

Legislative Council

Panel on Planning, Lands and Works

Meeting held on Tuesday, 23 May 2006

**Item IV: Review of lease modification to permit change of use
for sites previously granted by private treaty**

**Administration's response to
questions/suggestions raised by Members**

- 1. The Administration should consider specifying in the lease condition of future PTGs that the grantee must return the site to the Government first before change of use would be considered, and that there would be no re-grant through lease modification. In other words, there would be no exclusive right to redevelop the PTG land by the grantee.**

Administration's response: For new lots to be granted by way of private treaty (PTG lots), the lease conditions have been strengthened so that the opinion of D of L on whether a lot has ceased to be used for its permitted use would be unfettered, conclusive and binding on the grantee. Introduction of the new

clause has been put into effect. For these new PTG lots, the Administration may consider taking enforcement action, including the possibility of re-entry, if the land concerned is not being used for its original purpose.

- 2. The Administration could consider negotiating with the grantee for an amount to be paid to the grantee for putting up the land for sale at an auction. To guard against a falling market, the Administration could specify that the agreed amount would only be paid to the grantee if the auction for the subject land is higher than the agreed amount.**

Administration's response: If the Government negotiates with a grantee on gaining re-possession of the sites by voluntary surrender, it would only substitute the negotiation process for a lease modification premium with another negotiation process concerning the surrender value. The process will be equally protracted and time consuming, and it will not be possible to develop the lot concerned during the negotiation period. As regards the suggestion of specifying that the agreed amount for the lot being surrendered would only be paid if the auction price is higher than the agreed

amount, again, it will be a protracted process in negotiating with the grantee to surrender the land concerned and when faced with such unfavourable conditions, the grantees may refrain from making an application for lease modification and as a result the land concerned would continue to be used for purposes not compatible with the surrounding environment. Even if the grantee is in agreement with Government's proposal, he will most likely demand a very high proportion of the proceeds from land sale. We wish to point out that the grantee of existing land granted by private treaty has every right to refuse any request by Government.

- 3. The Administration should consider introducing legislative means to enhance lease enforcement and facilitate re-entry for non-compliance with the specified uses.**

Administration's response: For new lots granted by private treaty, it has been specified in the respective lease conditions that the Administration could re-enter upon non-compliance, and the opinion of the Director of Lands on whether a lot had ceased to be used, or had been adequately used, for its intended purpose would be unfettered, conclusive and binding on the grantee. The measure will address the problems associated with re-entry for new lots

granted by private treaty. For these new lots, the Administration may take enforcement action, including the possibility of re-entry, if the lot concerned is not being used for its original purpose. We do not consider it necessary to address the problem through legislative means. However, in exercising Government's right under the Government Rights (Re-entry and Vesting Remedies) Ordinance, Government will need to demonstrate that a grantee has breached the "cessation and diminution of user" clause. In this respect, a grantee will use its lots to a minimum extent such that there is no breach of that clause.

4. The Administration should strengthen its position in lease enforcement for existing PTGs to facilitate re-entry.

Administration's response: Where the "cessation or diminution" clause of a PTG lot has been demonstrably breached and relevant policy justifications for the PTG remain valid, the Administration may seek to re-enter the lot if the grantee refuses to purge the breach. However, given the principle that private property rights should be respected, if the grantee exercises the right conferred by law to apply to the Court or petition the Chief Executive for relief against re-entry, the process would take time and we have to allow

opportunities for a fair hearing of the petitioner's views. The time required for the relevant process to be completed will be lengthy. Only under the circumstances when the petition or the application has been rejected could the site be re-possessed successfully and disposed of in the market. In addition, a grantee will use its lots to a minimum extent so that there is no breach to the "cessation and diminution" clause.

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