

THE HONG KONG HOUSING AUTHORITY

Memorandum for the Housing Authority

Surrender of Crown Leases/Conditions of Grant held in respect of Rental Estates in return for Vesting Orders

PURPOSE

To seek Members' approval to Development Committee's recommendation to withhold the surrender of the Crown Leases/Conditions of Grant in respect of 11 rental estates.

BACKGROUND

2. On 24 September 1987, the Housing Authority (HA) approved the surrender of the Crown Leases/Conditions of Grant of the 11 rental estates in return for Vesting Orders (VO) vide Paper No. HA 52/87 as per **Annex A**. The original intention was that by so doing, the land status of all rental estates would be on the same footing. An added perceived benefit at that time was that it would not be necessary to pay the Government rent.

3. Work commenced soon after the HA's decision. Lands Department's agreement-in-principle to the surrender and vesting was later obtained. Deeds of Surrender and proposed VOs had been prepared. Had it not been due to the problem described below, the surrender and vesting would have been completed for many years.

THE PROBLEM

4. Advice from the Attorney General's Chambers and the Lands Department suggested that there would be a legal problem upon the surrender of the leases by the HA to the Government. Their views were that the Government would become the landlord in relation to the existing tenancies by operation of the law upon the surrender. The HA would not be able then to enforce the tenancies in the name of the HA even if the estates were subsequently vested in the HA under Section 5 of the Housing Ordinance. As a matter of principle, the Lands Department objected to the proposed surrender without a satisfactory resolution of the legal problem.

POSSIBLE SOLUTIONS

5. Two possible solutions have been proposed. One is by the Government appointing the HA to act as its agent to manage the tenancies. The other is to amend the Housing Ordinance by a specific provision in the Housing Ordinance to include the tenancies entered into before the surrender in the definition of estate which are under the control and management of the HA. After some time had been spent on an extensive search of the tenancy records of the 11 estates and the preparation of an agency agreement, it was found that the first option was not acceptable because it would mean that the Government was the landlord instead of the HA and would, therefore, create administrative and legal difficulties.

6. The option of legislative amendment is not viable either. In 1993, the Housing (Amendment) Bill was prepared. It was initially put into the 1994/95 Legislative Programme but because of the tight programme, it was deferred twice. Furthermore, since the proposed amendment could be seen as an attempt by the HA to evade the liability of Government rent which would be payable with effect from 28 June 1997 (vide para. 10 supra), it is unlikely that the proposed legislative amendment would be supported by the legislature.

7. Separately, the Department has come to the conclusion that the value of the leased land in terms of future development far outweighs the tax liability. It therefore feels that the 1987 decision warrants a review.

8. The Long Term Housing Strategy Review has put forward the idea of joint public/private sector developments as one means of encouraging greater private sector participation in the provision of housing. The Department is currently considering a variety of options for this type of mixed development and is examining the sort of circumstances in which the HA might use this method as a vehicle for the development or redevelopment of its estates. There are no immediate plans for the redevelopment of the 11 rental estates in question. However, it would seem unwise to surrender the leases to the Government before proper consideration has been given to their suitability for mixed development and an assessment has been made of the potential benefits. From a purely practical point of view, should the HA ultimately decide to involve the private sector in redevelopment of these estates, it would be less difficult to negotiate with the Government on modification to leases already held by the Authority than to negotiate for the re-grant of leases which had been surrendered.

RECOMMENDATION

9. In view of the opportunity of joint redevelopment of the 11 rental estates as mentioned in paragraph 8 above, the Development Committee, at the special meeting on 5 June 1997, unanimously endorsed the Department's recommendation to withhold action on the surrender of the leases until the study on the redevelopment potential of these estates is completed.

FINANCIAL IMPLICATIONS

10. Of the 11 rental estates, five will have their leases expired on 27 June 1997. These leases, if not surrendered by then, will automatically be extended to 30 June 2047 by virtue of the New Territories Leases (Extension) Ordinance and Government rent, at 3% of the then rateable value and currently estimated at an aggregate amount of \$26.7M per annum, will be payable with effect from 28 June 1997.

11. However, the Government rent will be relatively insignificant when compared with the roughly estimated land values of \$11,511M for these five sites, as shown in **Annex B**. As the mode of joint redevelopment of these sites is not yet determined at the moment and premia are likely to be payable upon modification of leases, the land values are estimated assuming redevelopment in the form of Home Ownership Scheme (HOS) projects. Under the existing terms of the leases, redevelopment of these sites for HOS projects may require lease modification, and hence payment of premia. In view that new grant of Government land for HOS projects is subject to a payment by the HA of a land formation cost which is calculated at 35% of the total construction costs, the total amount of premia for these 5 sites, upon lease modification for HOS development, would be in the region of \$5,362M, leaving a net land value totalling at \$6,149M. Once these sites are redeveloped for sale purpose, the Government rent will be paid by the individual flat owners.

PRESUMPTION

12. It is not thought that Members will object to the recommendation in paragraph 9 above. If no objection or request for discussion is received by the Committees' Secretary **by noon on 17 June 1997**, Members' approval will be presumed.

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File Ref. : L/M in HD(CR) 1/2/141 III

Date : 10 June 1997

Summary of Land Value Assessment

	Name of Estates	Lot No.	Site Area	Estimated Land Value \$M
1.	Choi Hung Estate	NKIL 4421	64,279m ²	2,932
2.	Fuk Loi Estate	DD449 TWTL 70	38,690m ²	1,791
3.	Ping Shek Estate	NKIL 5182RP	57,774m ²	2,674
4.	So Uk Estate	NKIL 3935RP	77,648m ²	3,594
5.	Wo Lok Estate	KTIL 600 KTIL 322	29,970m ²	520
			Total	\$11,511M

Assumptions

1. The sites are to be wholly redeveloped as HOS projects.
2. The plot ratio is taken as 7, except for Wo Lok Estate where the maximum permitted plot ratio is 3.
3. The land values are estimated basing on current HOS flat prices and construction costs as at May 1997.