

CB(1)2140/04-05(01)

香港特別行政區政府

The Government of the Hong Kong Special Administrative Region

房屋及規劃地政局

香港花園道美利大廈
九樓



Housing, Planning and Lands
Bureau

9/F, Murray Building
Garden Road, Hong Kong

本局檔號 Our Ref. HPLB(CR)(PL)2-15/06 (Pt 7)

來函檔號 Your Ref.

電話 Tel.: 2848 2608

傳真 Fax: 2899 2916

23 July 2005

Fax: 2529 2777 (total 10 pages)

Friends of the Earth
2/F., 53-55 Lockhart Road,
Wanchai,
Hong Kong

(Attn: Ms. Daphne N.Y. Mah)

Dear Ms. Mah,

**Rationalisation/Enforcement Action on Major UBWs
on Agricultural Lots in the NT**

I write to seek your views on a proposal to rationalise certain major unauthorized building works (UBWs) erected on agricultural lots in the New Territories (NT).

Problem

Currently, it is not an uncommon phenomenon that some agricultural lots in the NT have been erected with large UBWs, mostly in the form of warehouses, for business operations without seeking prior permission from Buildings Department, Lands Department and/or Planning Department, although some of these might have subsequently been covered by short-term waivers issued by Lands Department. Such unauthorized change in the land use of the site and erection of structures thereon are in breach of the relevant ordinances and lease conditions.

I should emphasize that these large UBWs erected on agricultural lots, which involve unauthorized building structures, are to be distinguished from sites for open storage and placing of containers.

The Proposed Rationalisation Scheme

From the perspective of law enforcement, all UBWs should be removed. In practice, having regard to our resource constraints, at this stage, we would mainly take priority enforcement action against UBWs posing imminent danger and unauthorized works-in-progress. Removing the major UBWs in question would have detrimental effect on the business activities undertaken in those UBWs, which to a large extent are associated with warehouse operations and the logistics industry, thereby adversely affecting the livelihood of people employed and the industry concerned. We therefore propose to defer taking immediate and full-scale enforcement against those UBWs on agricultural lots in the NT which do not pose imminent danger to the public.

To strike a balance between safeguarding public safety and ensuring the continued existence of the business activities associated with those UBWs, we are considering a pragmatic rationalisation scheme which would allow those major UBWs some degree of certainty to continue to exist on a temporary basis, provided that certain criteria and safety conditions are met. In a gist, within the policy framework proposed above, short-term waivers would be issued to major UBWs if they do not constitute unauthorized developments under the Town Planning Ordinance, subject to the UBW owners being able to fulfill certain conditions, including the certification of the structural and fire safety of their UBWs, the payment of a waiver fee, and undertaking necessary measures to minimise any nuisance and disturbance (e.g. noise and traffic problems) caused to the neighbouring environment in the course of business operation.

As of April 2005, we estimate that there are about 250 such major UBWs with an area of 1,000m² and above standing on agricultural lots in the NT, the majority of which are located in the Yuen Long and North districts.

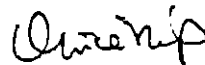
Consultation with LegCo Panel on Planning, Lands and Works

We consulted members of the LegCo Panel on Planning, Lands and Works on the proposed scheme at the Panel meeting held on 28 June 2005. A copy of the relevant Panel paper is attached for your

reference. At the meeting, Legislator Hon Choy So-yuk, JP raised a concern as to whether the continued existence of those major UBWs such as large warehouses might create environmental and ecological problems for the rural areas or cause damage to conservation zones in the NT. We clarified at the meeting that the proposed scheme is mainly to deal with the problem of pre-existing large warehouse-type UBWs, which should be separated from that of unauthorized open storage operations and site formation works not involving the erection of buildings structures. We also emphasized that those sites where the pre-existing warehouse-type UBWs are located generally do not fall under the conservation zones or ecologically sensitive areas. Miss Choy accepted our clarification and suggested that it might still be useful to consult green groups on the proposed scheme to ascertain whether there are any environmental concerns that we may need to pay attention to.

Against the above background, I write to seek comments from your organization on our proposed scheme as set out in the attached Panel paper. Your response by 4 August 2005 is much appreciated. If you need further information about the proposed scheme, please feel free to contact Mr Parrish Ng at 2848 6288 or Mr YC Chan at 2848 6007.

Yours sincerely,



(Ms Olivia Nip)
for Secretary for Housing,
Planning and Lands

c.c. Director of Buildings (Attn: Mr S T Lam)
Director of Lands (Attn: Mr Herbert Leung/
Mr Simon Yu)
Director of Planning (Attn: Mr Lau Sing)
Clerk to Panel on Planning, Lands and Works
(Attn: Miss Odelia Leung)

Encl

For discussion
on 28 June 2005

**LEGISLATIVE COUNCIL
PANEL ON PLANNING, LANDS AND WORKS**

**Review on the policy to handle major unauthorized building works
on agricultural lots in the New Territories**

Purpose

This paper reports on the outcome of the Government's review on the policy to handle major unauthorized building works (UBWs) on agricultural lots in the New Territories (NT) and seeks comments on a proposed scheme to rationalize such UBWs.

Background

The Fairview Park case

2. In November 2003, some residents of Fairview Park (FVP) in Yuen Long lodged a complaint with the LegCo Complaints Division in respect of a large unauthorized warehouse on agricultural land adjacent to FVP. The residents expressed concerns about the potential fire risk and noise nuisance posed by the warehouse concerned.

3. In the light of this complaint, LegCo held two Case Conference meetings in November 2003 and June 2004 to discuss the FVP case and the problem of major UBWs in the NT. At the Case Conference meeting held in June 2004, the Administration was asked to review its enforcement policy in tackling major UBWs in the NT such as the warehouse in FVP and to report to the LegCo on the outcome of the review in due course.

4. The review has been taken forward by a Steering Committee under the chairmanship of the Permanent Secretary for Housing, Planning and Lands (Planning and Lands), and with participation by the Directors of the Lands Department (LandsD), Buildings Department (BD) and Planning Department (PlanD).

Considerations

5. The FVP incident revealed that at present, some owners of agricultural lots have erected large UBWs, mostly in the form of warehouses, on their lots for business operations without seeking prior permission from BD, LandsD and/or PlanD. Such unauthorized change in the land use of the site and erection of structures thereon are in breach of the relevant ordinances and lease conditions. Our assessment is that the problem is quite prevalent in the NT. As of April 2005, we estimate that there are about 250 major UBWs with an area of 1,000m² and above standing on agricultural lots in the NT, the majority of which are located in the Yuen Long and North Districts.

6. From the perspective of law enforcement, all UBWs should be removed, especially those large-scale UBWs which may pose imminent safety and environmental problems. Nevertheless, we recognize that such actions will have a detrimental effect on the business activities undertaken in those UBWs, which to a large extent are associated with warehouse operation and the logistics industry, thereby adversely affecting the industry and the livelihood of people employed in the trade. According to the Hong Kong Container Freight Station and Logistics Association Ltd, the estimated annual turnover of the logistics business operating in major unauthorized warehouses on agricultural lots can be more than \$2 billion. Tens of thousands of jobs are also associated with the economic activities related to the operations of those warehouses.

7. In devising a scheme to tackle the problem, we have taken into account the following guiding principles:

- (a) a pragmatic solution should be identified which will strike a balance between ensuring public safety and keeping the disruption to the business concerned to the minimum;
- (b) the solution identified should align with the Buildings Ordinance and BD's current enforcement policy. In other words, the unauthorized status of the major UBWs concerned should remain unchanged and BD would retain the right to exercise its enforcement powers under the Buildings Ordinance against those UBWs as and when necessary in the light of changing circumstances;

- (c) in taking forward the pragmatic solution, relevant enforcement departments should adopt a consistent and coordinated approach in handling the major UBWs concerned;
- (d) vigorous enforcement actions should be taken against unauthorized works-in-progress with a view to curbing any new major UBWs; and
- (e) Government should take steps to map out a long term solution to the problem through proper town planning and provision of proper infrastructural facilities to the logistics industry and other port back-up uses.

Proposal

Short-term waiver scheme

8. In accordance with the above principles, we propose a scheme which would allow major UBWs some degree of certainty to continue to exist on a temporary basis, provided that certain criteria and safety conditions are met. The key features of the proposed scheme are:

- (a) drawing reference from LandsD's existing arrangement, a short-term waiver scheme (STW) (initially a three-year waiver to be granted and subject to renewal) will be introduced and administered by the LandsD such that enforcement against the major UBWs on agricultural lots may be deferred. Certain conditions (such as structural, fire safety and drainage requirements) have to be met in granting the STW;
- (b) a major UBW can come under the waiver scheme if :
 - (i) it is situated on agricultural land;
 - (ii) the UBW concerned does not constitute an unauthorized development (UD) under the Town Planning Ordinance; and
 - (iii) the UBW concerned does not constitute priority items (a), (b), (c), (e), (f) and (g) under BD's 2001 enforcement policy (*a copy of BD's enforcement policy at Appendix*);

- (c) a UBW owner wishing to join the STW scheme should employ professional(s) (i.e. Authorised Persons/Registered Structural Engineers under the Buildings Ordinance) to certify the safety of his UBW structure(s) as required;
- (d) the UBW owner should pay a waiver fee for the purpose of the scheme and abide by all the conditions of the STW agreement; and
- (e) the UBW owner should take necessary measures to minimise any nuisance and disturbance (e.g. noise and traffic problems) caused to the neighbouring environment in the course of operation of his business. The owners should fully comply with the environmental and hygiene regulations stipulated under existing law and being enforced by relevant government departments such as the Fire Services Department and Environmental Protection Department. We will consult relevant government departments on each waiver application and take into account their views where appropriate in considering whether to grant the waiver to the UBW owner.

9. Regarding similar cases already tolerated and covered by LandsD's existing short-term waivers, the owners of major UBWs will be asked to carry out the safety certification process within a specified period of time (say, in nine to twelve months) in order to join the new waiver scheme. The existing short-term waivers will not be renewed unless with the safety certification.

Coordinated Enforcement

10. Having regard to the extent of the problem and resource considerations, we will adopt a phased approach in tackling the problem. Initially, major UBWs covering a floor area of 5,000 m² or above will be targeted in the first phase. The relevant UBW owners will be invited to join the STW scheme. The size parameter will then be lowered progressively in subsequent phases of implementation.

11. For major UBW cases not eligible for joining the waiver scheme, or in cases where a UBW owner fails to fulfil the conditions required (such as completing the safety certification process), coordinated enforcement action will be taken by LandsD, BD and PlanD against the

UBWs concerned in accordance with their respective powers and authority under the law and the land lease.

Justification

12. We consider that the proposed scheme presents a feasible and pragmatic solution to the complex major UBW problem involving a diversity of interested parties, with built-in safeguards to ensure public safety. Vigorous enforcement actions will be taken against unauthorized works-in-progress once identified.

13. In parallel with the introduction of the above STW scheme, the Government will map out a long-term solution to the warehouse-type UBW problem by way of proper planning and provision of infrastructure to facilitate the logistics industry and other port back-up uses. Currently, there are 617 hectares of agricultural land in the rural NT zoned for port back-up and open storage uses which can accommodate warehouses and other business operations associated with the logistics industry. Nevertheless, due to various reasons, including problems of land ownership and lack of access and infrastructural services, many warehouses or other business operations related to the logistics industry are found operating outside the properly zoned areas in the form of major UBWs on agricultural lots.

14. In considering the long-term strategy for planning and provision of land and infrastructural facilities for the logistics industry and port back-up uses, the Government will take into account the mode of operation, the growth of the industry, and the demand for suitable sites for operation of the logistics industry, which is likely to be affected by the development of the road network in the north-west New Territories, such as the Deep Bay Link and the Hong Kong-Shenzhen Western Corridor. The long term strategy to tackle the problem would require the concerted efforts of relevant bureaux and departments.

Consultation with interested parties

15. We have informally sounded out interested parties on the proposed scheme in March 2005, including building professionals, members of the Heung Yee Kuk, District Council Chairmen of the affected districts, and some Legislative Council members to tap their initial feedback. The results of the sounding out exercise indicate that the rationalisation of certain pre-existing major UBWs on agricultural lots is generally accepted as a reasonable and pragmatic measure. At the

same time, the industry is in particular interested in the standards and technical arrangements for the certification process and has pointed out the importance of consistency in upholding safety standards when certifying the UBW structures. To address these concerns and suggestions, BD is finalising the technical guidelines for the certification task in consultation with the industry. There are also suggestions that the Government should properly plan for the provision of land and infrastructural facilities for the logistics industry in the long run.

Advice sought

16. Members' views are sought on the proposed scheme set out in paras 8 to 11.

17. Subject to Members' comments on the proposed scheme, we will follow up by drawing up the implementation details and further consult the relevant parties on the detailed scheme.

June 2005
Housing, Planning and Lands Bureau

BD's revised enforcement policy against unauthorized building works promulgated in 2001

The revised enforcement policy against unauthorized building works will re-focus priorities 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 unauthorised 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 unauthorised 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 (eg balconies, sky or podium gardens) for which exemption from calculation of gross floor area has been granted by the Building Authority.