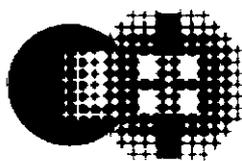


REPORT
OF THE INVESTIGATION
ON THE CLEARANCE OF
PROVISIONAL URBAN COUNCIL
TENANTS AND LICENCE HOLDERS
AFFECTED BY
LAND DEVELOPMENT CORPORATION'S
DEVELOPMENT PROJECTS

November 2000



Office of The Ombudsman

Hong Kong

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Legend of Abbreviations

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Legend of Abbreviations

CFC	Cooked Food Centre
CFM	Cooked Food Market
D of J	Department of Justice
DUS	Director of Urban Services
DLO/KW	District Lands Office (Kowloon West)
EFB	Environment and Food Bureau (from 1.1.2000)
EHB	Environmental Hygiene Branch
FEHD	Food and Environmental Hygiene Department (from 1.1.2000)
GIC	Government, Institution and Community
HQs	Headquarters
K2 Project	Argyle Street/Shanghai Street Project
Lands D	Lands Department
LCSD	Leisure and Cultural Services Department (from 1.1.2000)
LDC	Lands Development Corporation
LACO	Legal Advisory and Conveyancing Office
MSTSC	Markets and Street Traders Select Committee
MKDO/USD	Urban Services Department's Mongkok District Office
NCC	Neighbourhood Community Centre
NSTCFM	Nelson Street Temporary Cooked Food Market
Plan D	Planning Department
PUC	Provisional Urban Council (from 1.7.1997 to 31.12.1999)
TPB	Town Planning Board
USD	Urban Services Department (up to 31.12.1999)
UC	Urban Council (before 1.7.1997)

1

INTRODUCTION

BACKGROUND

1.1 On 12.11.1993, an Approved Plan by the Land Development Corporation (LDC) to redevelop "Six Streets" in Mongkok in cooperation with a private consortium was gazetted for public notification and exhibition. The redevelopment scheme designated as Urban Renewal Argyle Street/Shanghai Street Project, covered most of the area bounded by Portland Street, Argyle Street, Reclamation Street and Shantung Street, affecting a total of 538 property interests and 2,242 persons comprising 883 households. A site plan is at **Annex I**. The proposed redevelopment consists of a 50-storey office tower and a 12-storey retail block with 5 level basement in site A (east of Shanghai Street), and a 38-storey hotel with a 2 level basement in site B (west of Shanghai Street). The provision of Government, Institution and Community (GIC) facilities which include a public light bus terminus at ground level, a cooked food centre, a neighbourhood community centre (NCC) at the podium level and a public open space all situated at site B. The NCC comprises a social centre for the elderly, day nursery, family life education unit, children and youth centre cum study/reading room, multi-purpose hall and a conference room.

1.2 In mid 1999, there was public concern on the undue delay in the commencement of works on the 'Six Streets' redevelopment project. The media reported that the site had been cleared in December 1997 with the exception of five cooked food stalls in a temporary cooked food market of the former Provisional Urban Council (PUC). As the former Urban Services Department (USD) could not reach removal agreement with these cooked food stall operators, LDC could not start construction work for the redevelopment project. As a result, LDC and the private consortium had incurred a total of additional bank loan interests of \$439 million for 16 months since January 1998.

1.3 The Office of The Ombudsman conducted a preliminary assessment on the subject. The assessment revealed a number of issues that warranted further investigation. These included the unduly long delay in clearing the cooked food stalls in the Nelson Street Temporary Cooked Food Market (NSTCFM), USD's reasons for renewing the tenancy agreements for

the cooked food stalls for another three years in 1995 with the knowledge that NSTCFM would soon be demolished, the unclear status of the stall agreement as a tenancy agreement or a cooked food stall licence, and the role and effectiveness of USD in the clearance exercise.

1.4 In exercise of the authority vested in her under Section 7(1)(a)(ii) of The Ombudsman Ordinance, The Ombudsman informed the Chief Executive of LDC and the Director of Urban Services on 29.10.1999 of her decision to conduct a direct investigation into the clearance of PUC tenants and licence holders affected by LDC's development project at "Six Streets".

1.5 Following the enactment of the Provision of Municipal Services (Reorganisation) Bill on 2.12.1999 by the Legislative Council, a new structure for the delivery of municipal services was established with effect from 1.1.2000. The new structure consisted of an Environment and Food Bureau (EFB), a Food and Environmental Hygiene Department (FEHD) and a Leisure and Cultural Services Department (LCSD). The new bureau and departments had assumed the municipal service responsibilities from the former PUC, Provisional Regional Council, and their executive departments - USD and Regional Services Department respectively. This Office followed up with FEHD on all matters relating to USD/UC/PUC with effect from 1.1.2000.

PURPOSE OF THE INVESTIGATION

- 1.6 The purpose of the direct investigation is to -
- (a) conduct an overview study on the clearance of cooked food stall and other PUC tenants/licence holders in connection with LDC's development projects;
 - (b) assess whether the present framework and mechanism for the clearance of cooked food stall and other PUC tenants/licence holders in connection with LDC's development projects are adequate and effective;
 - (c) examine whether and how the current framework and mechanism for the clearance of cooked food stall and other PUC tenants/licence holders in connection with LDC's development projects can be improved.

AMBIT OF THE INVESTIGATION

- 1.7 The ambit of the investigation includes -
- (a) USD's role and responsibility in the clearance of

cooked food stall and other PUC tenants/licence holders in connection with LDC's development projects;

- (b) the departmental guidelines and procedures on the clearance of cooked food stall and other PUC tenants/licence holders in connection with LDC's development projects;
- (c) the framework and mechanism established for the clearance of cooked food stall and other PUC tenants/licence holders in connection with LDC's development projects;
- (d) the adequacy and effectiveness of the framework and mechanism for their intended purposes.

THE INVESTIGATION

1.8 In the course of this investigation, relevant papers, committee minutes, publications and statistical data were provided by USD and LDC to this Office for examination and analysis. Investigation officers of this Office have also conducted site inspections to the 'Six Streets' redevelopment site, and had discussions with representatives of USD/FEHD and LDC throughout the investigation period. Members of the public were invited through press release to offer their comments and suggestions on the subject matter during the period between 11.11.1999 and 11.12.1999; but this Office did not receive any views and suggestions.

INVESTIGATION REPORT

1.9 A Draft Investigation Report (DIR) was sent on 22.9.2000 to FEHD and LDC for comments. The comments were received on or before 25.10.2000. The final report was issued on 14.11.2000.

1.10 There are six chapters in this investigation report. The first five chapters deal with the background and purpose of the investigation, USD's role, guidelines and procedures for the clearance of PUC facilities affected by LDC development projects, details of the clearance for the 'Six Streets' project, and the overall observations, opinions, conclusion and recommendations of The Ombudsman. The last chapter covers the comments of FEHD and LDC on this investigation report, and the final remarks of The Ombudsman in response to the comments.

2

PUC FACILITIES AFFECTED BY LDC DEVELOPMENT PROJECTS

LAND DEVELOPMENT CORPORATION

2.1 LDC was established as a statutory body in 1988 under the Land Development Corporation Ordinance. The Corporation was charged with the responsibility to improve the standard of housing and the environment in Hong Kong by undertaking, encouraging, promoting and facilitating urban renewal. LDC embarks on development projects in the form of urban renewal projects to provide better housing, more desirable environment, and more open space and GIC facilities in the urban districts.

2.2 Since its establishment in 1988, LDC had commissioned a series of planning studies to investigate and identify redevelopment opportunities in the urban area. In 1997, in an attempt to prioritize target areas for redevelopment, LDC completed a series of comprehensive District Urban Renewal Strategies. These reassessed the need for urban renewal from an overall perspective in the ten urban districts where housing conditions and the living environment were considered to be generally poor. Since 1988, LDC had undertaken 50 urban renewal projects, of which over 15 had been completed.

2.3 LDC had no statutory power to resume land for redevelopment. It could only request the Government to do so under the Land Resumption Ordinance after it had made all reasonable attempts but failed to acquire all the land/interest within one year after Executive Council had approved the development proposal. Responsibility for clearing the affected sites is shared between LDC and the Government. LDC is responsible for clearing land and properties which it has acquired within the boundaries of its projects, while the Government is responsible for clearing government land and properties resumed by the Government.

However, Lands Department (Lands D) advised that in reality, LDC often acted as Government's agent in physical clearances and demolition of affected properties, and arranged compensation for tenants affected by the development schemes. Compensation might include building or purchasing residential blocks to re-house displaced residents or offering them cash compensation.

PUC FACILITIES AFFECTED BY LDC'S DEVELOPMENT PROJECTS

2.4 LDC development projects in the urban districts of Hong Kong and Kowloon have unavoidably incorporated areas where PUC's facilities such as sitting out areas, parks and playgrounds, markets, refuse collection points, public toilets, etc. are located. **Annexes II and III** list those PUC facilities affected by LDC development projects from 1997 to 1999 and from 2000 to 2002 respectively. NSTCFM, which is the subject of this investigation, belongs to the LDC Development Scheme Argyle Street/Shanghai Street Project in the Mong Kok District.

USD/FEHD'S ROLE AND RESPONSIBILITY IN LDC DEVELOPMENT SCHEMES AFFECTING MARKET STALL OPERATORS

2.5 Where market stall operators were affected by UC/PUC's own development projects, the latter's normal practice was to re-provision the affected operators to new Council markets. According to USD, UC/PUC accepted a moral obligation as the licensing authority to offer alternate sites to hawkers affected by development projects so that they could continue their business. The Hawker (Urban Council) Bylaws required UC/PUC to allocate alternative fixed pitches to fixed pitch licensees in the drink or cooked food trade if they were ordered to vacate their pitches permanently. Where redevelopment took place in situ, affected operators would be temporarily re-provisioned to a transit market pending the completion of the redeveloped market facility. Where non-UC/PUC development projects affected Council's market facilities, UC/PUC required the developer to make temporary and/or permanent reprovisioning arrangement for the affected stall operators.

2.6 In so far as LDC development projects were concerned, neither UC/PUC nor LDC had established guidelines on reprovisioning arrangements for affected market stalls. Prior to the clearance of NSTCFM, there were three such cases involving market stalls, namely LDC's H1 Scheme (Queen Street, Sheung Wan), H3 Scheme (Wing Lok Street) and H6 Scheme (Jubilee Street). These precedent cases provided the basis for the reprovisioning of UC/PUC market stalls affected by LDC

development projects.

2.7 In these cases, apart from reprovisioning in-situ, UC also required LDC to offer interim re-siting arrangements (or suitable alternatives) to the affected licensed cooked food hawkers. Licensed hawkers affected by LDC and other development schemes usually had to vacate their original trading places at least temporarily or permanently. For voluntary surrender of hawker licences under a financial compensation package offered and funded by LDC, USD's role was confined to arranging cancellation of licences. USD and its staff were not directly involved in negotiations on the compensation package proposed by LDC. The Department restricted its role to assist in arranging meetings for their direct negotiations. Licensed hawkers who had accepted LDC's compensation for voluntary surrender of licences would no longer be eligible for any form of UC/PUC ex-gratia payment or buy-back scheme.

PROCEDURAL GUIDELINES ON CLEARANCE OF PUC TENANTS AND LICENCE HOLDERS IN CONNECTION WITH LDC DEVELOPMENT PROJECTS

2.8 USD/FEHD advised that there were no written guidelines on the relationship and co-ordination between USD and LDC in the handling of LDC's (and indeed other private developers') development projects involving PUC facilities. However, the Department has established the following general working procedures and practices -

- (a) Upon notification of LDC development projects involving PUC facilities, USD would liaise with LDC and other departments to ascertain and to plan the reprovisioning requirements and to establish the related arrangements.
- (b) Proposals on reprovisioning requirements and arrangements would then be submitted to the relevant UC/PUC select committee for decision. LDC representatives would normally attend at the committee meetings to explain the proposals. Decisions of UC/PUC would then be conveyed to LDC in writing.
- (c) To implement UC/PUC decisions, USD would work with LDC on the design of the reprovisioning facilities, monitor the progress of the project and keep UC/PUC informed of development on a regular basis. As and when necessary USD would submit papers to UC/PUC seeking its specific instructions.

Co-ordination with other Departments in LDC Development Projects

2.9 USD/FEHD informed this Office that the Department itself had not established any guidelines, policies or framework, nor had it seen similar documents issued by other departments on the roles and responsibilities of relevant government departments in LDC development projects.

Monitoring Mechanism within USD/FEHD in LDC Projects

2.10 According to USD, its Headquarters (HQs) closely monitored Regional Offices, and Regional Offices in turn monitored District Offices in their work, including the progress of LDC projects. Regional and District Offices would submit regular reports for the attention of the subject officers and directorate officers in the relevant Branches in HQs. Difficulties encountered in implementation were brought up for discussion at HQs' level and advice was sought on the way forward including submissions to UC/PUC for decisions.

3

THE 'SIX STREETS' PROJECT

3.1 After gazettal of its development plan for the Urban Renewal Argyle Street/Shanghai Street Project on 12.11.1993, LDC embarked on a clearance programme. By 9.12.1997, the whole site was cleared of occupiers apart from NSTCFM. Of the 18 cooked food stall operators operating in NSTCFM, 13 accepted LDC's offer of ex-gratia payment and moved out from NSTCFM on 31.1.1998. By 30.10.1998, all other buildings were demolished. The draft Lease Condition for the Argyle Street/Shanghai Street project stipulated that the whole development should be completed within 72 months from site possession and GIC facilities should be completed within the first 48 months.

NELSON STREET TEMPORARY COOKED FOOD MARKET

3.2 From information provided by USD/FEHD, the NSTCFM site was allocated to USD in April 1986. NSTCFM could accommodate 18 cooked food stalls. Under an agreement with the former UC/PUC, 18 licensed on-street cooked food stalls in Mong Kok were resited into NSTCFM in July 1989 in exchange for the surrender of their hawker licences.

3.3 NSTCFM was located within the development area of LDC's Argyle Street/Shanghai Street Project. District Lands Office/Kowloon West (DLO/KW) informed USD on 7.8.1997 of the termination of the land allocation for NSTCFM and requested for the return of the site by 31.10.1997.

OTHER HAWKERS

3.4 Argyle Street/Shanghai Street Project also required the clearance of 29 other hawkers in the area, including some pet-bird traders at Hong Lok Street. After consulting the former Yau Tsim Mong District Board (YTMD), LDC funded and constructed the Yuen Po Street Bird Garden to reprovision the affected bird traders. Of the 29 licensed on-street fixed pitch hawkers affected by the project, 10 were resited to the

new Bird Garden and 19 non-bird hawkers selected other vacant fixed pitches. By 1.10.1997, all affected fixed pitched hawkers had moved out.

LDC' s ROLE AND RESPONSIBILITY IN THE REPROVISIONING OF NSTCFM

3.5 Under plans approved by the Town Planning Board (TPB) on 4.12.1992, LDC had to provide a permanent cooked food centre (CFC) and temporary reprovisioning of the existing cooked food market (CFM) within the Argyle Street/Shanghai Street Project development area. Given that no site could be identified within the district to construct a temporary CFM to reprovision the cooked food stalls operating within NSTCFM, LDC suggested that ex-gratia payment be provided to the stall operators instead. This was endorsed by UC. USD wrote to LDC on 14.10.1996, pointing out that UC members would like to have LDC's assurance on its responsibilities for resiting the affected stall operators. LDC replied on 17.10.1996, stating that as with its H1 Project (Queen Street, Sheung Wan), it would continue to work closely with USD in the clearance of cooked food stall operators to ensure that they would not face any unnecessary hardship or difficulty because of LDC projects. LDC's position was that as it was neither the licensing authority for the cooked food stalls nor the landlord of these operators, it was unable to make any compensation payments to them. However, as in previous clearances, LDC would be prepared to make ex-gratia payments to the operators affected by LDC's development project so that they would not face undue hardship. Ex-gratia payment for the NSTCFM operators would follow the pattern of similar payments made in previous clearances, reflecting whether the licensees opted for relocation, suspension of their business, or discontinuation of their businesses on a permanent basis.

USD' S ROLE AND RESPONSIBILITY IN ARGYLE STREET/SHANGHAI STREET PROJECT

3.6 Chapter 2 has explained USD's role in respect of LDC's development projects. Essentially USD saw its main responsibilities as arranging meetings between LDC and stall operators, arranging restricted auctions for those operators who opted to take up the reserved vacant stalls in other cooked food markets, and delivering vacant possession of NSTCFM to Lands D.

3.7 USD's legal position in the clearance of NSTCFM was that pursuant to the contract signed by stall operators, both UC/PUC and the stall operators were entitled to terminate the agreement by giving a month's notice to expire on the first

day of January/April/July/October as appropriate. USD took the view that once termination notice had been given, PUC had no legal obligation to compensate or reprovise the NSTCFM stall operators.

SEQUENCE OF MAIN EVENTS ON THE REPOSSESSION OF NTSCFM

3.8 A sequence of main events on the repossession of NTSCFM as provided by USD is at **Annex IV**.

Transitional Arrangement for NSTCFM Stall Operators

3.9 On the question of temporary reprovise for NSTCFM stall operators, USD wrote to the Planning Department (Plan D) on 6.12.1993 to state that such arrangements should be made by LDC prior to the clearance of the site. A meeting was held on 16.5.1994 between USD and LDC to discuss the design and provision of the CFC in Argyle Street/Shanghai Street Project and the reprovise of NSTCFM at the public open space site. On 2.8.1994, USD urged LDC to provide the requisite plans for the temporary CFM and public open space for consideration, comment and planning. On 30.5.1995, LDC replied that though LDC was prepared to bear the costs of temporary reprovise of NSTCFM, it did not hold any suitable cleared land in the vicinity and hence it would be necessary for UC or Government to provide a suitable site. USD reiterated to LDC on 7.7.1995 the option of using the open space site within Argyle Street/Shanghai Street Project for temporary relocation of NSTCFM as initially agreed at the meeting in May 1994. LDC responded on 25.7.1995 that the proposal was no longer viable since this would cause serious and costly delay to the construction programme for Site B, and would in turn delay the provision of the permanent CFC. Besides, the proposal was considered to be unsatisfactory on grounds of public safety, environmental acceptability, and operational problems to locate the facility within a major construction site.

3.10 In view of LDC's reply, USD solicited DLO/KW's assistance in August 1995 in identifying suitable sites for the temporary reprovise of NSTCFM. Plan D convened meeting on 18.8.1995, with representatives from Plan D, USD, Lands D and LDC to consider several options but none was considered feasible. The meeting found that -

- (a) the proposed open space inside Argyle Street/Shanghai Street Project was found not viable;
- (b) Lands D confirmed that no vacant land was available in YTM district;

- (c) Thistle Street Rest Garden would not be acceptable to NSTCFM stall operators since it was not centrally located and had only one frontage. YTMDB and Mongkok Area Committee would also likely object due to the adverse environmental impact on the surrounding residential development; and
- (d) the Fa Yuen Street Garden, being a new UC project, was not recommended for conversion into a CFM.

3.11 In order not to delay the Argyle Street/Shanghai Street Project, the meeting agreed that LDC should consider offering ex-gratia payment to attract NSTCFM stall operators to suspend business for 3 to 4 years pending completion of the development, or a smaller sum to those who decide to bid for vacant cooked food stalls in other UC markets. The meeting also agreed that NSTCFM should be cleared by mid-1996.

3.12 Despite this agreement to offer ex-gratia payment to NSTCFM stall operators (see para.3.13 above), both USD and LDC appeared to harbour a preference for reprovisioning the affected operators. In October 1995, the Leisure Services Section of USD Mongkok District Office (MKDO/USD) took soundings from NSTCFM stall operators, local residents, Mongkok Area Committee and Lands D on a proposal to relocate NSTCFM to Thistle Street Rest Garden. The feedback was rather unfavourable. The Environmental Health Division of USD Headquarters criticised its District Office for this "premature" sounding out as discussions on reprovisioning were still at a preliminary stage.

3.13 On 16.7.1996, YTMDB Environmental Committee (EC) was informed that in-situ reprovisioning of NSTCFM was not feasible and their views were sought on reprovisioning alternatives. At the meeting, LDC introduced the proposal of converting Thistle Street Rest Garden into a temporary CFM. This was unanimously opposed by YTMDB EC members, who instead suggested offering financial compensation and making available existing vacant stalls in UC markets for selection by NSTCFM stall operators.

3.14 On 18.9.1996, views were sought from members of UC's Markets and Street Traders Select Committee (MSTSC) on transitional arrangements for NSTCFM stall operators. Members were informed vide committee paper MST/47/96 of the following three options -

- (a) Provision of a temporary CFM at Thistle Street - LDC to bear the cost of constructing a temporary CFM at Thistle Street Rest Garden, being the only possible site identified in built-up Mongkok, and the subsequent reinstatement of the garden.

- (b) Financial Compensation Scheme by LDC - alternatively, LDC could provide financial compensation to stall operators who would have to choose either to suspend their business temporarily while reserving future bidding rights in the new CFM, or to cease their business permanently and relinquish the future bidding rights. LDC would determine the amount of compensation, and USD would not be involved in any negotiation process.
- (c) Bidding for vacant UC stalls by the stall operators - this option provides a smaller amount of compensation to those stall operators who chose to operate temporarily in other UC cooked food stalls pending the construction of the new CFM. These operators would be allowed to retain their bidding rights in the new CFM.

3.15 MSTSC members noted that YTMDB EC did not support the proposal of providing a temporary CFM at Thistle Street Rest Garden due to reservations about the viability of the site, possible nuisance arising from the CFM, and closure of the garden for about four years. They were also aware that LDC was not prepared to fund both options (a) and (b) at the same time. This would mean that the stall operators would have to agree either to move to a temporary CFC or accept financial compensation from LDC.

3.16 In discussing the reprovisioning arrangements, some MSTSC members thought that UC should adopt a more proactive stance. One member suggested that LDC should play an active role in reprovisioning arrangements and suggested UC to set a minimum amount of cash compensation for LDC's reference. Another member opined that apart from moral obligations, UC had responsibilities towards the affected stall operators and should consider formulating policies in different scenarios for which reprovisioning arrangements might be made. He also suggested that depending on the outcome of discussions with LDC, USD might have to explore additional options in order to bring the matter to a satisfactory conclusion.

3.17 USD's stance was that as in previous LDC development schemes, the Department would do its best to liaise with LDC and stall operators to make arrangements for their direct negotiations on compensation, but under no circumstances should USD staff be involved in the negotiations. The Department was not in a position to act on behalf of affected stall operators in proposing a fair amount of cash compensation. Given the complexity of the subject, members agreed that both UC and USD should not be involved in the negotiation process. However, some guidelines for negotiations should be set by UC.

3.18 In the event, MSTSC endorsed options (b) and (c) as transitional arrangements for NSTCFM stall operators and suggested that LDC should offer financial compensation to the affected stall operators under the following circumstances -

- (a) when they were resited to other UC CFM;
- (b) when they had suspended their business temporarily; and
- (c) when they had opted to cease their business permanently.

3.19 The meeting also agreed that the following two principles should be adopted in the transitional arrangements for the affected stall operators -

- (a) LDC should be responsible for direct negotiations with the stall operators on the financial compensation; and
- (b) subject to formulation of suitable compensation alternatives acceptable to LDC and the affected stall operators, then USD should proceed with the approved transitional arrangements for the affected stall operators.

3.20 USD informed LDC on 14.10.1996 that the options had been endorsed by MSTSC. LDC was also informed that the construction of a temporary CFM at Thistle Street Rest Garden would not be pursued. To follow-up, USD would arrange a sounding out meeting with the stall operators upon receipt of confirmation from LDC.

Negotiations with NSTCFM Stall Operators

3.21 Discussion on reprovisioning arrangement for NSTCFM between stall operators and USD started in 1995. On 15.3.1995, stall operators were informed that NSTCFM would be demolished in mid-1996 and they could continue operation at a temporary CFM to be built in the vicinity pending construction of a permanent CFC by LDC. In response, stall operators demanded a number of concessions: (a) freezing their rental at the July 1995 level, when they renewed their tenancy agreement with UC, until the completion of the new CFC; (b) removal allowance; and (c) a rent-free period for those who chose to operate at a temporary CFM.

3.22 In early July 1995, USD requested the stall operators to renew the stall agreements for a term of three years. The stall operators wrote to MKDO/USD on 14.7.1995 to question the rationale for the three year renewal, given that NSTCFM would be demolished in mid-1996. They also pointed out that MKDO/USD staff had not addressed the points they raised

during the meeting on 15.3.1995, viz., freezing of rent, removal allowance, etc.

3.23 USD replied to the stall operators on 20.7.1995 stating that UC markets were generally leased for 3-year terms. In the case of NSTCFM, signing a 3-year lease would obviate the need to sign a new lease or re-valuation of rental if the clearance project were to be delayed. No specific information on the temporary CFM was provided to the stall operators in the reply.

3.24 MKDO/USD met stall operators again on 7.8.1995 to discuss a proposal to relocate them to a temporary CFM at Thistle Street Rest Garden. Stall operators objected and made a counter-proposal to be relocated to the public open space opposite to Kam Shing Cinema.

3.25 As there had been no progress, stall operators wrote to MKDO/USD on 11.11.1996 to inquire into the latest development. At a meeting on 16.12.1996, stall operators were informed that LDC intended to demolish NSTCFM in 1997 and they were given the choice of three options -

- (a) to relocate to another CFM in Kowloon to continue their business and retain bidding rights for stalls in the new CFC upon completion of the Argyle Street/Shanghai Street Project;
- (b) to suspend their business temporarily but retain bidding rights for stalls in the new CFC of the Argyle Street/Shanghai Street Project; and
- (c) to cease their business permanently and give up bidding rights for the stalls in the new CFC.

3.26 LDC would offer ex-gratia payment or removal allowances to all affected stall operators according to the option they chose. LDC would directly negotiate with the stall operators on the terms and conditions of payment. After the meeting, most of the stall operators indicated their preliminary preference to suspend their businesses temporarily.

3.27 LDC held three subsequent meetings with stall operators on 29.1.1997, 12.5.1997 and 10.6.1997, but no agreement was reached. On 23.6.1997, the stall operators wrote to the former UC Chairman and the Chairman of MSTSC again questioning why they had been given a 3-year renewal of their lease in August 1995. They also complained for not having heard from UC/USD for more than a year, since they proposed on 7.8.1995 to be relocated to the public open space opposite Kam Shing Cinema (para. 3.26). In replying to the stall operators on 30.7.1997, PUC did not comment on the suggestion

of possible temporary CFMs, but merely reiterated the three options available to them (para. 3.27) and the limited involvement of PUC/USD in the negotiation process.

3.28 A special meeting between MKDO/USD and the stall operators was held on 8.8.1997, at which the stall operators rejected the ex-gratia payment proposed by LDC. They also refused to be relocated to other CFMs because of the poor locations of these casual vacancies. Instead, they wanted to continue operation en masse at a temporary CFM to be constructed by LDC at some public open space to be made available by UC. MKDO/USD pointed that relocation was not feasible because of a lack of suitable sites. Operators were told that the transitional arrangement approved by the MSTSC on 18.9.1996 was to relocate the affected NSTCFM stall operators to an alternative existing CFM to continue their business until LDC completed the construction of the permanent CFC at the Argyle Street/Shanghai Street Project site. The stall operators nevertheless wanted more active USD participation in their negotiations with LDC, particularly as regards the level of ex-gratia payment, temporary accommodation for their continued operation pending completion of the permanent CFC in the Argyle Street/Shanghai Street Project.

3.29 USD gave a more substantive reply on 3.9.1997 to the stall operators' letter of 23.6.1997. In addition to mentioning the three options available to them, USD explained that Lands D had been approached but failed to identify a suitable site for constructing a temporary CFM. USD also emphasized that the Department would not be involved in the negotiation process and urged the stall operators to maintain a more positive attitude in settling the issue.

3.30 LDC also wrote to the stall operators on 16.9.1997 to clarify its stance, namely that the latter were PUC tenants and LDC had no legal obligation to provide them with any compensation. LDC also reiterated its original offer to stall operators and pointed out that the ex-gratia payment counter-proposed by them was unacceptably high. LDC further explained that it could do nothing more on temporary reprovisioning since the stall operators had rejected the proposal of relocating to a temporary CFM at Thistle Street Rest Garden, and they were reluctant to move to other existing PUC CFMs. The stall operators were given two more weeks to make their choice.

3.31 In response to LDC's request made on 16.7.1997 to serve termination notices on the stall operators, views from MSTSC members were sought at the meeting on 24.9.1997. At the meeting, a member questioned whether the stall operators were willing to be relocated to other PUC CFMs. USD's reply was

that the operating conditions of the stalls were quite favourable and therefore the stall operators might be willing to bid these existing vacant stalls. In the event, on 24.9.1997, MSTSC endorsed USD's proposal to issue termination notice to the stall operators. On 6.10.1997 MKDO/USD informed stall operators of PUC's decision and requested them to indicate their choice of transition arrangement by 31.10.1997. On 15.10.1997, MKDO/USD issued notice under Clause 17 of the stall agreement to the stall operators to terminate their leases by 31.12.1997. Arrangements were also made for the stall operators to attend a restricted auction for reserved vacant stalls in other PUC CFMs for temporary resiting.

3.32 On 7.11.1997, stall operators met two PUC members and submitted a petition letter, requesting PUC assistance in negotiating for higher compensation from LDC. They also proposed two other alternative sites for constructing a temporary CFM to accommodate all of them, i.e. at Nam Cheong Street where a temporary CFM previously existed and the PUC Tai Kok Tsui complex which was under construction. The PUC members explained that the stall operators should negotiate directly with LDC, and they should also seriously consider the option of temporary relocation to other existing PUC CFMs. They also undertook to convey the new proposals to USD and forward their request for an estimation of the start-up cost of a new cooked food stall for their reference in the negotiation with LDC. PUC gave a reply to the stall operators on 21.11.1997, pointing out that the operators' proposed alternative sites were not feasible for constructing CFMs as the Nam Cheong Street site and the Tai Kok Tsui Complex had already been earmarked for development.

3.33 On 5.12.1997, USD arranged a restricted auction with 22 reserved vacant stalls in other PUC CFMs, but none of the stall operators from NSTCFM turned up. On 24.12.1997, the stall operators applied for a one-month extension of stall agreement (from 1.1.1998 to 31.1.1998) for further negotiations with LDC. LDC subsequently increased the offer of ex-gratia payment, and 13 stall operators accepted the new offer and vacated NSTCFM by 31.1.1998. Five stall operators still rejected LDC's offer of compensation. They refused to leave NSTCFM and chose to continue their business.

3.34 These five operators then sought assistance from a PUC member who write to LDC on 2.7.1998 seeking to re-open negotiation on the level of compensation. On the same day, USD also urged LDC to renew its offer of ex-gratia payment to the remaining five operators so as to facilitate early clearance of the site. In response, LDC's position was that after the final deadline of 31.1.1998, the Corporation was not prepared to renew the offer and that in any case it had no legal

obligation to do so.

3.35 USD then arranged two more restricted auctions for the five remaining stall operators on 29.9.1998 and 16.11.1998, but once again none turned up.

3.36 In view of the deadlock, the five stall operators approached HAD for assistance. On 3.2.1999, they requested the Yau Tsim Mong District Office (YTMDO/HAD) to arrange a meeting with LDC, USD, and Lands D. At a meeting on 10.3.1999 arranged by YTMDO/HAD, the stall operators submitted their compensation requests, which the LDC representative undertook to convey to LDC's Chief Executive for consideration. LDC rejected these requests on 24.3.1999.

3.37 The stall operators submitted a revised request on 13.4.1999. YTMDO/HAD organized another meeting for the operators to meet with LDC on 3.5.1999. After negotiations, agreement was finally reached on 8.6.1999 and the five remaining stall operators eventually vacated NSTCFM on 15.6.1999.

Clearance of NSTCFM

3.38 The original mid-1996 clearance date for NSTCFM was agreed between the relevant government departments and LDC on 18.8.1995. However by mid-1996, LDC and USD were still discussing reprovisioning arrangements and it should have come as no surprise that the first clearance date set for NSTCFM could not be achieved.

3.39 UC's MSTSC was informed on 18.9.1996 that a second date was set for September 1997 for the vacant possession of the NSTCFM site. Even at this stage, some UC members had voiced doubts on whether NSTCFM could be cleared on time. However it was not until nearly a year later, on 24.6.1997, that a first clearance co-ordination meeting was held. This meeting, attended by representatives of LDC, Police, YTMDO/HAD and USD, set a second clearance date for NSTCFM for the end of 1997.

3.40 On 16.7.1997, LDC requested USD to terminate the tenancies and vacate NSTCFM as soon as possible so that the site could be made available by October 1997. LDC stated that the counter-proposals from the stall operators were significantly higher than LDC's offer and it was unlikely that agreement could be reached in the near future. LDC also pointed out that Argyle Street/Shanghai Street Project had moved to a very advanced stage with demolition works already started on site. To avoid delay to the project, action had to be taken to ensure timely possession of the NSTCFM site even

though negotiation remained unsuccessful. USD maintained that LDC was obliged to negotiate with the stall operators for a final solution and it was unlikely that PUC would agree to terminate the tenancies before agreement was reached or even after the negotiation had failed. USD also pointed out that it would be impracticable to vacate the NSTCFM site by October 1997 unless LDC and the stall operators could come to an agreement in August 1997. USD conveyed to LDC on 26.7.1997 its views and the need to revert back to MSTSC for the decision to issue notices of termination to the stall operators.

3.41 At the clearance co-ordination meeting held on 21.8.1997, it was suggested that the appropriate clearance date should be some time between late October and the end of 1997. LDC preferred an earlier clearance date to avoid further delays to the project programme. Lands D pointed out that it would be more realistic to expect clearance at the end of 1997. USD remarked that the tentative clearance date could be fixed at the end of October 1997, subject to successful negotiation between LDC and the stall operators. The meeting noted the response of the stall operators at that stage was that agreement was unlikely to be reached. Nevertheless, the meeting agreed to schedule the tentative clearance date to the end of October 1997.

3.42 At a meeting held on 24.9.1997, MSTSC endorsed LDC's proposal to issue notice to terminate by 31.12.1997 the tenancy agreement of the NSTCFM stall operators. On this basis, USD proceeded to initiate the following action for the clearance of NSTCFM -

- On 15.10.1997, USD served notices of termination to the stall operators.
- At stall operators' request, USD granted them a one-month extension from 31.12.1997 to 31.1.1998.
- By 31.1.1998, 13 out of the 18 stall operators accepted LDC's offer and vacated their stalls. Five operators continued to occupy their stalls on site.
- On 1.2.1998, USD posted closure notices at the entrances of NSTCFM.

Institution of Legal Proceedings

3.43 Acting on reliance of the termination notice, USD attempted a clearance operation with police assistance on 6.2.1998. However, the operation was challenged on site by the stall operators' legal representative on the basis that the operators held a tenancy that required service of 6 months' notice of termination. The clearance was aborted.

3.44 PUC then applied to court for eviction orders to

resume the stalls under the stall agreements. A hearing was fixed in the Court of First Instance on 11.5.1998 and a further hearing was scheduled for 23.7.1998. At this stage, doubts were raised about the continued reliance on the stall agreement. To play safe, alternative legal avenues were being explored. On a "without prejudice" basis, USD served notice under Part V of the Landlord and Tenant (Consolidation) Ordinance on the five remaining stall operators on 16.6.1998, requiring them to deliver possession of their stalls in six months. At the second court hearing, the Court of First Instance ordered that the proceedings should continue as if they had begun by writ, this essentially meant that it could take at least two years for the substantial issues of the case to be tried. USD therefore discontinued the proceedings on legal advice for a related set of repossession proceedings for tenancies in order to speed up the whole process of repossession and to save costs.

3.45 On 20.12.1998, upon expiry of the notice of termination under Part V of the Landlord and Tenant (Consolidation) Ordinance, the stall operators still refused to leave. PUC instituted another round of legal proceedings for repossession of the stalls, and a hearing date was fixed for 9.6.1999. On 8.6.1999, agreement was finally reached between LDC and the five remaining stall operators and USD gained vacant possession of the stalls on 15.6.1999.

Roles of Other Government Departments in the Repossession of NSTCFM

3.46 Apart from LDC, UC/PUC and USD, a number of government departments were involved in the repossession of NSTCFM. They were Lands D, Plan D, and YTMDO/HAD.

Lands Department

3.47 In the repossession exercise, Lands D was requested by MKDO/USD on 2.8.1995 to identify a suitable site for construction of a temporary CFM to accommodate the stall operators. Lands D replied on 16.8.1995 that no suitable site could be identified. A second request made by MKDO/USD on 22.8.1997, was also rebuffed on 25.8.1997. USD also sought Lands D's comments on the stall operators' proposal to construct a temporary CFM at the former Nam Cheong Street Temporary CFM site. While Lands D indicated no objection to such proposal, USD did not accept it due to the fact that the site had been earmarked for development. Lands D chaired the clearance co-ordination meetings for the Argyle Street/Shanghai Street Project which were attended by representatives from LDC, YTMDO/HAD and USD. Four co-ordination meetings were held on 24.6.1997, 21.8.1997, 14.10.1997 and 25.11.1997.

3.48 In its memo of 10.3.1999 to YTMDO/HAD on the negotiations between LDC and the stall operators, Lands D stated that NSTCFM had been allocated to USD. There was no direct relationship between Lands D and the stall operators. Under the existing land policy, sites which were temporarily allocated to other Government departments and subsequently required for redevelopment had to be returned with vacant possession upon demand and no compensation would be payable to the allocatee. It would be the allocatee's sole responsibility to evict their lessees/licencees before handing back the site to Lands D.

3.49 Lands D considered that offer of compensation or otherwise to lessees/licencees would depend on the allocatee's departmental policy. In the case of NSTCFM, contractual relationship existed between the stall operators and UC/PUC acting through USD, and hence any claim for compensation would need to be dealt with by USD. Lands D also remarked in its letter of 4.6.1997 to LDC that whilst Lands D could terminate the land allocation of NSTCFM to USD as a last resort, it would be most undesirable politically if USD had to evict its tenants by force should the negotiations be unsuccessful. Nevertheless, as it was unlikely that an amicable agreement could be reached, LDC formally requested Lands D in July 1997 to terminate land allocation of the Argyle Street/Shanghai Street Project site, including NSTCFM by October 1997. Lands D formally served notice of termination to USD on 7.8.1997.

Planning Department

3.50 Plan D was involved at the early stage of the reprovisioning arrangement for NSTCFM in convening a meeting on 18.8.1995 to work out the temporary reprovisioning arrangement.

Home Affairs Department

3.51 YTMDO/HAD was involved when PUC/USD explored the possibility of constructing a temporary CFM at the Thistle Street Rest Garden to accommodate the NSTCFM stall operators. YTMDO/HAD assisted in consulting YTMDB EC on the reprovisioning arrangements. YTMDO/HAD also attended all the four clearance co-ordination meetings for the Argyle Street/Shanghai Street Project, and arranged meetings between LDC and the stall operators at the request of the latter.

REASONS FOR DELAYS IN REPOSSESSING NSTCFM

LDC's View

3.52 LDC pointed out that the NSTCFM site was a parcel of government land included in the land exchange for the Argyle Street/Shanghai Street Project. As LDC had to pay full premium in return for vacant possession of the site, it was the responsibility of USD to hand over vacant possession of the NSTCFM site to Lands D for inclusion in the land exchange. LDC had no relationship with the stall operators at NSTCFM and was therefore not liable to pay compensation in any form to them. Nevertheless, in accordance with similar practice in previous clearances, LDC was prepared to discuss with the stall operators and to offer them an ex-gratia allowance. LDC and the relevant government departments reached agreement in August 1995 to clear NSTCFM in mid 1996. But it was not until Executive Council approved the resumption of the site and gazettal of the resumption notice on 3.1.1997, when all remaining private interests within the site reverted to the Government, that LDC was in a position to pursue effective discussions with the District Land Office to obtain vacant possession of all government land within the site.

3.53 LDC stated that although it had pressed USD to serve notices of termination on the stall operators in mid-1997, it was in October 1997 that notices were served requiring the operators to leave by 31.12.1997. According to LDC, USD had assured it that the stall operators' licences could be terminated by not less than one month's notice. After intensive negotiations with the stall operators, 13 of the 18 stall operators accepted LDC's offer of ex-gratia payments and moved out on 31.1.1998. But the five remaining stall operators refused to move out and USD was only able to gain repossession of NSTCFM on 15.6.1999.

USD's View

3.54 USD attributed the delay in the clearance of NSTCFM to the resistance put up by the five remaining stall operators over the amount of ex-gratia payment, and the institution of legal proceedings. USD emphasized that the Department had acted on the direction of UC/PUC and legal advice, and had done all within its means to deliver vacant possession of the site to LDC.

3.55 USD explained that upon notifications from LDC on 16.7.1997 (para. 3.33) and Lands D on 7.8.1997 (para. 3.51), the Department intended to proceed with termination action immediately. However, LDC and the stall operators did not reach agreement on the amount of ex-gratia payment, USD had

to seek MSTSC's advice on the way forward. It did so at the September 1997 meeting, which was the earliest opportunity after the PUC summer recess. To comply with the requirement to give a month's notice to terminate the stall agreement, the earliest date of termination of the agreements was set on 31.12.1997.

3.56 USD pointed out that at a meeting with LDC, Lands D and Department of Justice (D of J) on 2.7.1998, LDC mentioned the possibility of developing the Argyle Street/Shanghai Street Project in two phases, thereby delaying the pressing need for immediate possession of the site for the second phase development. From the records, this Office noted that this option was discussed at the said meeting and LDC requested Lands D on 29.7.1998 to consider granting an advance possession licence for the other parts of the Argyle Street/Shanghai Street Project site in order to commence work on the available areas. Nevertheless, after consultation with its joint venture partner, LDC informed Lands D on 23.10.1998 that given the problematic situation that would arise if possession of Site A was given without any firm indication of the time when Site B would be available, LDC preferred possession of the whole site.

3.57 As regards the legal status of the market stall agreement which was challenged by the stall operators, USD pointed out that all stall operators in UC/PUC facilities were licensees. Such licences contained a standard clause providing that either party could terminate the agreement by giving not less than one month's notice in writing expiring on the first day of January/April/July/October. The NSTCFM case was the first time stall operators sought protection under the Landlord and Tenant (Consolidation) Ordinance to challenge the termination clause. USD explained that the subsequent issue of a six-month notice of termination under that Ordinance was done on the advice of independent counsel and on a "without prejudice" basis. This was a tactical move in the litigation process. According to legal advice, the relationship between UC/PUC and stall operators was basically contractual and the terms "tenant" or "tenancy" were only loosely used in the stall agreements.

3.58 However, the stall operators contended that when they entered into tenancy agreement with USD in 1989, they were told by USD officers that the tenancy would not be terminated except upon serious breach of the terms, and UC would not exercise its right as landlord to terminate the tenancy. The USD officer also assured them that there would be no difference between the fixed pitch hawkker licence and the tenancy. The stall operators claimed that if they knew that USD could terminate the tenancy at any time, they would not surrender

their fixed pitch hawker licences.

IMPROVEMENT MEASURES TO PREVENT DELAY TO SUBSEQUENT LDC PROJECTS

3.59 In its memo to USD on 9.7.1999, Lands D attributed the delay to stall operators' resistance to vacate NSTCFM as a result of their perception of their legal status, which was different from USD. While USD maintained that the stall operators were licensees and not tenants, the stall operators claimed that they were tenants and therefore entitled to be given a six-month notice to quit. In the light of the NSTCFM experience, Lands D had suggested that the standard agreements used by USD should be scrutinized by the Legal Advisory and Conveyancing Office (LACO) of Lands D in order to protect the Government's position. Furthermore, Lands D highlighted its concern that any licensing/leasing of government land allocated on a temporary basis, must be done within the terms of the temporary allocation. No tenancy/licence should be granted beyond the allocation period without the prior consent and agreement of the relevant District Lands Officer. In the present case, the temporary allocation of NSTCFM was due to expire on 31.10.1997, but USD gave stall operators a 3-year renewal on 1.8.1995 thereby exceeding the duration of the allocation of NSTCFM.

3.60 In response, FEHD argued that it had requested Lands D to give at least eight months' notice of its intention to terminate temporary allocation of the site. As regards the challenge to the status of market stall agreements, FEHD advised that it was studying whether action should be taken to clarify that such agreements were in reality "licences". Alternatively, it might have to seek to include a definition of the term "tenancy" in Section 2 of the Public Health and Municipal Services Ordinance to put it beyond doubt the relevant authority's power to clear market stalls on temporarily allocated land.

3.61 To enhance coordination among relevant departments in handling LDC's development projects involving FEHD's tenants/licence holders, FEHD intended to issue departmental guidelines setting out the procedures, officer(s) responsible, and action to be taken. The guidelines would also be issued to other parties concerned for general information and better communication.

4

OBSERVATIONS AND OPINIONS

GENERAL

4.1 Delay of the Argyle Street/Shanghai Street Project of LDC was caused principally by the 20-months' delay in the clearance of NSTCFM, which was originally scheduled for October 1997. Based on a detailed study of the "Six Streets" Development Project, this Chapter contains the overall observations of this Office on the deficiencies in arrangements relating to the resumption of UC/PUC/USD facilities involving the interest of tenants and/or licence holders.

ROLES AND RESPONSIBILITY IN LDC DEVELOPMENT SCHEMES

Different Views on Roles and Responsibilities

4.2 A fundamental problem observed in the NSTCFM clearance is the absence of ownership of the reprovisioning arrangements. LDC's position was that the Corporation had no relationship with the stall operators and that therefore it had no legal obligation to compensate them in any form. LDC made this clear to the stall operators in its letter to them dated 16.9.1997 (para. 3.30). In its reply to USD on 17.10.1996, LDC also refused to assure the UC that it would resite the affected stall operators. It merely stated that "it would continue to work closely with USD in the clearance of cooked food stall operators to ensure that they would not face any unnecessary hardship or difficulty because of LDC projects" (para. 3.5).

4.3 USD, however, considered that according to the requirements imposed by the TPB, LDC was responsible for providing both temporary and permanent reprovisioning arrangements for the stall operators (para. 3.5). USD considered that it could only take action to clear NSTCFM after LDC had satisfactorily reprovisioned all affected stall operators. As the stall operators were considered only

"licensees" whose stall agreements could be terminated at a month's notice, UC/USD did not accept any reprovisioning obligation towards them.

4.4 Against this background, neither LDC nor USD considered that they had a leading role to play in ensuring that the reprovisioning arrangements would satisfy the stall operators. LDC thought that if negotiations failed, they could ask Lands D to terminate the temporary land allocation and that USD would have to hand back vacant possession of the NSTCFM site. On the other hand, USD relied fully on LDC to negotiate reprovisioning arrangements satisfactory to the stall operators so that they would vacate NSTCFM in time. USD saw its role as limited to arranging meetings between LDC and the stall operators, even though some MSTSC members considered that UC should adopt a more proactive role in LDC development schemes. It was evident that this lack of understanding on the delineation of responsibilities between LDC and USD in respect of reprovisioning arrangements for NSTCFM stall operators was a main cause of the substantial delay in the NSTCFM clearance operation.

4.5 Lands D pointed out that as the allocatee of the site, UC/USD had the responsibility to evict their lessees/licensees before handing back the site to Lands D (para. 3.48). USD should not have limited its responsibility to arranging negotiations between LDC and the stall operators only. With full knowledge of the public objection to converting Thistle Street Rest Garden into a temporary CFM and the absence of a viable alternative, it should not have left the task of coming up with satisfactory reprovisioning arrangements for the stall operators to LDC alone.

4.6 The non-collaborative relationship between LDC and USD was even more marked after January 1998, upon expiry of LDC's offer of three options to the stall operators (para. 3.34). After the final deadline of 31.1.1998, LDC's position was clearly that the Corporation had no legal obligation and was not prepared to renew the offer beyond the deadline (paras. 3.33 & 3.34). This was reiterated by LDC on a few occasions in response to:

- (a) a PUC member's request made on 2.7.1998 to re-open negotiation with the stall operators (para. 3.34);
- (b) Lands D and USD's repeated inquiries into the possibility of re-opening negotiations with the stall operators made at a meeting on 2.7.1998;
- (c) a suggestion from USD's counsel in November 1998 that LDC should re-open negotiations with the stall operators.

4.7 However, LDC maintained that the clearance of NSTCFM was a problem for Government to solve. In the event, USD could only resort to court action to take back the NSTCFM site. From February 1998 to March 1999, no negotiation took place for 13 months. Had LDC not re-opened negotiations with the remaining five stall operators in March 1999, it would have taken even longer time to resume the site.

Lack of a Formal Co-ordination Committee to Speed up the Reprovisioning and Clearance of NSTCFM

4.8 This Office noted that despite the involvement of various government departments and LDC in a number of aspects of the Argyle Street/Shanghai Street Development Project, no central co-ordination machinery was set up for either the resumption of NSTCFM or the project as a whole. In consequence, neither LDC nor any of the departments involved perceived, let alone assumed, a leading role for any aspects of the exercise. This was clearly evident in the way the reprovisioning and clearance arrangements were handled.

4.9 Instead of having a more formalized structure to oversee and coordinate each other's input into the whole exercise which straddled a good number of years, meetings were called sporadically by different departments to discuss specific issues or problems. On 18.8.1995, Plan D convened a meeting with representatives from USD, Lands D and LDC to consider the various reprovisioning options, but none was found feasible (para. 3.10). Later in June and August 1997, Lands D chaired two clearance co-ordination meetings with the relevant parties including USD and LDC to decide on the clearance date for the NSTCFM. The meeting agreed that the suitable time for clearance should be between late October and end 1997 depending on the successful negotiation between LDC and the stall operators (paras. 3.39 & 3.41). On 8.6.1999, YTMDO/HAD held a final meeting at which agreement was reached between LDC and the stall operators who finally moved out of NSTCFM on 15.6.1999.

4.10 This Office believes that a major redevelopment exercise like "Six Streets" require the regular attention of a formalized structure of committees at the district level to plan and co-ordinate the many facets of activities on the ground. In the very least, a more formalized structure would help all involved focus on their ownership of the various tasks at hand, and ensure that reality checks were made at reasonable intervals against the project's timetable.

Lack of Contingency Plans to Tackle Resistance from the Stall Operators

4.11 From the notes of the various clearance co-ordination meetings, it was obvious that the relevant departments were aware of the lack of progress in negotiations and realized that agreement was unlikely to be reached between LDC and the stall operators. Apart from deciding to issue notice of termination to the stall operators, representatives made no other suggestions in bringing about an early clearance of NSTCFM or formulating a contingency plan in case the stall operators refused to vacate NSTCFM by the scheduled clearance deadline.

USD's Dealings with the Stall Operators

4.12 This Office believes that USD's passive attitude in respect of its own involvement in this case contributed to the overall ineffectual management of the clearance exercise. The decision to allow NSTCFM stall operators to renew their "tenancy" for the standard three-year term commencing in July 1995 served only to enhance operators' expectations that the clearance date of NSTCFM was a flexible one, and that they could further delay their moving out deadline. Furthermore, the fact that the clearance date was scheduled during the currency of the tenancy no doubt also reinforced some operators' moral convictions of their entitlement to compensation.

4.13 This Office noted that throughout the negotiation process, USD saw no active role for itself, steadfastly adhering to a stance of limited involvement in negotiations between LDC and the stall operators. In so far as USD was concerned, it would only become involved after LDC had successfully negotiated for a compensation package with the operators. Even then, its role would be limited to issuing notices of termination. This Office noted that even the final meeting on 8.6.1999, at which LDC and the stall operators reached an agreement, was not arranged by USD, but by YTMDO/HAD.

4.14 It would appear that USD's stance was not entirely endorsed by the MSTSC. MSTSC members expressed various views on this matter, ranging from UC should adopt a more proactive role in LDC development schemes (para. 3.16) to USD should explore additional options, depending on the outcome of discussions between LDC and the stall operators. Nevertheless, by reference to what had happened in previous cases, USD was able to convince MSTSC that neither UC nor USD should be involved in the compensation negotiations.

4.15 This Office notes that on various occasions stall operators had demanded more active USD participation in

helping to relocate their businesses to a temporary CFM and in getting a higher level of ex-gratia payment from LDC (para. 3.28). Stall operators proposed a number of sites for the construction of a temporary CFM, but these were turned down by USD. USD also refused to become involved in negotiations on the level of ex-gratia payment. It did not convey to LDC the demands of the stall operators, and would limit itself to organising meetings between stall operators and LDC, issuing notice of termination, organising restricted auctions for bidding other existing vacant stalls, and requesting DLO/KW to identify suitable sites for constructing a temporary CFM. After repeated futile attempts to involve USD (paras. 3.24 & 3.32), the stall operators turned to the Secretary for Planning, Environment and Lands on 3.8.1998 and YTMDO/HAD on 3.2.1999 for assistance to re-open negotiations with LDC.

ABSENCE OF ESTABLISHED GUIDELINES/PRACTICES TO HANDLE LDC DEVELOPMENT SCHEMES

Reliance on Seeking Instructions/Directions from PUC

4.16 As mentioned in para. 2.8, USD had no policy or written guidelines on the handling of LDC redevelopment projects involving or affecting PUC facilities. USD had to seek endorsement from UC/PUC for every action to be taken. Proposals on reprovisioning arrangements had to be submitted to the relevant PUC select committee for decisions. In consequence, USD could not respond flexibly to urgent matters and this caused delay to the clearance exercise. In July 1997, LDC requested USD to terminate the stall tenancies by October 1997. USD could not take action promptly because endorsement from MSTSC was required and the earliest MSTSC meeting was scheduled for 24.9.1997. In the event, the notice of termination was issued on 15.10.1997, nearly three months after the initial request, to take effect at the end of the year. Had USD been able to respond more promptly on what were after all operational matters, this could have avoided some delay.

Over-reliance on Experience Drawn from Past Resumption Cases

4.17 Over-reliance by USD on past resumption experience had probably contributed to an inability to respond to the unexpected adverse reaction from stall operators. Given that the resumption of licenced hawker stalls and cooked food stalls went smoothly in H3 (Wing Lok Street) and H6 (Jubilee Street) Schemes, the Department assumed that it would be the same in NSTCFM. They saw no need to work out any contingency plan because they only saw that they had a role to issue notice of termination after LDC had successfully negotiated a

reprovisioning package with the stall operators. The Department had failed to anticipate resistance to the clearance operation. Stall operators' challenge eventually resulted in the clearance operation on 6.2.1998 being withdrawn. The first set of blotched legal proceedings to resume the stalls also served to demonstrate the extent to which USD had misjudged its own legal position in evicting the stall operators (paras 3.43 & 3.44).

INEFFECTIVE INTRA-DEPARTMENTAL COMMUNICATION

4.18 The NSTCFM resumption exercise also revealed the lack of effective intra-departmental communication within USD. Under normal arrangements as described by USD (para. 2.10), Regional and District Offices would submit regular progress reports to their respective subject officers at headquarters to facilitate monitoring of progress of the clearance exercise by the latter. However, it appeared to this Office that such communication between the district and headquarters was negligible in the present case. MKDO/USD seldom submitted progress reports to USD HQs. USD's District Office largely reacted to requests for information or action. This might be to respond to LDC's request to issue termination notices (para. 3.40) or PUC members' request to explore suitable sites for constructing temporary CFM (para. 3.32). USD HQs also appeared not to have asked for regular progress reports from the District Office. All in all, it would appear that neither USDHQ nor its District Office got the full picture of happenings on the ground, let alone to talk of having a department wide strategy to tackle the problems posed. One example was the informal consultation made in October 1995 by the Leisure Services Section of MKDO/USD with the Mongkok Area Committee on the conversion of the Thistle Street Garden into a temporary CFM. This was done in pursuit of the possibility of relocating the NSTCFM to alternative sites for continued operation. However this was criticised as "premature" by the Environmental Health Division Headquarters (para. 3.12). If USD had better overall monitoring and coordination, it could have developed an overall strategy for action by different sections of the department.

PROBLEMS WITH THE "TENANCY" AGREEMENT

"Licence" versus "Tenancy"

4.19 As pointed out by LDC at the meeting on 2.7.1998, the NSTCFM case had revealed that the interpretation of "licence" and "tenancy" in the agreement with the stall operators might affect the resumption of other CFMs in

subsequent development schemes. All along USD had relied on clause 17 to terminate the agreement by giving one month's notice, and the Department had not encountered any challenge from stall operators. The challenge from NSTCFM stall operators revealed the "ambiguous" status of the agreement and therefore led to prolonged delay to the entire clearance exercise. If USD had realised earlier that the stall operators could be tenants rather than licence holders, then the six-month notice could be served earlier and the delay could have been shortened.

The Standard Three-year Renewal

4.20 The case also reflected USD's rigidity in insisting on giving the stall operators in July 1995 a three-year renewal in the knowledge that the demolition of NSTCFM was scheduled to take place in mid-1996. The stall operators themselves had written to MKDO/USD on 14.7.1995 (para. 3.22) to question the rationale for the three-year duration. USD's response was that, in the event of delay of the NSTCFM clearance, signing a three-year lease would save the effort of reevaluating the rents and rates, and would also obviate the need to sign a new agreement subsequently (para. 3.23). As it turned out, UC/USD's decision to give a three-year lease renewal turned out to be a costly one in so far as the LDC Argyle Street/Shanghai Street Project was concerned. If the operators were given annual renewals since 1995, USD could have avoided the need to seek PUC endorsement to terminate the agreements and the attendant delay to the whole project.

Granting Tenancy Agreements beyond the Land Allocation Period

4.21 UC granted tenancy agreements to the stall operators from 1.8 1995 to 31.7.1998 which exceeded the land allocation period. In August 1997 Lands D formally notified USD of termination of land allocation by October 1997. USD expected that the site could be resumed by 31.12.1997, i.e. on the expiry of the notice period served on the stall operators. But in reality, USD only managed to resume NSTCFM in mid-June 1999, 20 months after the original target date of returning the land to Lands D by October 1997.

4.22 This Office considers that Lands D was justified in expressing concern over granting tenancy agreements beyond the land allocation period. Lands D wrote to USD on 9.7.1999 requesting that all future lettings/licences including renewals for facilities on temporary allocated land should not exceed the allocation period. In order to prevent similar embarrassment and to protect the Government's position, Lands D proposed that standard USD agreements should be sent to its LACO for scrutiny (para. 3.59).

5

CONCLUSION AND RECOMMENDATIONS

GENERAL

5.1 Urban renewal projects, such as the Argyle Street/Shanghai Street Project, involve both LDC and various government departments. As these projects inevitably entail land resumption and reprovisioning of domestic and commercial establishments, close collaboration and efficient procedures are essential for the timely implementation of such projects. The NSTCFM case has illustrated amply that delay in clearance will lead to increased project costs, not least through interest costs incurred. It will also delay improvements to public facilities as well as the living environment of local residents affected, the costs of which cannot be quantified. In the Argyle Street/Shanghai Street Project, late clearance of NSTCFM delayed the whole development that included a cooked food centre, a neighbourhood community centre, a public light bus terminus and public open space. As regards additional interest costs incurred through delays in clearing NSTCFM, LDC stated that for the period between 31.1.1998, when 13 cooked food stall operators vacated their sites, and 21.5.1999 when the last five stall operators still refused to move out of NSTCFM, LDC and the private consortium incurred additional interest costs of \$439 million. After 21.5.1999, additional interest costs of approximately \$725,000 a day was incurred until the whole site was finally cleared on 15.6.1999.

5.2 This Office believes that delays in the NSTCFM case had been caused by two fundamental problems. The first relates to the absence of ownership in respect of major issues such as compensation and reprovisioning of affected private interests. The second is the lack of overall project coordination to oversee that the project timetable is being adhered to.

5.3 On the question of ownership, divergence is evident in the following key matters:

- (a) Both UC/PUC/USD and LDC held different views on whose responsibility it was to compensate and re-provision the affected stall operators. UC/USD's position was that no compensation was payable to the stall operators because they were "licensees" whose licences could be revoked at a month's notice. LDC's position was that it had no relationship with the stall operators who were UC/USD's tenants or in any event licensed by UC/USD, it therefore had no legal obligation to offer them any compensation or re-provisioning.
- (b) USD saw no role for itself in the negotiation process. It considered that LDC was obliged to negotiate with the stall operators for a final solution. Apart from arranging meetings for LDC to meet with the stall operators, USD only saw a role for itself after LDC and the operators had reached agreement on re-provisioning. Essentially this would mean arranging restricted auctions for those operators who opted to take up the reserved vacant stalls in other cooked food markets, giving notice to terminate the licences and delivering vacant possession of NSTCFM to Lands D. This Office notes that USD's stance was not fully endorsed by UC and/or the MSTSC, some of whose members felt that a more proactive approach was justified.
- (c) LDC maintained that as it would be paying market price for the NSTCFM site, it was the Government's responsibility to hand over vacant possession of that site. In offering ex-gratia payment to the affected stall operators, it was motivated by the spirit of cooperation as it refuted any suggestion that it was obliged to do so. It considered that if negotiations failed, they could ask Lands D to terminate the temporary land allocation and that USD would have to hand back vacant possession of the NSTCFM site.

5.4 On co-ordination, this Office has pointed out at paras. 4.8 to 4.10 the lack of an overall monitoring and co-ordination machinery to oversee the progress of the project. This resulted in a lack of overall strategy in tackling the problems even though these had been identified fairly early on. Lack of leadership and co-ordination meant that things happened ad hoc, often in response to external stimulus for action. The following shows the attempts made by three different departments at different stages of the resumption exercise to move the project forward -

- (a) Plan D convened a meeting on 18.8.1995 with representatives from USD, Lands D and LDC to consider the various options for the temporary reprovisioning of NSTCFM, but none was found feasible (para. 3.10).
- (b) Lands D chaired two clearance co-ordination meetings in June and August 1997, with the relevant parties including USD and LDC to decide on the clearance date for the NSTCFM (paras. 3.39 & 3.41).
- (c) YTMDO/HAD held a meeting on 8.6.1999, at which agreement was reached by LDC and the stall operators who subsequently moved out of NSTCFM on 15.6.1999.

5.5 As the landlord of the stall operators, USD seems well placed to assume overall project co-ordination for the resumption of NSTCFM. But USD failed to see its own responsibilities either as the allocatee of the NSTCFM site or as landlord/licensing authority of the affected stall operators. This Office believes that USD's stances and its dogged adherence to "standard procedures" contributed to problems experienced in this case. In this respect, this Office wishes to highlight in particular:

- (a) USD's rigidity in insisting on giving the stall operators in July 1995 a three-year renewal in the knowledge that the demolition of NSTCFM was scheduled to take place in mid-1996. When challenged by the operators, USD's response on the rationale was to save efforts in revaluating the rents and rates should there be delay in the Argyle Street/Shanghai Street Project.
- (b) In granting the 3-year licence renewals, USD had deliberately overlooked or ignored the target clearance date for NSTCFM that was agreed at an inter-departmental meeting and the fact that its own tenure of the NSTCFM site only lasted up to its clearance set for mid-1996. This Office saw no basis on which USD could justify granting renewals that exceeded the life span of the site itself.
- (c) USD also seemed oblivious of the fact that its action in renewing the licences beyond the scheduled clearance date only served to weaken the negotiating position of UC/USD and LDC in seeking to clear the NSTCFM site.
- (d) USD was clearly unaware of its responsibility as the allocatee of the NSTCFM site to hand back vacant possession of that site to Lands D for redevelopment.

5.6 USD's actions undermined the Government and LDC's

position as regards the Argyle Street/Shanghai Street Project. It gave conflicting signals to the affected stall operators as to the imminence of the clearance date. Apart from delays in terminating the agreements, giving stall operators formalized agreements beyond the scheduled clearance date also served to strength their moral conviction to demand that UC/USD and/or LDC should compensate them adequately on their terms.

CONCLUSION

5.7 The resumption of NSTCFM site ended up in a delay of some 20 months to the commencement of Argyle Street/Shanghai Street redevelopment project. In the course of this investigation, The Ombudsman has identified a number of issues where improvements should be made by USD/FEHD -

- (a) In the resumption of NSTCFM site, UC/PUC and USD did not have mutual agreement with LDC on their respective roles and responsibilities and co-ordinations on matters involving negotiation with the stall operators on ex-gratia payment, and reprovisioning arrangements.
- (b) Smooth and timely resumption hinges on the co-ordination of the departments involved and the co-operation of affected stall operators. On the part of FEHD, there is clearly a need to formulate comprehensive guidelines and procedures for resumption involving its tenants/licence holders affected by LDC development schemes.
- (c) As USD and NSTCFM stall operators had different interpretation on the status of the "tenancy agreement", future LDC development schemes involving resumption of land taken up by FEHD's tenants/licence holders on similar terms may be susceptible to potential problems.

RECOMMENDATIONS

5.8 Based on the observations and opinions in Chapter 4, The Ombudsman has made the following 10 recommendations for consideration by FEHD in future development projects which involve the clearance of its tenants and licensees -

- (a) Roles and responsibilities of departments/organisations involved
 - (i) FEHD is recommended to work out and agree with

LDC and Lands D their respective roles and responsibilities in the resumption exercise (paras. 4.2 - 4.4)

- (ii) FEHD is recommended to assume a more proactive role to facilitate smooth negotiations between LDC and the stall operators/licenseses on reprovisioning options (paras. 4.4, 4.5, 4.12 - 4.15)
- (b) Co-ordination between LDC, FEHD and relevant departments in the resumption exercise
- (iii) FEHD is recommended to consider devising comprehensive guidelines on inter-departmental co-ordination to facilitate timely completion of the resumption exercise (paras. 4.6 & 4.7)
 - (iv) To maximize efficiency in the resumption exercise, FEHD is recommended to consider assuming a co-ordinating role in the clearance of FEHD's tenants/licenseses and holding regular co-ordination meetings between relevant departments (paras. 4.8 - 4.10)
- (c) Guidelines and procedures in handling LDC development schemes
- (v) For staff guidance and to ensure consistency, FEHD is recommended to consider devising guidelines and procedures on the handling of development projects that involve or affect FEHD facilities (para. 4.16)
 - (vi) FEHD is recommended to consider formulating contingency plans where resistance to resumption is expected to be put up by its tenants/licenseses (paras. 4.11 & 4.17)
 - (vii) FEHD is recommended to review the adequacy of the communication and monitoring mechanism within the Department to ensure, in particular, a dialogue between the various divisions in headquarters and regional/district offices. The need for an effective reporting system to track the progress of and to anticipate unforeseen development in the resumption exercise cannot be over-looked (para. 4.18)

(d) Status of "tenancy agreement"

- (viii) To forestall future challenges to the status of the stall agreement by its tenants/licensees, FEHD is recommended to review the legal status of the "tenancy agreement", so as to clarify what notice period is required to terminate these agreements (para. 4.19)
- (ix) To avoid unnecessary delays to scheduled clearance, FEHD is recommended to ensure that its tenants/licensees are informed of the expected resumption date and to suitably adjust the duration of the tenancy being renewed (paras. 4.12 & 4.20)
- (x) To protect its own position, FEHD is recommended to ensure that the tenancy agreements granted to its tenants/licensees are consistent with the terms of the land allocation (para. 4.21)

FINAL REMARKS

COMMENTS FROM FEHD

6.1 FEHD accepts The Ombudsman's recommendations set out in Chapter 5. In response, FEHD advises that since its establishment on 1.1.2000, the Department has adopted a proactive approach and cultivated a new management and service culture. Apart from a few minor textual amendments which have been incorporated into the investigation report, FEHD has the following specific comments -

Para 5.3 on Ownership and Para 5.5 on Overall Project Co-ordination

6.2 Under the then Urban Council Ordinance Cap. 101, USD was the executive arm of the Council and was accountable to it for the execution of policy and decision taken by the Council. In the NSTCFM case, USD had acted in accordance with the directives of the Council. USD could only act within the powers given to it by the Council and there was always a limit to which it could exercise its discretion.

6.3 LDC's suggestion of paying ex-gratia payment to stall operators instead of constructing a temporary CFM to re-provision the cooked food stalls operating within NSTCFM, was accepted by the Council (para. 3.5). It was the MSTSC's decision (taken at its meeting on 18.9.1996) that neither UC nor USD should be involved in the compensation negotiation. USD had to act accordingly and thus had not taken an active part in the negotiation process. It is therefore not a question of USD not seeing a role for itself in the negotiation process as suggested in para. 5.3(b). Put simply, USD was "directed" by UC not to do so.

6.4 It was pointed out in para. 5.3(b) that USD's stance was not fully endorsed by UC and/or the MSTSC because some MSTSC members thought that the Council should adopt a more proactive stance (para. 3.16). Notwithstanding comments by certain MSTSC members, the decision on 18.9.1996 was taken by all MSTSC members present at the meeting collectively and the Committee as a whole. Once a decision was made by the MSTSC and with the endorsement of the UC, USD would have to implement it.

Para. 5.8(a)(i) on Roles and Responsibilities

6.5 The Department will consult LDC and Lands D to work out the respective roles and responsibilities in future redevelopment projects concerning FEHD facilities / licensees / stall operators.

Para. 5.8(a)(ii) on Assuming a More Proactive Role

6.6 The Department since its set-up has already taken a proactive approach in handling planning and development matters. It will play its co-ordinating role to facilitate negotiations.

Para. 5.8(b)(iii) on Guidelines on Inter-departmental Co-ordination

6.7 The Department will prepare guidelines on inter-departmental co-ordination for handling future LDC development projects.

Para. 5.8(b)(iv) on Assuming a Co-ordination Role

6.8 For LDC projects affecting FEHD's tenants / licensees, the Department will co-ordinate, closely monitor and hold regular co-ordination meeting with relevant departments. However, if the project boundary also covers other areas, the co-ordination will be handled in accordance with the normal government policy and practice with District Office (of Home Affairs Department) or Lands D assuming the co-ordinating role.

Para. 5.8(c)(v) on Guidelines and Procedures on Handling of Development Projects

6.9 The Department will devise appropriate guidelines and procedures in handling future development schemes involving FEHD facilities.

Para. 5.8(c)(vi) on Formulating Contingency Plans

6.10 It is already the practice of the Department to formulate contingency plans to tackle all problematic or emergency situations.

Para. 5.8(c)(vii) on Communication and Monitoring Mechanism

6.11 Since the setting up of the Department on 1.1.2000, it has instituted regular reporting and monitoring mechanisms between its Environmental Hygiene Branch (EHB) headquarters

and district offices and between the Planning Division and EHB.

Para. 5.8(d)(viii) on the Legal Status of the "Tenancy Agreement"

6.12 Legal advice on the "licence" versus "tenancy" had been sought. The preliminary suggestions of the D of J are that under the present state of the law where the market stall agreement is a tenancy agreement though its application and use is more of a licence by nature, FEHD should be on the safe side to serve a "six months notice" for re-possessing any stall leaving aside any legal conclusion that the agreement is a lease or a licence. In future, the legal uncertainties could be removed by appropriate legislative amendments. A policy review will be conducted to determine whether to grant the market stall tenancy in the form of licence after fully assessing the pros and cons. The review will be completed before the end of the year.

Para. 5.8(d)(ix) on Resumption Date

6.13 It is already the Department's policy to inform the affected tenants/licenseses of the expected resumption date at least six months in advance. Tenancy will be suitably adjusted upon renewal.

Para. 5.8(d)(x) on Tenancy Agreements Granted

6.14 The Department has drawn up a check-list on lots allocated on temporary basis and has ensured that tenancy agreements granted to its tenants/licences are consistent with the terms of land allocation.

COMMENTS FROM LDC

Para 3.5 on Ex-gratia Payment

6.15 In response to FEHD's comments (para. 6.3), LDC pointed out that the Corporation suggested to pay ex-gratia payment, after the proposal to relocate the cooked food stalls to Thistle Street Playground on a temporary basis was rejected by the District Board and the cooked food stall operators. As there was no other alternative sites available within the time frame, ex-gratia payment was the only acceptable alternative.

FINAL REMARKS FROM THE OMBUDSMAN

6.16 An integral part of this investigation is to examine the role and responsibilities of USD in the resumption /

clearance of cooked food stalls and other PUC tenants / licence holders in connection with LDC's development projects, in particular, the "Six Street" Development Project. This Office has looked into details of the process of the resumption of the NSTCFM ending up in a 20-months' delay against the original demolition date scheduled in October 1997. In financial terms, the delay has increased the project cost through incurring additional interest cost. In environmental improvement terms, it has delayed improvements to public facilities as well as the living environment of the local residents, the costs which cannot be quantified.

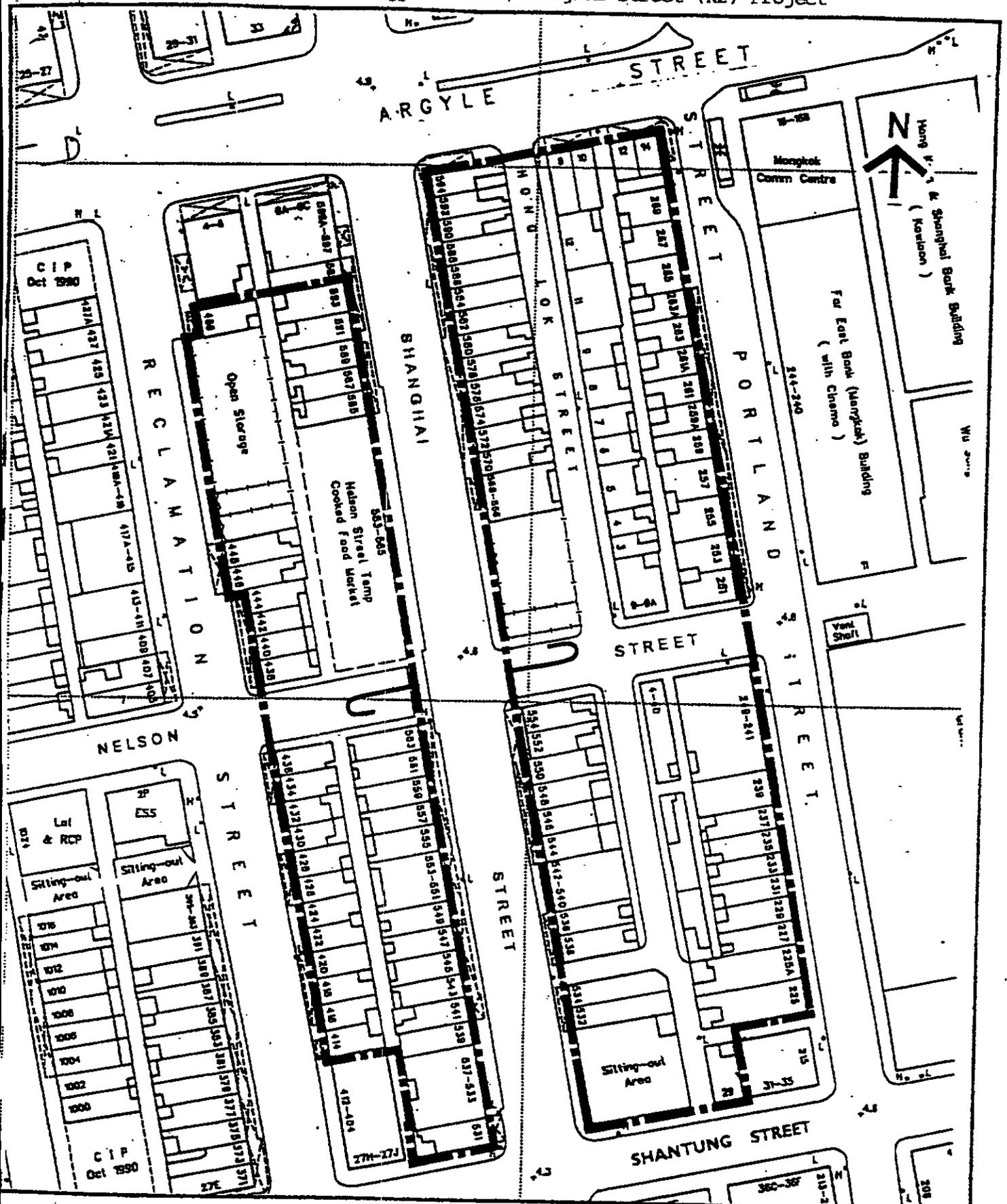
6.17 This Office understands USD's role and position as the executive arm of UC/PUC. From what this Office had seen of USD's involvement in the NSTCFM case, this office does not agree that "USD could only act within the powers given to it by the Council and there was always a limit to which it could exercise its discretion". While USD had correctly represented its relationship with the Council, The Ombudsman believed that the Department had underplayed the amount of influence and discretion it had in the matter. On seeking endorsement for the reprovisioning arrangements of NSTCFM stall operators (paras. 3.14 -3.20) from the MSTSC on 18.9.1996, this Office notes that USD managed to convince the MSTSC its "limited" role in the negotiation process. This Office believes that, in arriving at decision on the transitional arrangements for NSTCFM stall operators, MSTSC members would necessarily consider the proposals and options put forward by USD. Had USD not over-emphasised its "limited" role in previous LDC development schemes (para. 3.17) and had USD included a more positive option for the MSTSC members to consider, this Office seriously doubts if MSTSC would endorse such a narrow brief for USD against the advice voiced by some MSTSC members. In consequence, the delay for the clearance of NSTCFM could have been shortened. Moreover, this Office believes that there is scope, not a 'limit', for USD to be more positive and proactive in the handling of the resumption of NSTCFM, particularly in its capacity as the allocatee of the NSTCFM site and the landlord/ licensing authority of the affected stall operators.

6.18 Finally, The Ombudsman is pleased to note that FEHD has accepted the 10 recommendations set out in Chapter 5 and will take the recommendations forward in stages within a short timeframe to improve its operation and handling of future development projects involving the clearance of its tenants and licensees. The Ombudsman would like to be kept informed of progress on the implementation of the 10 recommendations, and any major changes in the policy and practice in handling development projects affecting FEHD's facilities, tenants, and licensees in due course.

6.19 Lastly, The Ombudsman would like to express appreciation to the cooperation and assistance rendered by LDC, USD/FEHD throughout the course of this direct investigation.

ANNEXES

Annex	Title	Paragraph No.
I	Site Plan of the Argyle Street/Shanghai Street (K2) Project	1.1
II	PUC Facilities affected by LDC's development project from 1997 to 1999	2.4
III	PUC Facilities affected by LDC's development project from 2000 to 2002	2.4
IV	Sequence of Main Events on Repossession of NSTCFM	3.8



Legend:
 Site Boundary

Scale 1: 1000
 0 50m

PUC Facilities affected by LDC Development Projects from 1997 to 1999

Name of LDC projects	PUC facilities affected
1. LDC Development Scheme (H3) at Wing Lok Street/Queen's Road Central, Central	A public toilet
2. LDC Development Scheme (H1) at Queen Street	(a) Tsung San Lane East Temporary Sitting-Out Area (b) An Area zoned "O", which included the Queen Street Sitting-Out Area (c) Heung Hing Lane Temporary Cooked Food Bazaar (affecting 6 licensed cooked food hawkers)
3. LDC Development Scheme (K10) at Waterloo Road and Yunnan Lane	A public toilet, a refuse collection point and an area of open space.
4. LDC Development Scheme (K2) at Argyle Street/Shanghai Street, Mong Kok	(a) Nelson Street Temporary Cooked Food Market (affecting 18 stallholders) (b) Shan Tung Street Sitting-Out Area

PUC Facilities affected by LDC Development Projects from 2000 to 2002

Name of LDC projects	PUC facilities affected
1. LDC Development Scheme (H12) at Kennedy Town New Praya	2 sites zoned "O" within a residential area.
2. MacPherson Stadium Redevelopment, Mong Kok (K9)	A rest garden, a basketball cum volleyball court and a children's play area
3. LDC Development Scheme (H9) at Wanchai Road/Tai Yuen Street, Wan Chai	(a) Wan Chai Market (affecting 49 stallholders) and Wan Chai Temporary Market (affecting 71 stallholders) (b) 1 wall stall at Wan Chai Road