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**Meeting of the Panel on Planning, Lands and Works  
on 28 June 2005**

**Background brief on major unauthorized building works  
on agricultural lots in the New Territories**

**Introduction**

The Administration will consult the Panel on Planning, Lands and Works on the outcome of its review on the policy to handle major unauthorized building works (UBWs) on agriculture lots in the New Territories (NT). This paper outlines the existing policy on major UBWs on agricultural lots, the circumstances leading to the review and members' concerns on the subject.

**Existing policy on unauthorized building works on agricultural lots**

2. At present, several departments are responsible for the handling of major UBWs on agricultural lots in the NT. They are the Lands Department (Lands D), the Buildings Department (BD) and the Planning Department (Plan D). The policy and practices adopted by these departments in relation to major UBWs on agricultural lots are highlighted below.

The Lands Department

3. In the NT, privately held "Old Schedule" lots contained within the Block Government Leases and described as agricultural land may, in some locations and under appropriate conditions, be suitable for the purpose of some temporary uses. If the temporary use does not involve any building work, then, subject to compliance with the Town Planning Ordinance (TPO) (Cap. 131) and other relevant legislations, the lessee may use the land for purposes such as the open storage of goods etc. However, the Block Government Lease does require that the lessee must obtain the approval of Government before any buildings or structures of any description are to be erected or constructed on the land. To accommodate some acceptable temporary uses that would involve the erection of structures, it is the current

land policy that a Short Term Waiver (STW) may be issued, subject to terms and conditions to be imposed by Government including the payment of a fee, to waive the Government's right of re-entry for a limited period during which the lessee may use the temporary structures on the land for purposes in accordance with the conditions imposed in the STW.

4. The same arrangement may apply to lots held under New Grant Conditions though the form of documentation may be different. The issue of a STW however should not prejudice in any way permanent development or long-term use in compliance with the zoning shown on a statutory town plan or a sub-regional land use plan. Nor would it prevent enforcement action from being taken by BD against any structures that have been erected without their prior approval, should such action be considered necessary.

#### The Buildings Department

5. The revised enforcement policy against UBWs promulgated in April 2001 would re-focus priority and broaden the scope for enforcement action. Resources will be directed to the removal of:

- (a) Items constituting obvious or imminent danger to life or property;
- (b) New items, irrespective of the date of completion of the building where they have been carried out;
- (c) Items in or on buildings, on podiums and rooftops, in yards and lanes (including unauthorized site formation works) constituting a serious hazard or a serious environmental nuisance, as determined by the Building Authority;
- (d) Major individual items;
- (e) Items in or on individual buildings with extensive unauthorized building works;
- (f) Items identified in buildings or groups of buildings targeted for large-scale operations or maintenance programmes; and
- (g) Unauthorized alterations to or works in environmentally friendly features of a building (e.g. balconies, sky or podium gardens) for which exemption from calculation of gross floor area has been granted by the Building Authority.

### The Planning Department

6. The Planning Authority (i.e. the Director of Planning) is empowered under the TPO to take enforcement/prosecution actions against unauthorized developments (UDs) in areas covered by a development permission area (DPA) plan or an outline zoning plan (OZP) which has replaced the DPA plan. These DPAs are located in the rural NT and such statutory planning control of land uses was only introduced in 1990. Any use that was in existence immediately before the publication of the DPA plan would not be construed as UD under the TPO even though it may be incompatible with the planning intention of the zoning. In addition, except in environmentally/ecologically sensitive areas, applications can be made to the Town Planning Board for temporary uses up to a maximum of three years.

7. Currently, there are 617 hectares of agricultural land in the rural NT zoned for open storage and port back-up uses which can accommodate those warehouses and other business operations associated with the logistics industry. Nevertheless, due to various reasons, including problem of land ownership, and the lack of access and infrastructural services, many warehouses or other operations are found outside the properly zoned areas in the form of major UBWs on agricultural lots.

### **Circumstances surrounding the review**

8. In November 2003, the Duty Roster Members (DRMs) received a complaint from some residents of Fairview Park, Yuen Long, about nuisances caused by the use of an agricultural lot in the neighbourhood as warehouse with a permitted total area of about 6150 square metres. The complainants called for the suspension of the STW of the warehouse which allowed the lot concerned to be used for general storage purposes, and the removal of the warehouse built therein.

9. In response to the Complaints Division of LegCo, BD replied on 7 November 2003 that there was no imminent danger in respect of the existing warehouse. Hence immediate enforcement would not be taken under the provisions of the Buildings Ordinance (Cap. 123). The stance of the Lands D was that unless it could be substantiated that the operator was in breach of the STW conditions and the operator had failed to rectify any such breaches despite repeated warnings, there were no justifiable grounds to terminate the STW. As to Plan D, since the warehouse had been classified as existing use, no statutory planning enforcement action can be taken against it under the TPO.

10. Having reviewed the situation, BD reported in the LegCo case conference held on 25 November 2003 that a removal order in respect of the warehouse would be served. The rationale given by BD was that the

unauthorized warehouse was large and it was considered as “major individual item” under the 2001 enforcement policy. BD also reported that the application for “permit to erect a temporary building” for the warehouse was rejected in 1991 and owners had not pursued further the application since then. The District Lands Office, Yuen Long also indicated that the STW in question might be reviewed after implementation of the removal order.

### **Members’ concerns**

11. The DRMs handling the case raised the following concerns at the policy level:

- (a) there was a lack of objective criteria to determine whether a UBW was sufficiently “major” to warrant action;
- (b) the Administration’s tolerant policy had sent a wrong message that warehouses would continue to be tolerated. This might encourage operators to invest resources to improve the facilities; and
- (c) enforcement action should be taken in a reasonable, fair and consistent manner and not only in response to complaints.

12. In response to members’ concerns, the Administration undertook to review the policy to handle major UBWs on agricultural lots in the NT. It also agreed to report to members on the outcome of the review. The proposal to issue a removal order against the major UBW in question by BD was being held in abeyance pending a review by the Administration to introduce a scheme to rationalize major UBWs on agricultural lots in NT.

### **Latest development**

13. The Administration has completed its review and will consult members on proposals to rationalize UBWs on agricultural lots in the NT.