

政府總部
發展局
規劃地政科



Planning and Lands Branch
Development Bureau
Government Secretariat

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(Translation)

9 December 2011

Legislative Council Secretariat
Legislative Council Complex,
1 Legislative Council Road,
Central, Hong Kong
(Attn Ms Angela CHU)

Dear Ms CHU,

**Meeting of
LegCo Members and Heung Yee Kuk Members
to be held on 12 January 2012**

**Definition under the Block Government Lease and Deprivation of the
Use Right of Agricultural Land in the New Territories**

Thank you for your letter dated 28 November 2011 addressed to the Secretary for Development. We have consulted the Planning Department and I am authorised to reply to you.

The Town Planning (Amendment) Ordinance 1991 (“Amendment Ordinance”) was enacted in January 1991 to extend statutory planning control to rural areas of Hong Kong. The Amendment Ordinance has empowered the Town Planning Board (“TPB”) to designate rural areas of Hong Kong as Development Permission Areas (“DPAs”) for the preparation of statutory DPA Plans. The Amendment Ordinance has also stipulated that the areas covered by a DPA Plan, or its replacement Outline Zoning Plan (“OZP”), are subject to the enforcement provisions under the Ordinance. The Director of Planning is the Authority for undertaking

enforcement under the Town Planning Ordinance (“Ordinance”).

Under s.1A of the Ordinance, “development” means “carrying out building, engineering, mining or other operations in, on, over or under land, or making a material change in the use of land or buildings”. Hence, an operation such as filling of land or filling of pond constitutes a “development”. As provided in the Ordinance, a development within a DPA Plan or its replacement OZP is regarded as unauthorised unless -

- (a) the development is an existing use;
- (b) the development is permitted under the relevant statutory plan; or
- (c) the development is covered by a valid planning permission.

Under s.1A of the Ordinance, an “existing use”, in relation to a DPA, means the use of any building or land that was in existence immediately before the first publication in the Gazette of notice of the draft DPA Plan (or of the Interim Development Permission Area (“IDPA”) Plan in case the land was once covered by an IDPA Plan). The “existing use” is tolerated in relation to planning enforcement but is not the only permitted use as quoted by Heung Yee Kuk Members.

“Agricultural Use” is a Column 1 use always permitted in “Agriculture” and conservation-related zones. The agriculture use allowed under the block government lease is thus not unduly restricted. As filling of land and filling of pond may cause adverse drainage and environmental impacts to rural areas, the TPB has stipulated controls in relevant statutory plans in these zones and areas susceptible to drainage problem requiring that prior planning permission should be obtained for undertaking such operations. Filling of land or filling of pond without prior planning permission from the TPB may constitute an unauthorised development and subject to the enforcement provisions under the Ordinance. Under the “Agriculture” zone, filling of land specifically required under prior written instructions of Government departments, or for the purpose of laying of soil not exceeding 1.2m in thickness for cultivation, is exempted from this control.

As provided under s.23(3) of the Ordinance, where an Enforcement Notice or Stop Notice has been served in relation to an

unauthorised development, including unauthorised filling of land or filling of pond, the Authority may serve a Reinstatement Notice to require the party concerned to reinstate the land by a specified date to the condition it was in immediately before the first publication of the DPA Plan or the IDPA Plan (if any) or to such other condition, more favourable to the person concerned, as the Authority considers satisfactory.

The purpose of requiring grassing the land in some Reinstatement Notices against unauthorised filling of land/pond is to introduce vegetation back to the damaged site, to ensure compatibility of the site conditions with the planning intention of the designated zoning and restore the greenery in the rural environment. The removal of hard paving and grassing of the land in some cases are necessary to address the drainage issue in the area. Grassing of the land is not in conflict with the user permitted under the lease. Grassing the land is considered a more favourable condition to the person who received the Reinstatement Notice as compared to reinstating a pond or original vegetation. The Planning Department will issue a Compliance Notice to the concerned party if the reinstatement works were completed to the satisfaction of the Authority. The site may subsequently be used for the uses as always permitted under the statutory plan, including agriculture use, unless the concerned statutory plan has provided otherwise. S.24 of the Ordinance has also made provision for any person aggrieved by the decision of the Authority in serving the Reinstatement Notice to apply to the Secretary for Development for a review of the Authority's decision. The Secretary may confirm or reverse the Authority's decision or make any decision the Authority could have made on the reinstatement action.

Similar queries were previously raised in the recent 26th and 27th Development Bureau and Heung Yee Kuk: Planning, Land Administration Liaison Meeting. The Director of Planning has already explained and responded accordingly. Planning Department has also attended the Heung Yee Kuk Executive Member Committee meeting on 15 December 2009 to explain the enforcement and reinstatement actions under the Ordinance.

For further enquiries, please contact Mr. Kelvin Chan, Chief Town Planner/Central Enforcement and Prosecution of the Planning

Department at 2158 6123.

Yours sincerely,

(Miss Elania LUK)
for Secretary for Development

c.c.

Central Enforcement and Prosecution Section, Planning Department
(Attn: Mr. Kelvin Chan) (fax: 2484 9997)