

Bills Committee on Town Planning (Amendment) Bill 2003**Enforcement of Planning and Land Matters
in the Rural New Territories****Purpose**

At the meeting on 18 March 2004, Members required the Administration to compile a table setting out the respective planning and land matters on which enforcement actions could be taken by the Planning Authority under the Town Planning Ordinance and/or other land authorities under other ordinances. This paper provides the requested information.

Background

2. In the rural New Territories (NT), enforcement actions may be taken under statutes or land leases in respect of the planning and land matters.

Enforcement under Statutes

3. The table in the **Annex** shows the enforcement actions which may be taken under the Town Planning Ordinance Cap. 131 (TPO), the Buildings Ordinance Cap. 123 (BO), the Waste Disposal Ordinance Cap. 354 (WDO) and the Land (Miscellaneous Provisions) Ordinance Cap. 28 (LMPO). The BO and the WDO are applicable to the whole territory of Hong Kong but the former excludes unleased Government land. The enforcement provisions under TPO are only applicable to those areas designated as “development permission areas” (normally within the rural NT but excluding new towns), and the relevant provisions of the LMPO are applicable to the unleased land (i.e. land which is neither held under Government lease nor vested in any person by any ordinance). In general, the TPO and the WDO deals with “development*” and “waste” respectively. The BO mainly deals with building works and dangerous hillsides on private land or associated with private developments, and the LMPO mainly deals with unlawful occupation of and excavation in the unleased land.

* “Development” is defined under s.1A of the TPO as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use of the land or buildings.

Enforcement under Land Leases

4. In the rural NT, most of the private land is held under “Block Government Leases (BGLs)” (previously known as “Block Crown Leases”). In the case *AG v Melhado Investment Ltd [1983] HKLR 327*, the Court of Appeal ruled that the uses listed under “Description of Lot” in the Schedule of the leases (such as “Padi”, “Waste”, “Grave” and “Dry cultivation”) were descriptive only and did not constitute any limitation on the use of the land.

5. Nevertheless, the Lands Department (LandsD) may, according to the terms of the BGLs, take enforcement against any unauthorized building structure erected on the land. In practice, the concerned owners will be advised to apply to the LandsD for waivers. If the planning requirements are complied with, the LandsD may regularize the situation by issuing retrospective waivers where appropriate. In the cases that the unauthorized structures have been built before the applications for or the granting of the waivers, LandsD may in the waivers specify that the issue of the waivers do not legalize any structures/buildings already built in contravention of the BO and the Building Authority (BA) retains the power to take enforcement action against the structures concerned. In other cases, the waivers may specifically require the holders to submit building plans to the BA if they want to carry out any building works. Any structures built without the BA’s approval therefore, apart from the contravention of the BO, contravene the waiver conditions and the LandsD can in principle:

- (a) cancel the concerned waiver; and
- (b) require the owner to remove the concerned structure/building, or if he/she refuses, the LandsD can re-enter the lot.

Enforcement of Planning and Land Matters under Statutes

Ordinance	Authority	Remarks
Town Planning Ordinance Cap. 131	Planning Authority (PA) (Director of Planning)	<ul style="list-style-type: none"> - The relevant provisions are only applicable to areas designated as “development permission areas (DPAs)” which are normally within the rural NT (i.e. excluding new towns). - The relevant provisions only deal with “development” which is defined under s.1A as: <ul style="list-style-type: none"> (a) the carrying out of building, engineering, mining, and other operations in, on, over and under land; or (b) the making of a material change in the use of the land or buildings. - A “development” will be unauthorized when: <ul style="list-style-type: none"> (a) it did not exist immediately before the gazette of the relevant DPA or interim DPA Plan; (b) it is not permitted under the relevant statutory plan; and (c) permission to carry out the development has not been granted under s.16 of the Ordinance. - The PA is empowered under s.20(7) and 21(1) to prosecute any person who undertakes or continues unauthorized development (UD) within a DPA. - Under s.23(1), the PA may also serve a notice on the land owner, occupier and/or the person responsible for an UD to require for discontinuance of the UD by a specified date. Any notice recipient will commit an offence under s.23(6) if he/she fails to take all reasonable steps to comply with the notice.
Buildings Ordinance Cap. 123	Building Authority (BA) (Director of Buildings)	<ul style="list-style-type: none"> - The relevant provisions are applicable to the whole territory of Hong Kong except unleased Government land. - Regarding the planning and land matters in the rural NT, the relevant provisions mainly deal with “building works” and “dangerous hillside” on private land or associated with private developments. The latter may be caused by site formation works.

Ordinance	Authority	Remarks
		<ul style="list-style-type: none"> - Under s.14 of the Ordinance, no person shall commence or carry out any building works without having first obtained the approval or consent of the BA. The person who contravenes this provision commits an offence under s.40(1). Under s.23 and 24(1), the BA may also issue orders to require the recipients to cease, demolish, remove or alter unauthorized or dangerous building works. Any non-compliance with these orders without any reasonable excuse commits an offence under s.40(1B)(b). - In respect of the dangerous hillsides on private land or associated with private developments, the BA may issue an order under s.27A. Any non-compliance with this order without any reasonable excuse also commits an offence under s.40(1B)(b).
Waste Disposal Ordinance Cap. 354	Director of Environmental Protection (DEP)	<ul style="list-style-type: none"> - The relevant provisions are applicable to the whole territory of Hong Kong. - The relevant provisions only deal with “waste” which is defined under s.2 as any substance or article which is abandoned and includes animal waste, chemical waste, household waste, livestock waste, street waste and trade waste. (“Trade waste” means waste from any trade, manufacture or business, or any waste building or civil engineering materials, but does not include animal waste and chemical waste) - Under s.16(1), the DEP is empowered to prosecute any person who uses or permits to be used any land or premises for disposal of chemical waste without a licence from the DEP to use the land or premises for that purpose. Section 38 of the Ordinance stipulates that s.16 does not apply to any other waste types. - Under s.16A(1), the DEP is also empowered to prosecute any person who without lawful authority or excuse deposits, or causes or permits to be deposited any waste: <ul style="list-style-type: none"> (a) in a public place; (b) on any Government land; or (c) on any land other than Government land without the consent of the owner or occupier.

Ordinance	Authority	Remarks
Land (Miscellaneous Provisions) Ordinance Cap. 28	Land Authority (LA) (refer to the Schedule of the Ordinance for the LAs in different areas)	<ul style="list-style-type: none"> - The relevant provisions are applicable to all unleased land in the whole territory of Hong Kong. This normally refers to the Government Land. - The relevant provisions mainly deal with unlawful occupation of and excavation in the unleased land. - Under s.6(4A), 7 and 8, the LA is empowered to prosecute any person who: <ul style="list-style-type: none"> (a) engages in , arranges or directs the erection of any unauthorized structure on the unleased land; (b) extracts or removes earth, turf or stone from the unleased land without any removal permit; or (c) makes or maintains excavation in the unleased land without any excavation permit. - If there is any unlawful occupation of the unleased land, the LA may under s.6(1) issue a notice to require a cease of the occupation. Any non-compliance with the notice will commit an offence under s.6(4).