

LCQ7: Waiver of Government Lease conditions

Following is a question by the Hon Louis Loong and a reply by the Secretary for Development, Ms Bernadette Linn, in the Legislative Council today (June 4):

Question:

Under the current land administration system, the Lands Department (LandsD) may grant waivers to temporarily relax restrictions under Government Leases to allow the leaseholders to carry out activities which do not comply with the lease conditions in the premises concerned (waiver premises), subject to payment of waiver fees assessed on the basis of the annual difference in full market rental value of the premises before and after the issue of the waiver letter. According to the information on the website of the LandsD, the waiver fee will be reviewed from time to time pursuant to the terms and conditions set out in the waiver letters and/or prevailing departmental policy and practice. It is learnt that due to the continuing sluggish rental market since the COVID-19 pandemic, the rental income from waiver premises, particularly those in retail use, has fallen substantially, with the result that in many cases, the net rental income after payment of the waiver fee is reduced to an unsustainable level and, in some cases, the rental income is less than the waiver fee. Some members of the real estate and construction sector have relayed to me that applications for review (including reassessment) of the waiver fees have not been processed by the LandsD in a timely manner and some have been pending for over a year. In this connection, will the Government inform this Council:

(1) whether the LandsD has taken the initiative, in the absence of applications for review of the waiver fees, carried out any periodic reviews of waiver fees in the past five years; if so, of the number of cases reviewed; if not, whether the LandsD will undertake to carry out such reviews, and of the frequency and mechanism for such reviews;

(2) in the past five years, of the following information on the applications made for review (including reassessment) of waiver fees:

(i) the numbers of applications received and processed, and the average time taken from the date of application received to the date of the completion of the review; and

(ii) the number of outstanding applications, and the average time lapse since the date of application for such applications; and

(3) as there are views that three-month period is a reasonable time for processing application for review of waiver fees, whether the LandsD will consider, in respect of applications which have been processed for more than

three months and approved with reduced waiver fees, backdating the effective date of the new waiver fee to a date which is three months immediately after the date of application?

Reply:

President,

In general, the leases granted by the Government would specify requirements and restrictions on the use of the land and whether structures may be erected thereon. If an owner wishes to use the land within a certain time period for a purpose which is not in line with the lease condition or to erect temporary structures, they must first apply to the Lands Department (LandsD) for a waiver to temporarily relax the relevant restrictions, subject to payment of waiver fee and administrative fee. The waiver fee is assessed based on the difference in the market rental value of the relevant land or property before and after the waiver is granted, and waivees are required to pay the waiver fees on a quarterly basis. Generally speaking, some waivers permitting the erection of structures on agricultural land are charged at standard rates.

In response to the various parts of the question raised by the Hon Loong, my reply is as follows:

(1) Under the current practice, waiver fees are generally reviewed every three years in accordance with the relevant terms of the waiver. The standard rates applicable to some waivers are also typically reviewed every three years. In response to the COVID-19 pandemic and the social environment, the Government implemented a series of relief measures between October 2019 and December 2023, including waiver fee concession of up to 75 per cent for waivers for commercial and community uses, as well as the suspension of the triennial fee review. As society returns to normalcy, such relief measures concluded at the end of 2023. The LandsD has resumed the collection of full waiver fees starting from January 2024.

For orderly resumption of regular reviews of waiver fees, the LandsD, having reviewed the circumstances and consulted the Development Bureau, has started from April this year to resume the fee reviews in batches. In particular, among some 3 900 waivers:

(i) the LandsD is prioritising the processing of around 2 630 waivers with original regular review cycles between April and June this year, with a view to completing the review within three months from the review cycles of the relevant waivers, and gradually notifying the waivees of the review results. So far, the LandsD has completed the fee review for around 2 500 cases charged at standard rates, with the adjusted fees (an average reduction of about two per cent) reflected in the demand notes to be issued in June. For the remaining cases of around 130 waivers requiring individual assessment, the LandsD will complete the review within three months (i.e. gradually from July to September this year), and will gradually notify the waivees of the review results.

(ii) As for the around 730 waivers originally scheduled for regular review in July 2025 or later, the LandsD will endeavour to complete the valuation within three months before the review cycle and notify the waivees of the results in time before the review cycle in line with their usual practice.

(iii) As for the remaining around 540 waivers, their previous regular review cycle originally fell between January 2024 and March 2025 (based on the position after the relief measures were lifted in end-2023). However, in view of the LandsD's resumption of review by batches since April this year, the first review cycle for this batch of cases after the end of 2023 has elapsed while the next cycle is expected to fall between 2027 and 2028. If the LandsD by then conducts the fee review for this batch of waivers, the relevant fee will in the coming two to three years still be based on the level determined in the previous review cycle (i.e. between 2018 and 2019) and hence fails to reflect the changes in the economic environment over the years. To allow flexibility for relevant waivees, the LandsD will put in a place a special arrangement for this type of cases to allow the relevant waivees to initiate a fee review application with the LandsD at this stage and provide supporting market evidence. The LandsD will then conduct the fee review and endeavour to, within three months upon receipt of the application, complete the review and notify the waivees of the results. If the waivees do not initiate an application, the LandsD will not conduct any fee review until the next review cycle (i.e. 2027 to 2028). The LandsD will issue notification letters in June this year to the relevant waivees on the abovementioned arrangement.

(2) As mentioned above, the LandsD suspended fee reviews for more than four years. Since the fee concession relief measures ended at the end of 2023, the LandsD has received 11 applications for waiver fee review. Among these, six cases were originally scheduled for fee review cycle between January 2024 and June 2025. The LandsD notified two of these waivees of the results of the reviewed quarterly fees in May, and the valuation of the remaining four cases will be completed as soon as possible under the aforementioned arrangements, with results expected to be notified by August 2025. For the other five applications, as their review cycles are in July 2025 or later, the LandsD will conduct the fee reviews according to the original review cycle under the timetable as mentioned in part (1) (ii) of the reply above, targeting to complete them within three months before the review cycle.

(3) Under the usual practice, the LandsD will complete the review and notify the waivees the reviewed fee level before the review cycle falls due. Whether the fees are adjusted upward or downward, the adjusted fees will take effect in the review cycle upon expiry of the notice period (depending on the waiver terms, usually it is three months). Given the special background of this resumption of fee reviews, if the reviewed fees are lower than the current levels upon the resumption of reviews by the LandsD, the effective date will be backdated to the first applicable review cycle after the lifting of the relief measures in end-December 2023 so as to allow the industry to benefit from the reduced fees earlier. As an illustration, for a case with a review cycle on May 1, 2025, if the LandsD completes the review in August

this year, the reduced waiver fee will take effect on May 1, 2025 while the increased waiver fee will take effect upon expiry of the notice period around November 2025. The new fees will be set out in the next demand notes, with any extra amount of fees paid after the effective date to be deducted in the next demand notes.