

Legislative Council Panel on Development

The Administration's Responses to the Motion passed under agenda item VI "Ex-gratia allowance arrangement for business undertakings affected by Government's development clearance exercises" at the meeting on 23 May 2017

The Legislative Council (LegCo) Panel on Development passed the Motion moved by Hon CHU Hoi-dick at the meeting on 23 May 2017:

"This Panel urges that the Government, in its review of the ex-gratia allowance arrangement for brownfield operations, must adopt the overriding principle of "re-provisioning in the same district" in the new developments concerned when carrying out Government's development clearance exercises affecting brownfield operations, so as to prevent more agricultural lands in other districts from becoming brownfield sites and protect the livelihood of workers."

The Administration's response to the Motion is as follow.

2. The purpose of the Government's proposal to enhance the general ex-gratia allowance arrangements to be offered to eligible clearerees affected by the Government's development clearance exercises is to better address the genuine needs of the clearerees. Business undertakings under the proposal are not limited to "brownfield operations".
3. There is no formal or standard definition for "brownfield sites" at present. The term generally refers to agricultural or rural land in the New Territories (NT), predominantly privately owned, that is deserted and converted to uses such as container yards, vehicle parking, vehicle repair workshops, logistics operations, rural workshops, open storage, recycling yards, construction machinery and materials storage, which are incompatible with the surrounding environment.
4. The evolution of the brownfield sites can be traced back to the history of rural land development in the NT. In the NT, private land is mostly held under "Old Schedule" lots contained within the Block Government Leases (BGL, formerly known as Block Crown Leases) and is described as "agricultural land". The BGL reflected the state of farming when it was executed in 1905. In 1983, the High Court ruled in the "Melhado" case that lots granted under the BGLs are subject to no restriction on the use of land, other than the clause preventing "Noisome or Offensive Trades". In other

words, so long as the development does not include any buildings, the agricultural lot owner under BGLs may use the land for purposes other than agriculture.

5. In 1991, the Town Planning Ordinance (TPO) was amended to empower the Town Planning Board to designate “Development Permission Areas” (DPAs) in rural areas in the NT and prepare statutory plans to cover such areas. The Planning Authority is empowered to take enforcement action against unauthorised developments within DPAs, unless the development is an “existing use”, permitted under the relevant statutory town plans, or covered by valid planning permission. Land uses (including brownfield operations) that were in existence immediately before the first publication of the draft plan for the DPA are regarded as an “existing use” under the TPO and do not constitute unauthorised developments.

6. Given the aforementioned historical development, some existing brownfield sites are neither in breach of lease conditions nor the statutory planning regime; in such cases, if there is no illegal occupation of government land, the Government does not have the authority to carry out enforcement actions against such operations or eradicate them. That notwithstanding, it has all along been the Government’s stance that the relevant departments would take stringent enforcement actions against illegal land uses on brownfield sites once discovered in accordance with the prevailing legislations and mechanisms. Such illegal land uses include unauthorised structures in violation of lease conditions, unauthorised development under the TPO, illegal occupation of government land, and fly-tipping.

7. Releasing and optimising the use of brownfield sites has been one of the major directions under the Government’s multi-pronged approach to land development. It is estimated that a total of about 340 hectares (ha) of brownfield sites are involved in the Kwu Tung North and Fanling North New Development Areas (NDAs), Hung Shui Kiu (HSK) NDA, and Yuen Long South development. The potential development areas in the NT North are estimated to cover another 200 ha of brownfield sites. While developing brownfield sites through comprehensive planning, the Government also understands the land requirements of brownfield operations.

8. The Government would endeavour to identify suitable sites for accommodating and consolidating brownfield operations that are still needed in Hong Kong through land-efficient measures, with the objective of rationalising rural land uses. To this end, the Civil Engineering and Development Department has commissioned feasibility studies to accommodate and consolidate brownfield operations in land-efficient manner such as multi-storey buildings (MSBs), taking HSK NDA as a pilot case. The studies will cover the conceptual design, planning, engineering, environmental

and financial assessments, and explore possible mode of operation and management of the proposed MSBs. Relevant stakeholders, including existing operators, trade representatives and locals, will be consulted during the feasibility studies. The studies are expected for completion within 2018. Apart from MSBs, we would not rule out the possibility and need for accommodating certain operations which could not be practically feasible to move into MSBs on suitable open-air sites with provision of proper infrastructure and segregation from sensitive receivers. To facilitate the development of HSK NDA, we have reserved about 24 ha of land in the northern part of the HSK NDA for the above purposes, and would explore other potential sites in nearby areas.

9. As part of the Government's overall multi-pronged land use strategy, in addition to the above pilot scheme in HSK NDA, DEVB aims to formulate a comprehensive brownfield policy, under which we would review how to support the sustainable development of relevant sectors through the provision of operating space for existing brownfield operations in a land-efficient manner. We would consult the Panel on the proposal in due course.

Development Bureau
June 2017