence. In March 1994, the Building Authority informed the AP of the DLO/KE's comment that **the plans were considered *not* acceptable from a lease point of view as the proposed maximum building height would exceed that permitted under the lease.**

The owner accepted the Formal Offer to delete the building height limit

2.29 **On 1 November 1994, the DLO/KE sent to the Agent a Formal Offer to delete the building height limit at a modification premium of \$15 million.** On 30 November 1994, the Agent informed the DLO/KE that he was instructed by the owner to accept the Formal Offer.

Application for lease modification to permit an industrial/office development and to delete building height limit

2.30 *Change of lease modification.* In March 1995, in the light of changes in the property market, the Agent advised the DLO/KE that the owner intended to change the development of the site from industrial to industrial/office. The Agent informed the DLO/KE that, under section 16 of the Town Planning Ordinance (Cap. 131 — Note 10), the permission of the Town Planning Board for such a change in land use had already been obtained in June 1994. The DLO/KE then continued to process the Agent's revised application for lease modification.

Note 9: *An Authorised Person is a person whose name is on the Authorised Persons' register kept under section 3(1) of the Buildings Ordinance as an architect, an engineer, or a surveyor.*

Note 10: *Section 16 of the Town Planning Ordinance provides that where a draft plan or an approved plan provides for the grant of permission for any purpose, an application for the grant of such permission should be made to the Town Planning Board.*

Revised application for lease modification approved

2.31 In June 1995, the DLC approved the lease modification to allow an industrial/office redevelopment and to delete the building height restriction. **In October 1995, the Valuation Committee approved a premium of \$37 million for the revised lease modification.**

2.32 *Appeal on premium assessed.* In December 1995, the Agent informed the DLO/KE that the basic terms of the proposed lease modification, with the exception of the premium, were acceptable in principle to the owner. The Agent appealed for a reassessment of the modification premium. **After considering the Agent's appeal, the Valuation Conference approved a revised premium of \$32 million.** In April 1996, the Agent accepted the revised premium on behalf of the owner.

2.33 *Amended building plans approval.* In May 1995, the AP submitted amended building plans to the Building Authority for approval. However, the DLO/KE refused to accept the building plans for industrial/office development because the proposed industrial/office development was in breach of the use permitted under the lease. In August 1995, the AP again submitted the amended building plans. In September 1995, the DLO/KE informed the owner that the submission was disapproved because the AP had not submitted a Development Schedule (Note 11) indicating the extent of compliance with the lease conditions. **However, in late September 1995, the Building Authority approved the building plans for industrial/office redevelopment. The Building Authority also informed the AP that the approval should not be deemed to act as a waiver of any term in any lease.**

2.34 *DLO/KE rejected amended building plans for redevelopment.* Between 1996 to 1998 (i.e. during which time the DLO/KE was considering the proposed lease modification for the Kwun Tong site), the Building Authority forwarded to the DLO/KE for comments the amended building plans which he had received from the AP. In response, in June 1997 and again in March 1998, the DLO/KE:

- (a) informed the AP and the Agent that the plans could not be checked as the proposed lease modification had not yet been executed; and
- (b) reminded the AP and the Agent that, under the existing lease conditions, "no building work may be effected on the lot unless prior approval of the building plans has been obtained under the lease. Failure to comply with this requirement may result in lease enforcement action being taken and the lot being re-entered by Government."

Note 11: *According to the Director of Lands' instruction to all Authorised Persons, any submission of general building plans will be rejected without scrutiny if the submission is not accompanied by a Development Schedule indicating the extent of compliance with the lease conditions.*

Consent to commence building works

2.35 In February 1996, the Building Authority granted a consent to the commencement and carrying out of building, drainage and superstructure works to the AP. The Building Authority drew the AP's attention to the provisions of section 14(2) (see paragraph 2.36 below) of the Buildings Ordinance. The Building Authority stated that before commencing the works, the AP should ensure that the provisions of any legislation or the requirements of any authority or the terms or conditions of any lease or licence would not be contravened. In May 1996, the AP notified the Building Authority that the building works would commence in June 1996. In March 1997, the new building was substantially completed (see paragraph 2.39 below for details).

2.36 Section 14(2) of the Buildings Ordinance stipulates that **neither** the approval of any building plans **nor** the consent to commence building works should be deemed:

- (a) to confer any title to land;
- (b) to act as a waiver of any term in any lease or licence; or
- (c) to grant any exemption from or to permit any contravention of any of the provisions of this Ordinance or of any other enactment.

The owner did not complete the lease modification

2.37 In September 1996, the Agent informed the DLO/KE that, due to some financial consideration beyond the owner's expectation, the owner was not able to execute the Modification Letter before the premium validity date. **The DLO/KE informed the owner that, due to his failure to pay the premium and to execute the Modification Letter, the lease modification application to delete the building height restriction and to allow industrial/office development was deemed to have been withdrawn.**

2.38 In January 1997, the Agent requested for a re-offer of the proposed lease modification on the same terms and conditions as those of the previous offer.

Industrial/office building substantially completed on the Kwun Tong site

2.39 In March 1997, during a site inspection carried out in connection with the lease modification application, the DLO/KE noted that the construction of a 23-storey industrial/office building on the Kwun Tong site had been substantially completed. In April 1997, the DLO/KE informed the Agent that he reserved the right to take appropriate lease enforcement action because the building was constructed without his prior approval when the lease modification was still under

consideration. The DLO/KE pointed out that failure to comply with the lease conditions might result in the site being re-entered by the Government. According to section 4 of the Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126):

- (a) whenever it is necessary to enforce a right of re-entry by the Government upon any lands for the breach of any covenant in the lease thereof, a memorial of an instrument of re-entry, under the hand of any public officer authorised by the Chief Executive to sign such instruments, may be registered in the Land Registry; and
- (b) immediately on the registration of such a memorial, the Government shall be deemed to have re-entered upon the lands described therein and in respect of which the right of re-entry has accrued, and the said lands shall thereby become **re-vested in the Government** as fully as if the lease thereof had determined.

First reapplication for lease modification

2.40 According to the Director of Lands' lease modification procedures prevailing in January 1997, a reapplication for a lease modification would not normally be accepted within 12 months of the date of withdrawal of the original application (Note 12). Nevertheless, the Assistant Director/Valuation of the Lands D had the discretion to accept a reapplication on a case-by-case basis.

2.41 In April 1997, the DLO/KE sought the endorsement of the Assistant Director/Valuation to accept the Agent's reapplication for the lease modification. The DLO/KE said that if the lease modification was not completed, lease enforcement action would have to be taken. The Chief Estate Surveyor/Valuation also said that "the alternative of taking lease enforcement action would further exacerbate the DLO/KE's resources problem".

2.42 The Assistant Director/Valuation agreed to accept the reapplication of the lease modification for the Kwun Tong site. He said that since the development was at an advanced stage of construction, it would cause significant lease enforcement work if the respective lease modification process did not proceed. He did not expect the premium for the reapplication to be lower than that previously agreed.

The owner accepted revised lease modification premium

2.43 In October 1997, the DLO/KE informed the owner of the Kwun Tong site that a modification of the lease would be granted to delete the building height restriction and to allow

Note 12: *The 12-month requirement was discontinued with effect from December 1997.*

industrial/office development at a premium of \$33 million. As mentioned in paragraph 2.10(e) above, the offer was not intended to create any legal obligations. **In November 1997, the owner accepted the basic terms of the Formal Offer at a modification premium of \$33 million.**

Building Authority issued Occupation Permit

2.44 While the lease modification for the Kwun Tong site was being processed by the Director of Lands, in accordance with the provisions of the Buildings Ordinance, the Building Authority issued an Occupation Permit for the 23-storey new building on 24 December 1997. This is because the Building Authority could not refuse to issue an Occupation Permit on the grounds of the non-compliance with the lease conditions (see paragraph 2.45 below). In January 1998, the Building Authority sent a copy of the Occupation Permit for the new building to the DLO/KE for information.

2.45 Under section 21(6) of the Buildings Ordinance, the Building Authority may refuse to issue a Temporary Occupation Permit or an Occupation Permit where:

- (a) any part of the building works has been carried out in contravention of any of the provisions of the Buildings Ordinance;
- (b) any street works required under the Buildings Ordinance in connection with any new private street or any access road, on to which the building abuts or fronts or by which access is obtained, remain to be completed;
- (c) in the case of a building in which a liftway is provided, a lift has not yet been installed therein, unless the liftway has been protected to the satisfaction of the Building Authority;
- (d) the applicant for the permit fails to produce to the Building Authority a certificate from the Director of Fire Services certifying that he is satisfied that the fire service installations and equipment shown on the plans have been provided and are in efficient working order and satisfactory condition;
- (e) in the case of a building to which by regulations a supply of water is required to be connected for any purpose, the Building Authority is not satisfied that connection of a supply of water for every such purpose has been made to the building; and
- (f) any performance review in the opinion of the Building Authority fails to state or justify that the building works have been adequately inspected and monitored in the course of construction or that the geotechnical design assumptions upon which the building works have been based are valid.

However, non-compliance with lease conditions is not included in section 21(6) of the Buildings Ordinance.

The owner again did not proceed with the lease modification

2.46 In February 1998, the Director of Lands sent the Agent a Modification Letter for execution by the owner of the Kwun Tong site. However, in March 1998, the Agent informed the DLO/KE that the owner could not execute the Modification Letter. The Agent requested the Government to reduce the premium because the owner had encountered difficulty in raising funds to pay the premium. **In reply, the DLO/KE informed the Agent that the proposed lease modification was deemed to have been withdrawn by the owner and that a reapplication would be necessary if the owner intended to proceed with the lease modification again.**

Second reapplication for lease modification

2.47 In April 1998, the Agent requested the DLO/KE to re-offer the proposed lease modification on the same terms and conditions, except for the amount of the premium. In view of the then extremely unfavourable market conditions of industrial/office premises and the cautious attitude of banks in lending for a high premium, the owner also requested for a reduction in the premium.

2.48 *Reapplication promptly processed.* In May 1998, the DLO/KE informed the Agent that if there were no adverse comments from relevant government departments and subject to the Director of Lands' approval, the basic terms would be sent to the owner of the Kwun Tong site by October 1998. The DLO/KE also said that, while an Occupation Permit for an industrial/office building constructed had been issued by the Building Authority in December 1997, the building plan had not been accepted by him. He reserved the right to take appropriate lease enforcement action.

2.49 Since no objections were received from relevant government departments, in July 1998 the DLO/KE approved the reapplication for the lease modification of the Kwun Tong site. The reason for his approval was that the proposed lease modification was previously considered and approved by the DLC in June 1995 (see paragraph 2.31 above).

The owner executed the Modification Letter for the Kwun Tong site

2.50 *Valuation Committee approved the premium assessment.* In November 1998, the Valuation Committee approved a revised premium of \$19 million for the lease modification for the Kwun Tong site. The Valuation Committee recommended that since building works on the Kwun Tong site had already been completed, the DLO/KE should take lease enforcement action if the premium for the lease modification was not accepted.

2.51 In December 1998, the DLO/KE sent a Formal Offer to the owner saying that a modification of the lease to delete the building height restriction and to allow industrial/office development on the Kwun Tong site would be granted at a premium of \$19 million. **In January 1999, the owner accepted the Formal Offer. In April 1999, the owner paid the \$19 million premium and on 28 May 1999, he executed the Modification Letter.** In July 1999, the Director of Lands issued a Certificate of Compliance (Note 13) for the Kwun Tong site.

Audit observations and recommendations on lease modification of the site in Kwun Tong

2.52 In March 1997, prior to the payment of the modification premium and completion of the lease modification, the construction of the 23-storey industrial/office building on the Kwun Tong site had been substantially completed. This constituted a breach of the lease conditions of the site. In December 1997, i.e. about 16 months prior to the payment of the premium and the completion of the lease modification, the Building Authority issued an Occupation Permit for the new building on the Kwun Tong site. Audit considers that this is unsatisfactory.

Issue of Occupation Permit and approval of building plans before completion of lease modification

2.53 When the new building on the Kwun Tong site was completed, its owner clearly did not comply with the lease conditions (see paragraph 2.52 above). However, as non-compliance with lease conditions was not a valid reason for refusal to issue an Occupation Permit in the Buildings Ordinance (see paragraph 2.45 above), the Building Authority had to issue an Occupation Permit for the industrial/office development on the Kwun Tong site. The Building Authority had also approved the building plans of the Kwun Tong site based on provisions of the Buildings Ordinance (see paragraphs 2.28 and 2.33 above), even though the Lands D repeatedly refused to accept them (see paragraphs 2.28, 2.33 and 2.34 above). Audit considers that the situation is unsatisfactory. **The Secretary for Planning and Lands, the Director of Lands and the Director of Buildings should consider making changes to the legislation so as to empower the Building Authority to withhold the approval of building plans and to refuse the issue of Occupation Permit to buildings which are in breach of lease conditions.**

Lease enforcement action by the Director of Lands

2.54 The lease of the Kwun Tong site stated that in case of the breach or non-performance of any of its covenants and conditions, it should be lawful for the Government to **re-enter** the site. In March 1998, the owner informed the DLO/KE that he could not execute the Modification Letter and pay the modification premium. **The DLO/KE accepted the owner's request and informed him that the proposed lease modification was deemed to have been withdrawn. As the**

Note 13: *The Certificate of Compliance is an administrative measure whereby the Director of Lands confirms to registered owners that all positive obligations imposed by the General and Special Conditions of a lease have been complied with.*

construction of the building had been substantially completed and this was clearly in breach of the lease conditions, the Director of Lands should have taken appropriate lease enforcement action, including re-entering the site, so as to protect the Government's interest.

2.55 **Audit has *recommended* that the Director of Lands should:**

- (a) **take prompt lease enforcement action when the development on a site is in breach of lease conditions; and**
- (b) **as a long-term solution, in conjunction with the Secretary for Planning and Lands and the Director of Buildings, consider taking appropriate action, which may include making changes to the legislation, so as to empower the Building Authority to withhold the approval of building plans and to refuse the issue of Occupation Permit to buildings which are in breach of lease conditions.**

Response from the Administration

2.56 **The Director of Lands has said that:**

- (a) he accepts the audit recommendation that the owner should be required to pay the lease modification deposit immediately upon his acceptance of the Formal Offer. He will make an amendment to the Lands D's standard formal offer letter;
- (b) he agrees with the audit recommendations that the Lands D's procedures should include a requirement that, for lease modification cases involving important points of principle or a significantly high amount of premium, the Chairman of the Valuation Conference should:
 - (i) inform the Director of Lands of the important points of principle involved, the premium assessed and the terms of the lease modification, before making a Formal Offer to the owner for acceptance. He has issued instructions that all Valuation Conference decisions be referred to him so that he can identify cases involving important points of principle or a significantly high amount of premium at an early stage; or
 - (ii) invite the Director of Lands to participate personally in the Valuation Conference for the approval of the modification premium. In cases with a relatively high premium, although he will stipulate that these will be referred to him for guidance, he would not want to chair these cases except on appeal because once he chairs the meeting, there is no one for the applicant to appeal to;

- (c) he agrees with the audit recommendations that for lease modification cases involving important points of principle or a significantly high amount of premium, the Chairman of the Valuation Conference meeting should put on record:
 - (i) the reasons for not informing the Director of Lands of the premium assessed and the terms of the lease modification, before making a Formal Offer to the owner; and
 - (ii) the reasons for not inviting the Director of Lands to participate personally in the Valuation Conference for the approval of the modification premium;
- (d) he agrees with the audit recommendation that he should take prompt lease enforcement action when the development on a site is in breach of lease conditions. Each case must be considered on its merit, as re-entry is not an action that should be taken if other alternatives (e.g. lease modification) are available; and
- (e) he agrees with the audit recommendation that he should, in conjunction with the Secretary for Planning and Lands and the Director of Buildings, consider taking appropriate action so as to empower the Building Authority to withhold the approval of building plans and to refuse the issue of Occupation Permit to buildings which are in breach of lease conditions.

2.57 The **Secretary for Planning and Lands** and the **Director of Buildings** have said that they support the views put forward by the Director of Lands in paragraph 2.56 above. As regards the audit recommendation in paragraph 2.55(b) above, they are seeking legal advice. The audit recommendation can only be achieved through amendments to the Buildings Ordinance. They have to ensure that such amendments would be legally in order, for example, within the objects of the Buildings Ordinance.

2.58 The **Secretary for the Treasury** has said that she supports the audit recommendation that the owner should be required to pay the lease modification deposit immediately upon his acceptance of the Formal Offer (para. 2.19(a) above refers).

PART 3: PERFORMANCE PLEDGES

3.1 This part examines performance pledges concerning lease modification cases. The audit revealed that there is room for improvement.

Classification of lease modification cases

3.2 Lease modification cases are classified by the Lands D into straightforward and non-straightforward (i.e. complicated) cases. The Lands D has not published the bases of classification of straightforward and non-straightforward cases. In 1999, the Lands D completed about 190 lease modification cases, as shown in Table 3 below.

Table 3

Lease modification cases completed by the Lands D in 1999

	Non- straightforward case	Straightforward case	Total
No. of cases	132 (69%)	58 (31%)	190 (100%)
Average time taken (from application to execution)	501 days	250 days	

Source: Lands D's records

3.3 The Lands D sets time targets for each type of service provided to the public in a Performance Pledges pamphlet which is available in all DLOs. The performance targets for straightforward cases were published, as follows:

- (a) the Lands D would give a reply identifying the case officer within three weeks from receipt of the application;
- (b) the Lands D would issue a letter offering the basic terms or a letter rejecting the application within 24 weeks from receipt of the application; and

- (c) the Lands D would issue the legal document for execution by the owner within 12 weeks from receipt of the owner's acceptance (Note 14).

No performance targets for non-straightforward cases were published. In response to a recent audit enquiry, the Director of Lands has said that the Performance Pledges are under review. The Lands D's intention is that references to straightforward or non-straightforward cases will cease. Instead, one set of performance pledges similar to those for straightforward cases mentioned above will be announced.

Audit observations and recommendations on performance pledges

Issue of letter offering basic terms

3.4 According to the procedures for lease modification, on approval of the lease modification by the DLC, the subject Estate Surveyor prepares a letter detailing the provisional basic terms and the draft revised lease conditions for acceptance by the owner (see paragraph 2.3 above). Later on, after approval of the modification premium by the Valuation Committee or the Valuation Conference, the assessed premium is included in the Formal Offer, which also contains the formal basic terms, for acceptance by the owner (see paragraph 2.8 above). However, regarding the Lands D's performance targets for the issue of the letter offering the basic terms, it is not clear whether the basic terms refer to the provisional basic terms or the formal basic terms. It would facilitate understanding of the performance targets if the meaning of the basic terms is clearly stated.

Reporting system on performance achievement

3.5 The Lands D currently compiles statistics on the achievement of performance pledges concerning lease modification cases by calling quarterly returns from the DLOs. The manual process of compilation of statistics is time consuming. The Lands D has a computerised management information system, known as the Case Monitoring System (CMS) for the preparation of regular and special statistical reports for the management. **The Lands D inputs information about the lease modification cases (both straightforward and non-straightforward ones) into the CMS. To improve the efficiency in the compilation of statistics on the Lands D's performance in processing lease modification cases, Audit considers that the Lands D should make full use of the CMS.**

Note 14: *With the introduction of the revised procedures for lease modification with effect from 1 April 1999 (see paragraph 2.14(d) above), the legal document for lease modification will be executed and the modification premium will be paid within three months from the date of receipt of the owner's acceptance of the Formal Offer.*

3.6 In response to a recent Audit enquiry on the above issues, the Director of Lands has said that work on the design of a new CMS will start in late 2000 and Audit's suggestion will form part of the features to be included in the new system. The new CMS will be operational in late 2001 and the new system will assist the Lands D in compiling statistics on the achievement of targets.

3.7 Audit has *recommended* that the Director of Lands should:

- (a) regarding the issue of letters offering basic terms, state clearly in the Lands D's performance targets whether the basic terms refer to the provisional basic terms or the formal basic terms; and
- (b) make full use of the CMS when it becomes operational in late 2001. In particular, he should monitor closely the enhancement of the CMS to ensure that the enhanced system can effectively assist the Lands D in compiling statistics on the achievement of performance pledges concerning lease modification cases.

Response from the Administration

3.8 The Director of Lands agrees with the audit recommendations. He has said that:

- (a) he will issue a new set of the Lands D's performance targets effective from 1 October 2000 making it clear whether the targets relate to provisional basic terms or formal basic terms; and
- (b) the enhanced CMS can assist the Lands D in compiling statistics on achievements of performance pledges concerning lease modification cases.

Chronology of key events

- October 1993 The Agent for the owner of the Kwun Tong site applied to the DLO/KE for a lease modification to relax the building height restriction of the site.
- November 1994 The owner accepted the DLO/KE's Formal Offer to delete the building height restriction at a modification premium of \$15 million.
- March 1995 The Agent informed the DLO/KE that the owner decided to proceed with the lease modification of the site to allow for industrial/office development.
- June 1995 The DLC approved a modification of the lease for the Kwun Tong site to delete the building height restriction and to allow industrial/office development.
- November 1995 The DLO/KE sent a Formal Offer to the owner with a premium assessment of \$37 million.
- December 1995 The Agent informed the DLO/KE that except for the premium assessment, the basic terms of the lease modification were acceptable in principle to the owner.
- February 1996 The Building Authority issued to the owner a consent to commence building works on the site.
- April 1996 Upon appeal by the Agent, the Valuation Conference approved and the Chief Estate Surveyor/Valuation of the Lands D sent to the owner a revised premium of \$32 million. This was accepted by the owner.

September 1996	The Agent informed the DLO/KE that because of financial reasons, the owner was not able to execute the Modification Letter before the premium validity date.
October 1996	The DLO/KE informed the owner that the proposed lease modification was deemed to be withdrawn.
January 1997	The Agent requested the DLO/KE to re-offer the proposed lease modification on the same terms and conditions as those previously sent to him in November 1995. The owner requested for a more favourable assessment of the modification premium.
March 1997	The DLO/KE found in a site inspection that construction of the 23-storey industrial/office building had been substantially completed on the Kwun Tong site.
April 1997	The DLO/KE informed the Agent that failure to comply with the lease conditions of the site might result in lease enforcement action being taken and the site re-entered by the Government.
October 1997	The DLO/KE sent a Formal Offer to the owner with a premium assessment of \$33 million.
November 1997	The owner accepted the Formal Offer at a premium of \$33 million.
December 1997	The Building Authority issued to the owner an Occupation Permit for the industrial/office development on the Kwun Tong site.
March 1998	The Agent asked the DLO/KE to revise the premium. The owner was unable to execute the modification letter as he encountered difficulty in raising funds after the property market crash. The DLO/KE said that the proposed lease modification was deemed to be withdrawn.

April 1998	The Agent asked the DLO/KE to re-offer the proposed lease modification on the same terms and conditions as those contained in the previous offer in October 1997 except for the amount of premium.
December 1998	The DLO/KE sent a Formal Offer to the owner with a premium assessment of \$19 million.
January 1999	The Agent informed the DLO/KE that the owner accepted the Formal Offer at a premium of \$19 million.
April 1999	The owner paid the \$19 million modification premium.
May 1999	The owner executed the Modification Letter.
July 1999	The Director of Lands issued a Certificate of Compliance to the owner. He certified that the obligations imposed on the owner of the Kwun Tong site under the lease conditions as varied and modified by the Modification Letter had been complied with.

Appendix B

Acronyms and abbreviations

AP	Authorised Person
CMS	Case Monitoring System
DLC	District Lands Conference
DLOs	District Lands Offices
DLO/KE	District Lands Officer/Kowloon East
Formal Offer	Letter of Formal Basic Terms Offer with assessed premium
Lands D	Lands Department
LACO	Legal Advisory and Conveyancing Office
The Agent	The agent for the owner of the Kwun Tong site