

CHAPTER 8

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

CAPITAL WORKS RESERVE FUND

GOVERNMENT SECRETARIAT

Housing, Planning and Lands Bureau

GOVERNMENT DEPARTMENT

Lands Department

Small house grants in the New Territories

**Audit Commission
Hong Kong
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SMALL HOUSE GRANTS IN THE NEW TERRITORIES

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SMALL HOUSE GRANTS IN THE NEW TERRITORIES

Summary and key findings

A. **Introduction.** In November 1972, the then Governor-in-Council approved a small house policy for the rural areas of the New Territories. Under this policy, an indigenous male villager, who is over 18 years old and is descended through the male line from a resident in 1898 of a recognised village, is entitled to one concessionary grant during his lifetime to build one small house. The small house policy enables New Territories indigenous villagers to build houses for themselves and to preserve the cohesion of indigenous communities. The policy is also intended to improve the housing and sanitary standards in the rural areas of the New Territories (paras. 1.1 and 1.2).

B. **Audit review.** Audit has recently carried out a review to examine the Lands Department (Lands D)'s implementation of the small house policy and to ascertain whether there is room for improvement (para. 1.6). The audit findings are summarised in paragraphs C to G below.

C. **Need to improve the implementation of the small house policy.** In this audit review, Audit has noted that, similar to the observations of the 1987 audit review of small house grants in the New Territories, the problem of indigenous villagers selling their small houses soon after the issue of the certificates of compliance (CCs) still exists. 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 considers that many indigenous villagers were cashing in on their eligibility for the small house concessionary grants. In June 2001, the Court of Appeal drew the Lands D's attention to the issue of illegal agreements on small house grant applications. The Lands D noted the problem and has taken some actions to address it (paras. 2.3, 2.10, 2.11, 2.13 to 2.21 and 2.23).

D. **Need to improve the checking of indigenous villager status.** The Lands D does not keep a list of eligible indigenous villagers who are entitled to the small house grant. A small house grant applicant has to submit a declaration, signed either by a village representative of his village or by a chairman/vice-chairman of the relevant rural committee, certifying that he is an indigenous villager. Besides such a declaration, the applicant does not have to submit any other evidence to substantiate the indigenous villager status. Audit considers that it is important for the Lands D to ensure that the small house grant is only given to genuine indigenous villagers (paras. 3.2, 3.4 and 3.8).

E. **Premium computation inconsistent with the grant conditions.** All small house grants contain restriction clauses on alienation. If a villager wishes to assign his small house to a non-indigenous villager within the operative period of the restriction, he has to pay to the Government a premium. The restriction is designed to prevent indigenous villagers from cashing in on their eligibility for concessionary grants. According to the small house grant conditions, the amount of premium to be paid to the Government is the difference between the full market value of the lot as at the date of the application to the District Lands Officer and the premium previously paid, if any. However, Audit noted that for small house building licence/land exchange, the Lands D applied a

discounting factor to the premium computation. Audit considers that the application of the discounting factor for computing the premium is inconsistent with the small house grant conditions and would impair the effectiveness of imposing the restriction on alienation in the small house grant conditions (paras. 4.2, 4.3 and 4.5 to 4.7).

F. Discrepancies between the list of recognised villages and registers of concessionary grants. The Approved List of recognised villages is an essential document for checking the eligibility of the small house grant applicant. The Lands D also keeps the Registers of Concessionary Grants for small houses (hereinafter referred to as the Small House Registers) to ensure that an indigenous villager is given only one small house grant in his lifetime. Audit found that there were discrepancies between the Small House Registers and the Approved List. Audit considers that there is room for improvement in the control over the keeping of the Small House Registers (paras. 5.4, 5.9, 5.11 and 5.14).

G. Scope for improvement in the processing of small house grant applications. As at 31 March 2002, the total number of outstanding small house grant applications was 14,157. There was on average a three-year waiting period before the Lands D could commence working on an application. In spite of the Lands D's efforts to expedite the processing time, the Lands D completed only 1,049 applications in the year ended 31 March 2002, which fell short of its target of 1,200 cases a year. Audit considers that the Lands D should expedite the processing of the small house grant applications so as to reduce the long waiting time. Audit noted that the wording used in the performance pledge is not clear. In Audit's view, the performance pledge should be worded more clearly so as to avoid ambiguity and misunderstanding (paras. 6.2, 6.15, 6.20 and 6.22).

H. Audit recommendations. Audit has made the following major recommendations:

- (a) the Director of Lands and the Secretary for Housing, Planning and Lands should:

Implementation of the small house policy

- (i) 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 not under the village expansion area schemes (para. 2.25(a)(i)); and
- (ii) 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 (para. 2.25(b)); and

- (b) the Director of Lands should:

Checking of indigenous villager status and doubtful cases

- (i) take prompt action to incorporate in the LAOI procedures for verifying the indigenous villager status of the small house grant applicant if his indigenous villager status is in doubt (para. 3.13(a)(iii));

- (ii) in consultation with the Legal Advisory and Conveyancing Office, 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 (para. 3.13(b));

Premium computation on removal of restriction on alienation

- (iii) 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 (para. 4.12(a));

Approved List and Small House Registers

- (iv) specify clearly in the LAOI the criteria for inclusion of additional villages in the Approved List of recognised villages (para. 5.15(a));
- (v) ensure that the New Territories District Lands Offices (NTDLOs) keep complete and accurate Small House Registers so as to ensure that an eligible indigenous villager from villages in the Approved List is only given one small house grant in his lifetime (para. 5.15(c));
- (vi) carry out a thorough check of the Small House Registers kept by the NTDLOs with a view to reconciling/rectifying any discrepancies/errors found (para. 5.15(e));

Processing of small house grant applications and Lands D's performance pledge

- (vii) expedite the processing of small house grant applications so as to reduce the long waiting time (para. 6.23(a));
- (viii) include in the performance pledge for the small house grants the initial waiting time of the small house grant applications for straightforward cases (para. 6.23(d)); and
- (ix) refine the Lands D's performance pledge on the processing of small house grant applications in such a way that ambiguity and misunderstanding will not arise (para. 6.23(e)).

I. Response from the Administration. The Administration generally agrees with the audit recommendations.

PART 1: INTRODUCTION

Background

1.1 In November 1972, the then Governor-in-Council approved a small house policy for the rural areas of the New Territories. **Under this policy, an indigenous male villager, who is over 18 years old and is descended through the male line from a resident in 1898 of a recognised village, is entitled to one concessionary grant during his lifetime to build one small house.** The small house policy enables male indigenous villagers to apply for a small house grant in the form of either:

- (a) *a building licence/land exchange.* For an indigenous villager who owns private agricultural land, he can apply for a building licence at nil premium, or a land exchange to build a small house on his own agricultural land; or
- (b) *a private treaty grant (PTG).* For an indigenous villager who does not own land, he can apply for the grant of a site on government land at a concessionary premium of two-thirds of the full market value.

In either case, the villager has to pay for the construction cost of the small house. A list of Recognised Villages is kept by the Director of Lands.

1.2 The New Territories small house policy enables New Territories indigenous villagers to build houses for themselves and to preserve the cohesion of indigenous communities. The policy is also intended to improve the housing and sanitary standards in the rural areas of the New Territories.

1.3 Such New Territories small houses may not exceed three storeys or 8.23 metres (27 feet) in height and 65.03 square metres (700 square feet) in the roofed-over area. There are also rules regarding building materials and construction standards. As long as the small houses conform to these rules, they are exempt from the requirement to submit building plans to the Building Authority for approval. This arrangement enables villagers to construct small houses with a minimum of administrative procedures, while ensuring that the houses are properly and safely constructed.

1.4 Small houses may be built in existing village areas within 91.44 metres (300 feet) from the edge of the last house built before December 1972, or within village type development zones in Development Permission Areas or Outline Zoning Plans. However, this rule is subject to the

constraints of local topography, the need to avoid power lines, country parks, etc. and the compliance with planning layouts.

1.5 In 1981, the then Governor-in-Council approved a village expansion area scheme. Under this scheme, private lands within village environs were resumed to meet the demand for village housing. Indigenous villagers could apply for the construction of small houses in the resumed land. The cost incurred by the Government in the acquisition and servicing of the land under the scheme was to be recovered from the premium for the small house sites.

Audit review

1.6 Audit has recently carried out a review of the Lands Department (Lands D)'s implementation of the small house policy. The objectives of the review are:

- (a) to ascertain whether the Lands D's procedures for the administration of the small house grant applications are effective;
- (b) to evaluate the efficiency and effectiveness of the Lands D in the implementation of the small house policy; and
- (c) to ascertain whether there is room for improvement in the implementation of the small house policy.

PART 2: IMPLEMENTATION OF THE SMALL HOUSE POLICY

2.1 This PART examines the implementation of the small house policy. The audit has revealed that there is room for improvement in the grant of building licences/land exchanges for small houses.

2.2 **1987 audit review.** In 1987, Audit carried out a review on “Small house policy for the indigenous villagers — pilot scheme for village expansion in the New Territories”. **In the Director of Audit’s Report No. 10 of October 1987, Audit reported that the objectives of the small house policy, to provide house sites on which eligible villagers would build houses to live in and to improve their living environment, had not been satisfactorily achieved.** Of the 35 certificates of compliance (CCs — Note 1) issued to the villagers for the houses completed under the Tin Sum Village Expansion Area scheme, the Government had received, within two months of the issue of the CCs, 19 applications for the removal of the restriction on alienation to enable the houses to be sold to non-villagers. 15 of the applications were approved. In response to the 1987 audit review, the then Director of Buildings and Lands accepted 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. In January 1988, the Public Accounts Committee, in its Report No. 10, concluded that the aim of the policy on small houses had not been achieved in the Tin Sum Village project.

2.3 In the present audit review, Audit noted that, similar to the audit observations of the 1987 audit review, the problem of indigenous villagers selling their small houses soon after the issue of the CCs still exists. Details of this problem are given in paragraphs 2.4 to 2.20 below.

Restriction on alienation of small houses

2.4 For the purpose of preventing the indigenous villagers from cashing in on their eligibility for the small house grants, the small house grant conditions contain a restriction on alienation. The restriction is incorporated in the conditions of building licence, land exchange and PTG (including small house grants under the village expansion area schemes). The main terms of the restriction are as follows:

- (a) if an indigenous villager wishes to assign the small house to a non-indigenous villager within the operative period of the restriction after the issue of the CC, he has to pay to the Government a premium;

Note 1: *The certificate of compliance is an administrative measure whereby the Lands D confirms to registered owners that all positive obligations imposed by the conditions of the small house grant have been complied with.*

- (b) the premium is equivalent to the difference between the full market value of the lot as at the date of application to the District Lands Officer for the consent to remove the restriction on alienation, and the amount of premium (if any) paid by the indigenous villager to the Government at the date of the grant; and
- (c) for different types of small house grants, the length of the operative period is different.

2.5 The restriction on alienation for different types of small house grants is summarised in Table 1 below:

Table 1
Restriction on alienation for
different types of small house grants

Type of small house grant	Operative period of restriction	Removal of restriction		
		Within years 1 to 3	Within years 4 & 5	After 5 years
Building licence	Five years	Permitted, but upon the payment of full market value premium (Note)	Same as years 1 – 3 (Note)	No restriction
Land exchange	Five years	Permitted, but upon the payment of full market value premium (Note)	Same as years 1 – 3 (Note)	No restriction
PTG — village expansion area scheme	Perpetual	Not permitted, because of the moratorium during the first 3 years	Permitted, but upon the payment of full market value premium	Same as years 4 & 5
— other PTGs	Perpetual	Permitted, but upon the payment of full market value premium	Same as years 1 – 3	Same as years 1 – 3

Source: Lands D's records

Note: The Lands D applies a discounting factor to the full market value in computing the premium (see PART 4).

It can be seen that for building licence or land exchange, the payment of a premium is not required if the assignment to a non-indigenous villager takes place after five years from the date of the CC.

2.6 ***Purpose of restriction on alienation.*** According to the Chief Secretary's Committee Paper No. 16/94 of 12 December 1994 concerning small house grants, the Government considered that the ability to develop small houses by indigenous villagers in a way not open to other people is a valuable privilege, especially in a rising property market. **The restriction on alienation in the conditions is designed to prevent indigenous villagers from cashing in on their eligibility for concessionary grants.**

2.7 ***Moratorium on removal of restriction on alienation for village expansion area schemes.*** Small house grants under the village expansion area schemes are made by way of PTGs. In 2001-02, only about 4.5% of the total small house grants were made under the village expansion area schemes. After the 1987 audit review (see para. 2.2 above), the Lands D introduced in the small house grant conditions under the village expansion area schemes a three-year moratorium on removal of the restriction on alienation (i.e. the Lands D would not permit the assignment of small houses in such areas within three years after the issue of the CC). Audit examined 20 small house grants under the village expansion area schemes and found that the three-year moratorium had been complied with. After the three-year moratorium, if an indigenous villager wishes to assign the small house under the village expansion area scheme to a non-indigenous villager, he has to pay to the Government a premium (see Table 1 in para. 2.5 above).

Removal of restriction on alienation

2.8 ***Statistics on removal of restriction on alienation.*** The statistics on the removal of the restriction on alienation of small houses during the last five financial years (1997-98 to 2001-02) are shown in Table 2 below:

Table 2

**Removal of restriction on
alienation from 1997-98 to 2001-02**

Financial year	CC issued	Approved cases of removal of restriction on alienation	Premium collected
	(No.)	(No.)	(\$ million)
1997-98	1,306	669	839
1998-99	1,549	685	795
1999-2000	1,401	572	524
2000-01	988	360	321
2001-02	993	378	276
Total	<u>6,237</u>	<u>2,664</u>	<u>2,755</u>
Average	1,247	533	551

Source: Lands D's records

2.9 As shown in Table 2 above, there were on average 533 cases a year of approved removal of the restriction on alienation during the last five years, representing about 43% of the 1,247 CCs issued in a year.

Cases of removal of restriction on alienation

2.10 In a test check of the removal of the restriction on alienation approved in the three financial years from 1999-2000 to 2001-02 by three New Territories District Lands Offices (NTDLOs), namely Yuen Long, Tai Po and North, Audit found that in 53 cases, the indigenous villagers applied for permission to sell their small houses soon after the date of issue of the CCs, as summarised in Table 3 below.

Table 3

Cases of application for removal of restriction soon after the date of issue of CCs

Location of village	No. of cases involved	Average time between date of CC and date of application for removal of restriction on alienation (Note 1) (days)	Average time between date of removal of restriction on alienation and date of sale of the flats (Note 2) (days)
Tai Po	31	2	235
Yuen Long	10	2	82
Fanling	4	13	32
Sheung Shui	8	7	38
Total	53	3 (Note 3)	158 (Note 3)

Source: Land Registry's and Lands D's records

Note 1: This is the average for the NTDLO concerned.

Note 2: After the removal of the restriction on alienation, a small house may be sold either completely or partially in flats.

Note 3: This is the overall average for the 53 cases.

2.11 It can be seen from Table 3 above that for the 53 cases, the indigenous villagers applied for the removal of the restriction on alienation within an average of three days after the issue of the CC. After the approval of the Lands D, 153 (96%) out of the 159 flats (i.e. 3 flats + 53 small houses) were sold within an average of 158 days (or about five months).

Sale of small house in breach of the building licence conditions

2.12 Of the 53 cases, the Lands D was informed in 1998 that in one case, a villager had breached the building licence conditions because he had sold the small house even before the CC was issued. Some salient points of this case are as follows:

- (a) in June 1997, the Lands D granted a building licence to the indigenous villager;

- (b) in December 1998, the solicitors acting for the respective purchasers of the three flats of the small house informed the Lands D that the villager had breached the conditions of the building licence. The solicitors forwarded to the Lands D copies of three sale and purchase agreements signed by a company and the respective purchasers;

- (c) the solicitors pointed out that:
 - (i) under Condition 4(a) of the building licence, the villager should not assign or otherwise dispose of the site or enter into any agreement to do so, whether directly or indirectly unless either a period of five years had elapsed from the date of issue of the CC, or the villager had paid to the Government the premium in accordance with Condition 4(d)(ii) (Note 2) thereof; and

 - (ii) under Condition 36 of the building licence, if the villager failed to observe or comply with any of these Conditions, the Government was entitled to re-enter upon and take back possession of the site.

- (d) in January 1999, after consulting the Legal Advisory and Conveyancing Office (LACO) of the Lands D, the Lands D informed the solicitors that:
 - (i) as neither the Government nor the villager was involved in the agreements, the Lands D had no comments on the solicitors' view as to whether the villager was in breach of the conditions of the building licence; and

 - (ii) it was the solicitors' responsibility to advise their clients on all the possible legal consequences that might arise from the transactions; and

- (e) in November 1999, the Lands D issued the CC to the villager.

Note 2: *Condition 4(d)(ii) of the building licence stated that the villager should pay to the Government a premium equivalent to the full market value of the site as at the date of the application to the District Lands Officer for consent to assign the site.*

Concern raised by the Court of Appeal

2.13 Furthermore, there was a problem of illegal agreements for small house grant applications. This problem was pointed out by the Court of Appeal in a court case. In June 2001, the Court of Appeal, when concluding an appeal case related to small house grants, said that:

“There are grounds to suspect that agreements that were made between the parties were illegal there are grounds to consider that the agreements inevitably required that misrepresentations would be made to the Director of Lands through the District Land Offices as to the intention on the part of the various indigenous inhabitants to occupy the houses that were to be built”.

The Court of Appeal then directed that the papers related to the court case should be sent to the Director of Lands for his consideration.

2.14 In July 2001, having considered the papers from the Court of Appeal, the Director of Lands wrote to the then Secretary for Planning and Lands. The Director said that:

- (a) land owners (either individuals or companies) took the initiative to recruit indigenous villagers who were eligible for small house grant as “front men” to enable the land owners to develop small houses on their land. **The indigenous villagers were prepared to “sell” that eligibility and sign declarations which misrepresented their intentions. The Lands D suspected that this type of thing had been going on for some time;**
- (b) the land was carved out into sections and assigned to the indigenous villagers but at the same time some form of “security documentation”, such as a trust to prevent the indigenous villager from taking full advantage of his title to the lot, was drawn up together with the indigenous villager making a will in which the lot would be left to the developer in the event of the indigenous villager’s death. This security documentation was known only to the developer, the indigenous villagers and the solicitors firm who drew it up;
- (c) the indigenous villagers completed the building licence application forms, and made declarations to the Lands D as to their bona fide intent to occupy the house and to the effect that they had made no agreements with third parties for the subsequent assignment of the lot (see para. 2.19 below). These declarations were misrepresentations to the Lands D as to the true situation;

- (d) after the building licences had been issued and the development completed, the indigenous villagers applied to the relevant NTDL0 for the removal of the restriction on alienation on the payment of a premium; and
- (e) **after paying the premium, the indigenous villagers assigned the small houses to the purchasers (who might be the developer, or persons nominated by the developer). At this point, the indigenous villagers collected monies for selling their small house right.**

Lands D's actions to address the problem of selling the small house right

2.15 The Lands D was aware of the problem of some indigenous villagers selling their small house right as mentioned in paragraphs 2.12 to 2.14 above. To address the problem, the Lands D had taken the actions as described in paragraphs 2.16 to 2.19 below.

2.16 *Moratorium on removal of restriction on alienation for village expansion area schemes.* As indicated in paragraph 2.7 above, after the 1987 audit review, the Lands D introduced a three-year moratorium clause on the removal of the restriction on alienation in the small house grant conditions under the village expansion area scheme. The measure is effective for controlling the abuse among small house grants under such schemes. Audit found that the three-year moratorium has generally been followed. However, the Lands D has not introduced any moratorium clause on the removal of the restriction on alienation in small house building licences, land exchanges and PTGs not under the village expansion area schemes.

2.17 *Lands D's advice to the Law Society.* Following the Court of Appeal's referral of the case to the Lands D (see para. 2.13 above), in July 2001 the Lands D raised its concern to the Law Society on whether the solicitors had acted with any impropriety in preparing the conveyancing legal documents, in that they might have possibly facilitated what was described by the Court of Appeal as illegal agreements between the parties. In reply, the Law Society informed the Lands D that an investigation into the matter was in progress.

2.18 *Restriction on use of Power of Attorney.* Before June 2001, the Lands D accepted the use of Power of Attorney to represent an indigenous villager in all dealings with the Lands D. To control possible abuse, with effect from June 2001, the Lands D would not accept the use of Power of Attorney for the execution of small house grants unless under certain exceptional circumstances (Note 3).

Note 3: *An example of exceptional circumstances is that if a villager is abroad on a business trip or studying overseas, his close relatives including his wife, father, mother, son, brother or sister can be appointed as his attorney.*

2.19 ***Inclusion of an additional clause in the villager's declaration to the Lands D.*** Since October 1997, the declaration form for small house grant application has included the clause: "I have never made and have no intention at present to make any private arrangements for my rights under the Small House Policy to be sold to other individual/a developer". With the dual objectives of making small house applicants think hard before making their representation, and of facilitating subsequent prosecution if evidence of misrepresentation comes to light, in 2001, the Lands D re-examined the wording of the declarations required to be made by applicants. With effect from October 2001, in addition to making the above declaration, the indigenous villager has to make the following additional declaration:

"I have never entered into any arrangements or agreement with any person or persons to transfer, alienate, dispose or otherwise deal with my rights in and over the Lot including but not limited to the right to develop the Lot pursuant to any grant or approval to be issued by the Government."

2.20 However, in July 2002 (date of completion of audit field work), Audit noted that the old declaration forms, which did not contain the above additional declaration, were still being used in the NTDLOs of Tsuen Wan and Tuen Mun. Upon Audit's enquiry, the two NTDLOs had promptly started using the new declaration forms.

Audit observations on the implementation of the small house policy

2.21 The present small house policy was established in 1972. **In this audit review, similar to the findings of the 1987 audit review (see para. 2.2 above), Audit noted that some indigenous villagers sold their small houses built under building licences or land exchanges soon after the issue of the CCs. As shown in the 53 cases mentioned in paragraphs 2.10 and 2.11 above, the applications for the removal of the restriction on alienation were submitted within a few days after the issue of the CCs. After the removal of the restriction on alienation, nearly all of the flats of the 53 small houses were sold in about five months. Many indigenous villagers were cashing in on their eligibility for concessionary grants.**

2.22 **The Lands D was informed that, in one case, the villager concerned had possibly breached the building licence conditions and abused the small house policy. The Court of Appeal has also referred a case to the Lands D for follow-up action (see paras. 2.12 and 2.13 above).**

2.23 The Lands D had taken note of the problem of the small house grant referred to it by the Court of Appeal. Some measures have been implemented to address the problem (see paras. 2.16 to 2.19 above). By including an additional clause in the declaration forms (see para. 2.19 above),

as from October 2001, the Lands D has made it clear that the selling, transfer, alienation or disposal of the indigenous villager's right to small house grants is not acceptable to the Government. **However, Audit noted that the NTDLOs of Tsuen Wan and Tuen Mun had not used the new declaration forms until Audit's enquiry in July 2002 (see para. 2.20 above).**

2.24 The restriction on alienation included in the licences or grant conditions is designed to prevent indigenous villagers from cashing in on their eligibility for small house grants (see para. 2.6 above). The introduction of a three-year moratorium on removal of the restriction on alienation for PTGs under the village expansion area schemes has been effective for controlling potential abuse among small house grants under such schemes (see para. 2.7 above). **However, a similar moratorium clause has not been included in the conditions of small house building licences, land exchanges and PTGs not under the village expansion area schemes. In July 2002, upon Audit's enquiry, the Lands D said that:**

- (a) **the Government had recently suggested to the Heung Yee Kuk that a similar moratorium clause should be included in the conditions of small house building licences, land exchanges and PTGs not under the village expansion area schemes; and**
- (b) **further negotiation with the Heung Yee Kuk was required.**

Audit recommendations on the implementation of the small house policy

2.25 **Audit has recommended that the Director of Lands and the Secretary for Housing, Planning and Lands should:**

- (a) **in consultation with the Heung Yee Kuk:**
 - (i) **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 PTGs not under the village expansion area schemes; and**
 - (ii) **take other measures, such as enforcement action, to effectively control potential abuse of the small house policy;**

- (b) **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**

- (c) **review the documents currently used by the NTDLOs for the small house grants to ensure that all NTDLOs use the up-to-date forms for processing small house grants.**

Response from the Administration

2.26 The **Director of Lands** generally agrees with the audit recommendations for improving the current arrangements regarding small house administration. He has said that the current policy, subject to the payment of the relevant premium, does not prohibit the villager from applying for the removal of the restriction on alienation after the issue of the CC.

2.27 The **Secretary for Housing, Planning and Lands** has said that the small house policy was introduced with the aims of improving the rural housing standard and allowing the indigenous villagers to build small houses once in their lifetime for their own use. While it is not an abuse for villagers to dispose of their small houses built under building licence/land exchange soon after the issue of the CC, he agrees that this problem deserves his attention. He is exploring appropriate measures to address this issue.

PART 3: CHECKING OF INDIGENOUS VILLAGER STATUS

3.1 This PART examines the procedures for the checking of the indigenous villager status of small house grant applicants. The audit has revealed that there is room for improvement in the checking procedures.

Indigenous villager status of small house grant applicants

3.2 *Certification of indigenous villager status.* The Lands D does not keep a list of eligible indigenous villagers who are entitled to the small house grant. A small house grant applicant has to submit a declaration, signed either by a village representative of his village or by a chairman/vice-chairman of the relevant rural committee, certifying that he is an indigenous villager of the village. In addition, a notice of the application is posted at the applicant's small house site, notice boards of his village and the Rural Committee Office, and at the relevant NTDLO. The small house grant application will be processed if no valid objection is raised within 14 days after the posting of the notice of the application.

3.3 *No other evidence of indigenous villager status required.* Under the declaration form, the village representative or the chairman/vice-chairman of the relevant rural committee declares to the Lands D that "I believe that the applicant is a descendant through the male line from a resident who has resided in the said village in or before 1898". Since June 2001, the Lands D has used a new declaration form in which the village representative's declaration must be witnessed by either a solicitor or an officer of the NTDLO.

3.4 According to the application form and the LAOI, the applicant does not have to submit any other evidence to substantiate the indigenous villager status for both himself, his father or grandfather.

Checking of indigenous villager status

3.5 To improve the checking of the indigenous villager status of the small house grant applicant, in June 2002, Audit suggested to the Lands D that the NTDLOs should perform checks to satisfy themselves that:

- (a) the applicant was descended through "the male line" (see para. 3.3 above) by confirming the relationship between the applicant and his father and grandfather, as claimed by the small house grant applicant; and

- (b) the father and grandfather of the applicant were both indigenous villagers.

3.6 In reply, in July 2002 the Lands D said that:

- (a) depending on the complexity of the case, the handling officer of the small house grant application would carry out necessary checks to confirm that the small house grant applicant was eligible for the small house grant. In simple cases, certification from either a village representative of the applicant's village, or a chairman/vice-chairman of the rural committee concerned on the indigenous villager status of the applicant under a declaration, would be sufficient;
- (b) the names of the applicant's father and grandfather given in the application form would provide useful information for the village representative to make the certification. Further checking of the indigenous villager status of the applicant's father or grandfather might not be necessary;
- (c) if the indigenous villager status of the small house grant applicant was in doubt, the NTDLO would carry out more sophisticated checking. Such checking included ascertaining the applicant's family tree, clan book and private properties owned by him or by his family under the Block Government Lease (Note 4). Hence, not only his father and grandfather's status would be checked, the origin of his family/clan would also be traced back to 1898 in order to verify his indigenous villager status; and
- (d) the relationship between a small house grant applicant and his father could be easily verified by the Birth Certificate which he was required to produce during the interview.

Audit observations on checking of indigenous villager status

3.7 Audit welcomes the Lands D's action to improve the procedures for checking the indigenous villager status of the small house grant applicant (see para. 3.6 above). **However, Audit noted that, as at July 2002, the LAOI:**

Note 4: *In 1898, a survey was conducted for the purposes of land ownership identification and government rent roll preparation. The New Territories was divided into 477 Demarcation Districts which were recorded on the respective Demarcation Districts sheets (see Note 6 to para. 5.2 below). Lots within the same Demarcation District sheet were recorded collectively under a common lease known as the Block Government Lease (then called the Block Crown Lease).*

- (a) **did not define what types of small house grant application should be classified as a simple case, and what criteria would be used for determining whether the case was simple or complex (see para. 3.6(a) above);**
- (b) **did not state the checking procedures to be adopted if the applicant's indigenous villager status was in doubt (see para. 3.6(c) above);**
- (c) **did not specify the requirement of verifying the applicant's Birth Certificate during the vetting of the small house grant application with a view to confirming the relationship between the applicant and his father (see para. 3.6(d) above); and**
- (d) **did not specify that the NTDLO should perform checks to confirm that the relationship with his father and grandfather as claimed by the applicant was bona fide (see para. 3.6(b) above), and that the applicant's father and grandfather were indigenous villagers.**

3.8 Audit considers that the small house grant represents a concession to the indigenous villagers in terms of land use and government revenue forgone. It is important to ensure that the small house grant is only given to genuine indigenous villagers. More specific procedures for the checking of the applicant's eligibility are necessary.

Checking of doubtful cases

3.9 The small house grant applicant declares in the application form that he may render himself disqualified for the small house grant and/or liable to prosecution by the Government if he makes a false declaration. Similarly, if a village representative of the applicant's village, or a chairman/vice-chairman of the relevant rural committee makes a false declaration of the applicant's indigenous villager status, he may also render himself liable to prosecution by the Government. Audit considers that the wording in the declaration forms and relevant legal documents for the small house grant applications should be strengthened and clearly stated so as to deter false claims of the indigenous villager status.

3.10 In June 2002, in an audit test check of the procedures for handling small house grants, Audit noted that in a memorandum dated 14 September 1998, the Lands D Headquarters informed the NTDLOs that if a small house grant applicant's indigenous villager status was in doubt, a thorough check on the applicant's eligibility should be conducted. This should include checking with the District Office of the Home Affairs Department to see if it had any information which might assist in verifying the applicant's status. However, Audit noted that the LAOI had not defined the circumstances under which a case should be classified as doubtful. The LAOI had not specified what checks the NTDLOs should perform to verify the applicant's indigenous villager status.

3.11 In July 2002, the Lands D informed Audit that:

- (a) a doubtful case was one where the information provided by the small house grant applicant was insufficient to establish his indigenous villager status, for example, applications from ‘moved and settled’ villagers;
- (b) in doubtful cases, the NTDLOs would conduct further investigations in accordance with the following procedures:
 - (i) checking the details of the applicant’s family tree and private properties including the history of the site;
 - (ii) consulting village elders; and
 - (iii) verifying the particulars from the government rent roll;
- (c) the District Office of the Home Affairs Department could supply information about the applicant’s membership of a Tso/Tong in establishing the status of an applicant;
- (d) the applicant or village representative who made false declaration would be liable to prosecution under section 36 of the Crimes Ordinance (Cap. 200). Upon conviction, the offender might be fined and sentenced to an imprisonment not exceeding two years. The Lands D agreed that, subject to the LACO’s advice, the penalty liable under section 36 of the Crimes Ordinance would be stated in the small house grant application form; and
- (e) the above procedures would be incorporated in the LAOI.

Audit observations on checking of doubtful cases

3.12 **Audit welcomes the Lands D’s actions taken to improve the procedures for checking doubtful cases. Both the procedures for checking doubtful cases and the inclusion of a penalty clause in the declaration form are useful measures for deterring false claims of the indigenous villager status. Audit considers that the Lands D should incorporate the procedures for checking doubtful cases in the LAOI, and include the penalty clause in the declaration form as early as possible.**

Audit recommendations on checking of indigenous villager status

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

- (a) take prompt action to incorporate in the LAOI:**
 - (i) criteria for determining whether a small house grant application is a simple or complex case;**
 - (ii) 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;**
 - (iii) procedures for verifying the indigenous villager status of the small house grant applicant if his indigenous villager status is in doubt;**
 - (iv) the criteria under which a small house grant application is classified as a doubtful case;**
 - (v) detailed procedures for the checking of doubtful cases; and**
 - (vi) the type of information which should be obtained from the District Office of the Home Affairs Department for checking the doubtful cases; and**
- (b) in consultation with the 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.**

Response from the Administration

3.14 The **Director of Lands** generally agrees with the audit recommendations. He has said that the audit recommendations will be included where applicable in a new checking system which is under consideration in consultation with the Heung Yee Kuk.

PART 4: PREMIUM ON REMOVAL OF RESTRICTION ON ALIENATION

4.1 This PART examines the method of premium computation on the removal of the restriction on alienation adopted by the Lands D. The audit has revealed that there is a need to amend the small house grant conditions.

Small house grant conditions

4.2 **The restriction on alienation in the licences or grant conditions (see para. 2.6 above) is designed to prevent indigenous villagers from cashing in on their eligibility for concessionary grants.** Nevertheless, according to the conditions, the removal of the restriction on alienation may be allowed subject to the payment of a premium, as follows:

- (a) ***Building licence (five-year restriction on alienation).*** Condition 4(d)(ii) of the small house building licence conditions states that:

“..... the Licensee shall have first paid to the Government a premium equivalent to the full market value of the lot as at the date of the application to the District Lands Officer for such consent” (Audit emphasis);

- (b) ***Land exchange (five-year restriction on alienation).*** Condition 6(d)(ii) of the small house land exchange conditions states that:

“..... the Grantee shall have first paid to the Government an additional premium equivalent to the difference between the amount of premium (if any) paid by the Grantee to the Government at the date of this grant and the full market value of the lot as at the date of the application to the District Lands Officer for such consent” (Audit emphasis); and

- (c) ***PTG (perpetual restriction on alienation).*** The wording of condition 5(d)(ii) of the small house PTG conditions is the same as (b) above.

4.3 The above three clauses on the conditions of small house grant in effect have the same meaning concerning the amount of the premium to be paid. According to the conditions, in order to remove the restriction on alienation, the villager (i.e. the licensee/grantee) has to pay a premium to the Government. **The amount of premium is the difference between the full market value of the lot as at the date of the application to the District Lands Officer for the consent to remove**

the restriction and the premium previously paid, if any. The amount of premium for the removal of the restriction on alienation for the small house grants received by the Government in 2001-02 was \$276 million (see Table 2 in para. 2.8 above).

Premium computation inconsistent with the small house grant conditions

4.4 Audit’s test check of the premium to be paid to the Government for the consent to remove the restriction on alienation revealed that the Lands D had adopted the following methods of computation for the three types of small house grant:

(a) ***Building licence (five-year restriction on alienation):***

$$\left\{ \begin{array}{l} \text{Full market} \\ \text{value of the} \\ \text{site as at the} \\ \text{date of} \\ \text{application for} \\ \text{consent} \end{array} \right. \text{ less } \left. \begin{array}{l} \text{Premium} \\ \text{previously} \\ \text{paid} \end{array} \right\} \times \begin{array}{l} \text{Discounting factor} \\ \text{(as stated in the} \\ \text{LAOI — see} \\ \text{Appendix A)} \end{array} = \begin{array}{l} \text{Premium} \\ \text{to be paid} \\ \text{to the} \\ \text{Government} \end{array}$$

(b) ***Land exchange (five-year restriction on alienation):***

$$\left\{ \begin{array}{l} \text{Full market} \\ \text{value of the} \\ \text{site as at the} \\ \text{date of} \\ \text{application for} \\ \text{consent} \end{array} \right. \text{ less } \left. \begin{array}{l} \text{Premium} \\ \text{previously} \\ \text{paid} \end{array} \right\} \times \begin{array}{l} \text{Discounting factor} \\ \text{(as stated in the} \\ \text{LAOI — see} \\ \text{Appendix A)} \end{array} = \begin{array}{l} \text{Premium} \\ \text{to be paid} \\ \text{to the} \\ \text{Government} \end{array}$$

(c) ***PTG (perpetual restriction on alienation):***

$$\left\{ \begin{array}{l} \text{Full market} \\ \text{value of the} \\ \text{site as at the} \\ \text{date of} \\ \text{application for} \\ \text{consent} \end{array} \right. \text{ less } \left. \begin{array}{l} \text{Premium} \\ \text{previously} \\ \text{paid} \end{array} \right\} = \begin{array}{l} \text{Premium} \\ \text{to be paid} \\ \text{to the} \\ \text{Government} \end{array}$$

4.5 It can be seen in paragraph 4.4(a) and (b) above that, for the small house grants made by way of building licence or land exchange, the premium to be paid to the Government was discounted by a discounting factor, as shown in the following example:

Table 4

**Lands D's computation of premium
for removal of restriction on alienation for a
small house site under a building licence or land exchange**

Time between date of CC and date of application for removal of restriction (Note 1) (year)	Full market value of small house site as at date of application for removal of restriction (Note 2) (a) (\$ million)	Discounting factor as stated in the LAOI (see Appendix A) (Note 3) (b)	Premium after applying discounting factor (Note 4) (c) = (a) × (b) (\$ million)
0	2	0.2953	0.6
1	2	0.2442	0.5
2	2	0.1894	0.4
3	2	0.1306	0.3
4	2	0.0676	0.1

Source: Lands D's records

Note 1: According to the LAOI, the time between the date of the CC and the date of application for the removal of the restriction on alienation is rounded down to the nearest quarter.

Note 2: In this example, it is assumed that the full market value of the small house site assessed by the Lands D is \$2 million.

Note 3: The discounting factor for this illustration is based on the assumption that the best lending rate is 5.25%. As the Lands D adds another 2% above the best lending rate, the interest rate of 7.25% is used in calculating the discounting factor.

Note 4: In these computations, it is assumed that no premium has previously been paid by the villager to the Government.

Audit query

4.6 **Audit noted that for the removal of restriction on alienation in respect of small house grants made by building licences and land exchanges, the application of a discounting factor for computing the premium is inconsistent with the grant conditions (see paras. 4.2(a), 4.2(b) and 4.5 above). According to the small house grant conditions, the amount of premium to be paid is the difference between the full market value of the site as at the date of**

application and the premium previously paid. There is no mention of the application of a discounting factor in the grant documents.

4.7 As the objective of the clause on the restriction on alienation is to prevent the indigenous villagers from cashing in on their eligibility for small house grants (see para. 2.6 above), the practice of applying a discounting factor for computing the premium would impair the effectiveness of the imposition of the restriction on alienation.

4.8 In June 2002, Audit raised a query to the Lands D on whether its method of premium computation complied with the small house grant conditions.

4.9 *The Lands D's reply.* In July 2002, the Lands D informed Audit that:

- (a) the restriction on alienation clause of the small house grant was first introduced in 1976 to the effect that any assignment made to a person not entitled to a concessionary grant within five years from the date of the CC would be subject to the payment of a premium. The reason for the introduction of this measure was to prevent the misuse of the small house policy;
- (b) in October 1977, the matter was again raised to the then New Territories Lands Meeting (Note 5). The Meeting considered that to follow the condition as written would result in an unsatisfactory situation because there was no differentiation in the premium between a villager who applied for consent to assign at, say, the commencement of the five-year restriction on alienation period, and another villager who applied for consent to assign at, say, three years after the commencement of the five-year period. It was considered that the former villager should pay a higher premium than the latter villager as the former one would be able to realise a higher profit upon the disposal of the small house; and
- (c) on 20 December 1977, the New Territories Lands Meeting agreed to adopt the computation method as mentioned in paragraph 4.4 above, i.e. the premium would reduce as the unexpired operative period of the restriction on alienation shortened and the villagers' benefit increased. Based on the agreed approach, an assessment method and the adoption of different operative periods of the restriction on alienation for building licence, land exchange and PTG were formulated in 1978 and put into use.

Note 5: *The New Territories Lands Meeting was chaired by the then Deputy Secretary for the New Territories and included the then Deputy Secretary for the Environment, the then Registrar General (New Territories Section) and the then Principal Government Land Agent (New Territories).*

Audit observations on premium computation on removal of restriction on alienation

4.10 **Audit considers that the application of a discounting factor for computing the 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.** There is no mention of the application of a discounting factor in the small house grant documents.

4.11 **As it is the Government's intention that the premium to be paid should reduce as the unexpired operative period of the restriction on alienation shortens, Audit considers that the Lands D should amend the small house grant conditions to reflect this.**

Audit recommendations on premium computation on removal of restriction on alienation

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

- (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.**

Response from the Administration

4.13 **The Director of Lands agrees with the audit recommendation that the building licence/land exchange conditions need amendment to make them more accurately reflect the Government's intention.** He has said that small house grants made by building licences and land exchanges differ from the PTGs in that the restriction on alienation on the former is valid for five years only, while the restriction on the latter type (PTGs) is permanent. It is therefore considered unfair and illogical that the building licence and land exchange grantees should pay a premium representing the full difference between any premium paid and the full market value of the lot as at the date of application in the five-year operative period, irrespective of the remaining operative period, and pay no premium in the sixth year and thereafter. This situation was identified at the New Territories Lands Meeting on 20 December 1977 and the current method of premium calculation was agreed to be adopted.

4.14 **The Secretary for Housing, Planning and Lands agrees with the Director of Lands' views that the existing building licence/land exchange documents need appropriate updating to reflect more clearly the Lands D's existing premium assessment method.**

PART 5: LIST OF RECOGNISED VILLAGES AND REGISTERS OF CONCESSIONARY GRANTS

5.1 This PART examines the management control over the keeping of the list of recognised villages and registers of small house concessionary grants. The audit has revealed that there is room for improvement in the management control.

The Approved List of recognised villages

5.2 As mentioned in paragraph 1.1 above, the New Territories small house policy only applies to male indigenous villagers over 18 years old who are descended through the male line from a resident in 1898 of a recognised village. In order to facilitate the implementation of the small house policy, in January 1973, the then District Commissioner, New Territories approved a list of recognised villages (hereinafter referred to as the **Approved List**). This Approved List was prepared by the New Territories District Offices in 1972 with reference to the Block Government Leases and the Demarcation Districts sheets (Note 6) after consultation with the Heung Yee Kuk and the rural committees.

5.3 The Approved List is an important control document for making concessionary small house grants. The Lands D has set criteria for the inclusion of villages into the Approved List. Only those villages found genuinely omitted at the time of drawing up the Approved List in 1972 will be considered for subsequent inclusion into the Approved List. From 1972 to 1983, the Approved List was reviewed annually and about 37 villages were included. Since 1983, very few claims from other villagers were found justified. Up to the end of July 2002, six more villages had been included into the Approved List.

Criteria for inclusion of additional villages in the Approved List

5.4 According to the Lands D, the Approved List of recognised villages is an essential document for checking the eligibility of the small house grant applicant. The Lands D has included the Approved List in the LAOI. However, the LAOI does not specify the criteria for the inclusion of a village in the Approved List. The criteria were only mentioned in a memorandum dated 20 July 2000 from the Lands D Headquarters to the NTDLOs. The memorandum said that in considering whether a village could qualify for inclusion as a recognised village in the Approved List, some basic criteria had to be considered. Two of the basic criteria were that the village under application should have been in existence in 1898, and that the village should have been included in the Demarcation District sheets and the Block Government Leases.

Note 6: *The Demarcation District sheets were indexed plans prepared during the period 1898 to 1904 for land ownership identification and government rent roll preparation.*

Audit observations on the Approved List

5.5 **The Approved List is an important control list for ensuring that only eligible indigenous villagers of recognised villages are entitled to the small house concessionary grant. Audit considers that the criteria for the inclusion of villages in the Approved List should be clearly specified in the LAOI.** In vetting applications from villages, the Lands D officers should strictly follow the criteria for determining the inclusion of villages in the Approved List.

Small house licences issued to villagers of a village not in the Approved List

5.6 An audit test check of the small house grant records revealed that in 1995, the DLO/Yuen Long issued four small house building licences to four villagers of a village (Village A). However, Village A was not included in the Approved List.

5.7 In response to Audit's queries, in July 2002, the Lands D said that:

- (a) Village A had already been in existence since 1898 but it had not been included in the Approved List when the List was compiled;
- (b) the most probable reason was that, when the Approved List was compiled, the villagers of Village A had already settled in another village (Village B) in Yuen Long because of the remoteness of their village. With this special background, some villagers of Village A were allowed to build small houses in Village B, a recognised village in the Approved List; and
- (c) the DLO/Yuen Long would take action to amend the records.

5.8 **Audit noted the Lands D's explanations. However, the fact that the village was not on the Approved List, when building licences were issued, cannot be regarded as satisfactory. Audit considers that there is scope for improvement in the control procedures.** The DLO/Yuen Long should have checked whether Village A was in the Approved List before processing the applications for small house grants. If the Lands D considered that Village A was a genuine recognised village, procedurally this village should have first been included in the Approved List before the building licences were issued.

Registers of Concessionary Grants

5.9 Under the LAOI, Registers of Concessionary Grants for small houses (hereinafter referred to as the **Small House Registers**) are required to be kept in each NTDLO to ensure that an

indigenous villager is given only one small house grant in his lifetime. In order to ensure that a villager applying for the small house grant has not previously been given one, the LAOI requires that the NTDLO should check the villager's name against the Small House Registers.

5.10 The Small House Registers are classified by location and name of the recognised villages. A new small house grant to an indigenous villager is recorded in the Small House Registers. Since the Small House Registers are important control records, the completeness and accuracy of the registers are essential for ensuring that no double claims for the small house grants are made by an indigenous villager.

Audit observations on the Small House Registers

5.11 In June 2002, Audit selected for checking the Small House Registers kept by three major NTDLOs. A comparison of the names of the villages recorded in the Small House Registers with those of the recognised villages in the Approved List revealed some discrepancies, as summarised in Appendix B. This showed that there was lack of proper control over the keeping of the Small House Registers.

5.12 In reply to Audit's queries on the discrepancies, in July 2002, the Lands D confirmed that:

- (a) for those villages which were not recognised villages but which had been wrongly entered in the Small House Registers, remedial action would be taken to delete them from the Small House Registers; and
- (b) arrangement for proper updating of the Small House Registers would be made.

5.13 It is also relevant to note that, in the NTDLOs, clerical officers are usually tasked to check whether an applicant has previously received a small house grant. According to the LAOI, the supervising officers of the clerical officers should carry out spot checks on their work. In 1998, the Independent Commission Against Corruption (ICAC) recommended that the Senior Land Executive should carry out such spot checks. **However, from a scrutiny of selected case files in some NTDLOs, Audit could not find any evidence of such spot checks.**

5.14 **In view of the discrepancies between the Small House Registers and the Approved List, Audit considers that there is room for improvement in the control over the keeping of the Small House Registers. The Lands D should carry out a thorough check of the Small House Registers maintained by all the NTDLOs with a view to reconciling/rectifying any discrepancies/errors found in the Small House Registers.**

Audit recommendations on the Approved List and the Small House Registers

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

- (a) **specify clearly in the LAOI the criteria for inclusion of additional villages in the Approved List of recognised villages;**
- (b) **ensure that the small house grants are only made to eligible indigenous villagers of recognised villages included in the Approved List;**
- (c) **ensure that the NTDLOs keep complete and accurate Small House Registers so as to ensure that an eligible indigenous villager from villages in the Approved List is only given one small house grant in his lifetime;**
- (d) **ensure that the record of villages entered into the Small House Registers is accurate with reference to the Approved List of recognised villages;**
- (e) **carry out a thorough check of the Small House Registers kept by the NTDLOs with a view to reconciling/rectifying any discrepancies/errors found; and**
- (f) **in accordance with the relevant LAOI, require the Lands D officers to carry out spot checks on the Small House Registers and to keep records of such spot checks.**

Response from the Administration

5.16 **The Director of Lands generally agrees with the audit recommendations. He has said that the recommendations would be implemented as soon as practicable.**

PART 6: PROCESSING OF SMALL HOUSE GRANT APPLICATIONS AND LANDS D'S PERFORMANCE PLEDGE

6.1 This PART examines the procedures of the NTDLOs for the processing of small house grant applications. The audit has revealed that there is scope for improvement in the processing of small house grant applications.

Long waiting time for processing small house grant applications

6.2 *Concerns over long waiting time.* As at 31 March 2002, the total number of outstanding small house grant applications was 14,157. A breakdown of the outstanding applications by NTDLO is shown in Appendix C. The Legislative Council (LegCo) and some District Council Members have 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 D could commence working on an application. The Lands D has pledged that, once the processing has started, the straightforward cases can normally be completed within 34 weeks (i.e. about 8.5 months).

6.3 *Procedures and time involved in processing small house grant applications.* In June 2002, the then Secretary for Planning and Lands also informed the LegCo Panel on Planning, Lands and Works about the procedures and the time involved in processing the small house grant applications (see Table 5 below).

Table 5

Procedures and time involved in processing small house grant applications

Steps	Processing time	
	Straightforward cases (No. of months)	Non-straightforward cases (No. of months)
1 Receipt of application	—	—
2 Waiting time	36	36
3 Arranging interviews with applicant and completing statutory declaration	1	1
4 Checking applicant's eligibility and land status	0.5	9 — 12 (applicant to resolve land title problems)
5 Conducting site visits to ascertain suitability of the site	0.75	1
6 Preparing the site plan and posting notices	1	1
7 Handling objections	—	3 — 9 (applicant to resolve objections)
8 Consulting the relevant government departments	0.75	30
9 Submitting to DLO Conference or Chief Land Executive for approval	0.5	1
10 Offering and accepting basic terms	1	1
11 Preparing the grant plan and grant documents	2	3
12 Executing small house grant documents	1	1
Total time:	44.5	96
	(or 3.7 years)	(or 8 years, being the worst case scenario)

Source: Lands D's records

6.4 Audit has noted that, if the waiting time of 36 months (i.e. Step No. 2 of Table 5 in para. 6.3 above) is not taken into account, the straightforward cases could be completed in 8.5 (44.5 – 36) months, and the non-straightforward cases in 60 (96 – 36) months in the worst case scenario. **Therefore, the initial waiting time of 36 months significantly affects the completion time of the small house grant application.**

6.5 **In June 2002, the then Secretary for Planning and Lands informed the LegCo Panel on Planning, Lands and Works that he was confident that even for non-straightforward cases, the processing and the approval of the applications could be completed within eight years. The processing and approval time may exceed eight years in exceptionally complex cases. However, Audit notes that the villagers applying for the small house grants have not been notified of such information.**

6.6 According to the Lands D, the main causes for the long processing time were:

- (a) land title or division problems;
- (b) villagers' failure to attend interviews with the Lands D;
- (c) villagers' requests for change of sites;
- (d) villagers' failure to submit, in time, slope stability reports from authorised person or qualified engineer;
- (e) local objections, e.g. on fung shui grounds, against cross-village applications; and
- (f) problems relating to emergency vehicular access, environmental and drainage issues.

The processing time also depended on the progress of actions taken by the villager, his authorised person or consultant, and the complexity of the problem.

Measures to expedite the processing of small house grant applications

6.7 ***Contracting out.*** In February 1998, the Lands D introduced a pilot scheme of contracting out the survey and legal work involved in small house grant applications at the DLO/Yuen Long. The villagers had to pay a fee of \$22,000 each for the contracting out service. According to the DLO/Yuen Long, it could only shorten the processing time by about four to six months. The villagers considered that the \$22,000 fee was not a small amount and that the improvement was only minimal when compared to the total waiting time of three to four years for their applications. In September 1999, the Lands D discontinued the contracting out because of the low response from the villagers.

6.8 ***Workshop approach.*** The Lands D has been exploring ways to streamline the processing of the small house grant applications. It has adopted a workshop approach in some NTDLOs (Yuen Long, Tai Po and North) to process applications by batches according to their complexity and location. Under this arrangement, a pool of officers of the NTDLO conduct dedicated sessions in the form of a workshop to process the applications. The applications at the top end of the outstanding list of applications are pre-vetted, and straightforward cases are identified and grouped for processing on a collective basis. The officers who deal with the straightforward cases are accommodated within the same room. Files are passed by hand among them. There is a closer and faster communication link among these officers. The workshop approach has helped enhance efficiency and reduce the processing time. The Lands D is also exploring other ways to re-structure the small house processing teams to further improve efficiency.

6.9 ***Village Layout Plan Scheme.*** In April 2002, the Lands D proposed a village layout plan scheme. Under this scheme, the NTDLO concerned works together with villagers to draw up village layout plans to guide future development of their villages. The proposed scheme will help identify site constraints early, and ensure that village facilities (such as emergency vehicular access and refuse collection point) are planned properly for the benefit of the villagers. The scheme will facilitate the processing of the small house grant applications. Nevertheless, it will require the agreement of the villagers concerned. The Lands D is conducting further consultations with the Heung Yee Kuk on the proposed scheme.

6.10 ***Computerisation of the Small House Information System.*** The data relating to the small house grants are not centralised. They are stored in four different computer application systems. There is no interface among the four systems and it is not convenient to search for information among them. In May 1998, the Lands D decided to establish a centralised Small House Information System for monitoring the small house grant applications. In early 2000, Stage I of the system concerning the screening of applicants was completed. In June 2002, the Administrative Computer Projects Committee of the Information Technology Services Department approved \$6.24 million funding for the system.

6.11 In June 2002, Audit suggested to the Lands D to incorporate both the small house grant applications and registers in the proposed Small House Information System. This may help expedite processing, facilitate monitoring and checking of the applications.

6.12 In response to Audit's enquiry, in July 2002, the Lands D said that:

(a) the Lands D was devising a small house grant applications standard reply letter for use by all the NTDLOs. The standard reply letter would be incorporated in the LAOI;

(b) the Lands D would issue an instruction to the NTDLOs requiring them to display for public information the small house grant applications being processed by the NTDLOs; and

(c) the small house grant applications and registers would be incorporated in the proposed Small House Information System. As requested by the Administrative Computer Projects Committee, the system requirements of the Small House Information System were being examined so as to reduce the funding required. The Lands D would resubmit an application for funding.

Acknowledgement of small house grant applications and display of information

6.13 After the receipt of the small house grant applications, the NTDLO concerned issues reply letters to the villagers to acknowledge receipt of their applications (see Step 1 of Table 5 in para. 6.3 above). In 1998, the ICAC recommended in a review report that a standard reply letter to the villagers should be devised and used by all the NTDLOs. **However, up to July 2002, the Lands D had not yet devised the standard reply letter.** Audit noted that the NTDLOs of Yuen Long, Tai Po and North had been using their own set of reply letters.

6.14 In 1998, the ICAC also recommended that the practice of displaying notices at the NTDLOs should be formalised. Audit noted that the NTDLOs of Yuen Long, Tai Po and North had displayed notices at their offices to inform the public of the application dates of cases which were due for processing. In addition, the DLO/North also publicised the case numbers of cases for which approval in principle had been given. **However, such practice has not yet been specified in the LAOI. Audit considers that such practice should be incorporated in the LAOI.**

Audit observations on the processing of small house grant applications

6.15 Audit welcomes the Lands D's efforts to expedite the processing of the small house grant applications (see paras. 6.7 to 6.9 above). However, in spite of its efforts, the Lands D completed only 1,049 cases of small house grant applications in the year ended 31 March 2002. The number of completed cases fell short of its target level of 1,200 cases a year (see para. 6.17 below). **Audit considers that the Lands D should expedite the processing of the small house grant applications so as to reduce the long waiting time.**

6.16 Both the waiting time and processing time of small house grant applications vary significantly among the NTDLOs (see Appendix D). Audit considers that it will be helpful to the villagers if they are informed of the average waiting time and processing time at their respective NTDLOs. **However, the Lands D has not made available such information to the villagers.**

Performance pledge for the small house grants

6.17 According to the published performance pledge of the Lands D, the Lands D:

*"..... will execute about 1,200 cases each year out of the many applications received from indigenous NT villagers for the erection of a house under the New Territories Small House Policy. **Cases that can be processed to execution will normally be dealt with within 34 weeks from the start of processing of the application**" (Audit emphasis).*

6.18 In June 2001, the Lands D published "The New Territories small house policy — How to apply for a small house grant" pamphlet. The pamphlet states that:

"In straightforward cases, it may be possible for execution to take place within 170 working days from the date when the District Lands Officer begins to process the application" (Audit emphasis).

6.19 **Actual performance in 2001-02.** According to the records of the Lands D, 26% of the cases completed in the year ended 31 March 2002 were classified as straightforward cases to which the Lands D's performance pledge applies. In about 3% of these cases, the pledge (see para. 6.17 above) has been achieved, i.e. they were completed within 34 weeks.

Audit observations on performance pledge for the small house grants

6.20 In the performance pledge, the meanings of “cases that can be processed to execution”, “will normally be dealt with” and “the start of processing of the application” are not clear.

6.21 Both the performance pledge and the pamphlet use one sentence to describe the Lands D’s commitment to the time for processing small house grant applications. However, different wording is used to describe the Lands D’s commitment as shown in Table 6 below:

Table 6

Different wording used in performance pledge and pamphlet on small house grant application

Wording used in the performance pledge (see para. 6.17 above)	Wording used in the pamphlet (see para. 6.18 above)
“cases that can be processed to execution”	“straightforward cases”
“will normally be dealt with”	“may be possible for execution to take place”

Source: Lands D’s records

6.22 **Audit considers that the performance pledge should be worded more clearly so as to avoid ambiguity and misunderstanding.** It can be seen from Table 5 in paragraph 6.3 above that the waiting time before the NTDLO begins to process the application significantly affects the completion time. However, both the performance pledge and the pamphlet on the small house grant application do not mention the initial waiting time. **Audit considers that the performance pledge should cover the initial waiting time of the small house grant applications for straightforward cases.**

Audit recommendations on the processing of small house grant applications

6.23 **Audit has recommended that the Director of Lands should take prompt action to:**

- (a) **expedite the processing of small house grant applications so as to reduce the long waiting time;**

- (b) **devise a small house grant applications 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 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;**
- (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 D'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 D's performance pledge and in the information pamphlet: "The New Territories small house policy — How to apply for a small house grant".**

Response from the Administration

6.24 The **Director of Lands** generally agrees with the audit recommendations. He has said that the Lands D is in the process of undertaking a review of small house grant processing procedures and guidelines. The audit recommendations as mentioned in paragraph 6.23 above, where practicable, will be incorporated in the review.

Appendix A
(paras. 4.4 and 4.5 refer)

**Discounting factor as stated in the LAOI for computing
premium on removal of restriction on alienation of small houses**

**Per annum
interest rate
adopted by
the Lands D
(Note)**

**Time between date of CC and
date of application for removal of restriction on alienation**

(%)	(year)				
	0	1	2	3	4
7.25 %	0.2953	0.2442	0.1894	0.1306	0.0676
7.50 %	0.3034	0.2512	0.1950	0.1347	0.0698
7.75 %	0.3115	0.2581	0.2006	0.1387	0.0719
8.00 %	0.3194	0.2650	0.2062	0.1427	0.0741
8.25 %	0.3272	0.2717	0.2117	0.1466	0.0762
8.50 %	0.3350	0.2784	0.2171	0.1505	0.0783
8.75 %	0.3426	0.2850	0.2225	0.1544	0.0805
9.00 %	0.3501	0.2916	0.2278	0.1583	0.0826
9.25 %	0.3575	0.2980	0.2331	0.1622	0.0847
9.50 %	0.3648	0.3044	0.2383	0.1660	0.0868
9.75 %	0.3720	0.3107	0.2435	0.1698	0.0888
10.00 %	0.3791	0.3170	0.2487	0.1736	0.0909
10.25 %	0.3861	0.3232	0.2538	0.1773	0.0930
10.50 %	0.3930	0.3293	0.2588	0.1810	0.0950
10.75 %	0.3998	0.3353	0.2638	0.1847	0.0971
11.00 %	0.4065	0.3413	0.2688	0.1884	0.0991
11.25 %	0.4132	0.3472	0.2737	0.1920	0.1011
11.50 %	0.4197	0.3530	0.2786	0.1956	0.1031
11.75 %	0.4262	0.3588	0.2834	0.1992	0.1051
12.00 %	0.4326	0.3645	0.2882	0.2028	0.1071
12.25 %	0.4389	0.3701	0.2930	0.2064	0.1091

Source: Lands D's record

Note: The interest rate adopted was 2% above the best lending rate. The lower the interest rate, the higher is the discount given to the villager.

Appendix B
(para. 5.11 refers)

Discrepancies found in the Small House Registers

NTDLO	No. of villages in the Approved List	No. of villages in the Small House Registers	Overall discrepancies	Subsequent reconciliation of discrepancies	
				Villages shown in the Small House Registers but not in the Approved List	Villages shown in the Approved List but not in the Small House Register
North	102	113	11	12	1
Yuen Long	131	154	23	27	4
Tai Po	120	137	17	25	8

Source: Lands D's records

**Number of outstanding small house
grant applications as at 31 March 2002**

NTDLO	Number of outstanding applications
Yuen Long	4,468
Tai Po	3,615
North	2,940
Sha Tin	937
Sai Kung	878
Islands	480
Tuen Mun	430
Tsuen Wan	354
Kwai Tsing	55
	<hr/>
Total	14,157 (Note)
	<hr/> <hr/>

Source: Lands D's records

Note: This includes 1,372 applications already approved but pending execution of the land documents as at 31 March 2002.

Appendix D
(para. 6.16 refers)

**Average processing time of
small house grant applications by different NTDLOs**

NTDLO	Straightforward applications (months)		Non-straightforward applications (months)	
	Waiting time	Average processing time	Waiting time	Average processing time
Yuen Long	36	12	36	45
Tai Po	36	15	36	39
North	36	9	36	22
Sai Kung	N.A. (Note 1)	N.A.	24	16
Islands	N.A.	N.A.	24	15
Sha Tin	N.A.	N.A.	0	54
Tuen Mun	0 (Note 2)	12	0	36
Kwai Tsing	N.A.	N.A.	0	36
Tsuen Wan	N.A.	N.A.	0	20

Source: Housing, Planning and Lands Bureau's records

Note 1: "N.A." means there were no straightforward cases in that NTDLO.

Note 2: "0" means the cases were dealt with immediately.

Appendix E

Chronology of key events

- November 1972 The then Governor-in-Council approved a small house policy.
- October 1987 Audit completed a review of the “Small house policy for the indigenous villagers — pilot scheme for village expansion in the New Territories”.
- December 1987 The Lands D introduced in the small house grant conditions under the village expansion area schemes a three-year moratorium on removal of the restriction on alienation.
- January 1988 The Public Accounts Committee concluded that the aim of the policy on small houses had not been achieved in the Tin Sum Village project.
- February 1998 The Lands D introduced a pilot scheme of contracting out the survey and legal work involved in small house grant applications at the DLO/Yuen Long.
- December 1998 Solicitors acting for the respective purchasers of the three flats of a small house informed the Lands D that the villager had breached the conditions of the building licence.
- June 2001 The Court of Appeal raised its concern over illegal agreements to the Lands D.
- June 2001 The Lands D would not accept the use of Power of Attorney for the execution of small house grants unless under certain exceptional circumstances.
- July 2001 The Lands D wrote to the Law Society of Hong Kong, drawing the Law Society’s attention to the matter of illegal agreements on the small house grant applications raised by the Court of Appeal.
- October 2001 The Lands D included an additional clause in the declaration forms for the small house grants.

Acronyms and abbreviations

CC	Certificate of Compliance
DLO	District Lands Office
ICAC	Independent Commission Against Corruption
Lands D	Lands Department
LegCo	Legislative Council
LACO	Legal Advisory and Conveyancing Office
LAOI	Lands Administration Office Instruction
NTDLO	New Territories District Lands Office
PTG	Private Treaty Grant