

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

Management of Unleased Government Land and Lease Enforcement

PURPOSE

This paper provides an overview of the management of unleased Government land and enforcement of lease conditions in respect of leased land in Hong Kong. It also sets out the Administration's response to concerns raised by Members of the Legislative Council.

BACKGROUND

2. All land within the Hong Kong Special Administrative Region (HKSAR) is state property, and the HKSAR Government is responsible for its disposal and management. The HKSAR has an area of 110,173 hectares (ha.). About 52% (57,160 ha.) are actively used by Government departments and other bodies under Government consent for purposes such as country parks, public housing development, infrastructures e.g. railway lines.

3. Of the remaining land, some 31,860 ha. (about 29%) are unleased Government land and require daily management by Government, mainly through Lands Department (Lands D), principally to guard against unlawful occupation and, to a lesser degree, excavation and dumping. This activity is generally known as 'land control'. The balance of 21,153 ha. (19%) are held under Government leases and licences Lands D has to ensure that the lease and licence conditions are being observed. This activity is generally called 'lease enforcement'.

4. During the past decades of high economic growth and housing production, concerned departments (Lands D included) had deployed most of their resources to the corresponding work activities such as land disposal and resumption required to facilitate economic, housing production and infrastructural developments. Other work such as land control and lease enforcement was therefore accorded with relatively lower priorities.

STATUTORY AUTHORITY FOR LAND CONTROL

5. The statutory authority for land control functions is largely derived from the Land (Miscellaneous Provisions) Ordinance, Cap 28. The main enforcement agencies for dealing with unlawful occupation of unleased land are Lands D and the Housing Department (“HD”). The latter is mainly concerned with the control of squatters on unleased land and private agricultural lots in the New Territories (NT).

6. In respect of the control of excavations in unleased land, the enforcement responsibility falls on Lands D and the Highways Department. The latter is mainly concerned with excavations on highways.

STATUTORY AUTHORITY FOR LEASE ENFORCEMENT

7. In general, the authority to enforce lease conditions is implied within the terms of the lease. There is also legislation to assist in lease enforcement such as the Land (Miscellaneous Provisions) Ordinance (Cap 28) and Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap 126). Lands D and HD are the main enforcement agencies.

DETECTION OF UNLAWFUL OCCUPATION AND EXCAVATION OF UNLEASED LAND AND BREACH OF LEASE CONDITIONS

8. Cases which require land control and lease enforcement actions normally arise as a result of :-

- (a) referrals from Lands D staff who, in the course of carrying out their duties not related to land control and lease enforcement, notice suspected unlawful occupation, excavation and breaches of the lease;
- (b) referrals from other Government departments (such as HD, Home Affairs Department, Food and Environmental Hygiene Department), District Councils (DCs), Rural Committees and other civic organisations;
- (c) complaints reported in the media or made by the public to District Lands Offices (DLOs); and
- (d) patrolling by Lands D staff designated for land control and

lease enforcement duties, and HD's squatter control teams.

9. Due to manpower constraints, Lands D can only conduct limited patrolling. In reality, therefore, Lands D has to rely heavily on the first three sources of detection as described in paragraph 8 above .

LAND CONTROL PROBLEMS

(a) Unlawful Occupation of Unleased Land

10. Generally, unlawful occupations take either of the following two forms -

- (i) unauthorized structures on unleased land; or
- (ii) unlawful occupation of unleased land without structures.

(i) Unauthorised Structures on Unleased Land

11. Unauthorised structures on unleased land can range from flimsy small structures to large warehouses with metal-cladding, to unauthorized village type houses. The unlawful occupation of unleased land by the erection of unauthorized structures is a squatter control problem. Squatter control had for many years been an HD function. HD conducted a freezing survey of squatter structures throughout Hong Kong in 1982, on both unleased land and private agricultural lots, and seeks to remove all new squatter structures built after that date. This function in respect of the urban area and Islands District had been transferred to Lands D since 1 April 2002. Squatter control in respect of the NT remains with HD for the time being.

12. The clearance of unauthorized structures which are inhabited could be difficult due to resistance by the inhabitants even though they are offered rehousing or accommodation by HD under Government's policy that nobody would be rendered homeless.

13. In the urban area, the problem of unlawful occupation of land by unauthorized structures generally take the form of occupation of public pavements by business operators. This is both a building control and land control problem. Joint operations by relevant departments may be carried out in these cases. A Member has asked the Administration to provide information on the number of such cases, particularly in areas with heavy pedestrian traffic. Since the Administration has not conducted survey targeting specifically at this type of unlawful

occupation of land, we do not have statistics in this respect.

(ii) Unlawful Occupation Of Unleased Land Without Structures

14. The responsibility for dealing with unlawful occupation of unleased Government land (GL) without structure falls on Lands D. The most common types of the problem are -

- (a) transient occupation of GL for various purposes such as placing skips on roadside, flytipping, dumping;
- (b) residents of village houses in the NT fencing up unleased land adjoining their houses for security and gardening;
- (c) occupation of GL for car-parking, in some cases operated for profit; and
- (d) occupation of GL in connection with a business operation such as a restaurant.

15. When unlawful occupation of GL without structures is detected by Lands D, they may be regularized under certain circumstances by the issue of short term tenancies (STTs) at market rental to the occupiers. Regularisation is a pragmatic way of resolving the unlawful occupation problem of a particular piece of GL and obviates the need for frequent inspections to prevent re-occupation of the GL concerned.

16. In certain circumstances, if regularization by STTs is not in the public interest, Lands D will require the occupier to vacate the land by posting a statutory notice to cease the occupation. In most cases, occupiers would stop their unlawful occupations without incident, but in some cases they would only give up after repeated warnings and protracted arguments with Lands D. An occupier who does not comply with Lands D's notice and continues his unlawful occupation may be guilty of an offence and may be liable to a fine of \$10,000 and imprisonment for 6 months.

(b) Unlawful Excavation in Unleased Land

17. Excavation in unleased land without an excavation permit is an offence under Cap 28. Offenders are liable to a fine of \$5,000 and imprisonment for 6 months. From 1 April 2004, the fine will be amended to \$50,000. Removal of earth, turf or stone from unleased land without a removal permit is also an offence under Cap 28. Offenders are

liable to a fine of \$5,000 and imprisonment for six months. Lands D, in consultation with Department of Justice, will consider prosecuting suspected offenders, even though it is sometimes difficult to secure sufficient evidence. To help solve the problem, Lands D would carry out preventive or remedial measures such as fencing up the land in question where appropriate.

(c) Size of Land Control Problem

18. Each year, about 4,000 cases of unlawful occupation of unleased land are detected by Lands D. DLOs deal with these generally by removing the occupation, by invoking Cap 28. Where appropriate, DLOs may also regularize unlawful occupations by issuing tenancies to the occupiers.

19. If unleased land is unlawfully occupied for the operation of fee-paying carparks, Lands D can effectively remove these carparks by fencing up the unleased land in question. 18 such cases were discovered in the period from 1 April 2002 to 31 March 2003.

20. Flytipping and dumping problems occur generally in step with construction and decoration activities. In recent years, the number of these problems has reduced substantially, to around 10 per year.

LEASE ENFORCEMENT PROBLEMS

(a) Nature of Breaches

21. Generally speaking, the nature of lease enforcement cases in the urban areas (including NT New Towns) differ from that in rural NT. In the urban areas and the NT New Towns, breaches of lease conditions generally involve misuses in multi-storey buildings, such as converting industrial units into non-industrial use.

22. In the rural parts of the NT, lease enforcement cases can be roughly categorized as :-

- (a) unauthorized structures, in the form of village houses built on private agricultural land;
- (b) unauthorized structures built on private agricultural land for industrial or business purposes and generally not in the form of village houses; and

- (c) unauthorized building works (UBWs) on building lots constructed in contravention of lease conditions.

(i) Misuses in Multi-storey Buildings

23. These breaches tend to occur in the urban areas. DLOs carry out programmed patrols in targeted buildings.

(ii) Unauthorized Structures on Private Agricultural Land

24. As explained in paragraph 11, HD conducted a freezing survey in 1982 of all squatter structures, on both unleased land and on private agricultural land and then seek to remove all squatter structures erected after that survey. Unauthorized structures on private agricultural land is also a squatter control problem. The Director of Housing has similar authorities as the Director of Lands in respect of the enforcement provisions of Cap 28.

(iii) UBWs on Building Lots in Contravention of Lease Conditions

25. These breaches tend to happen in the NT. They are UBWs built in contravention of the Buildings Ordinance and enforcement action can be taken by the Buildings Department. LandsD will also consider taking lease enforcement action.

(b) Size of Lease Enforcement Problem

26. Owing to resource constraints, no survey had been done to ascertain the size of the problem. Among various kinds of breach of leases, there are around 13,000 UBWs on rural buildings or village houses in the NT. Some involved re-building of houses on existing lots that might have exceeded the exempted limits laid down in the relevant legislation. Each year, DLOs can complete about 700 enforcement cases.

WAY FORWARD

27. The Administration fully recognizes the importance of land control and lease enforcement work and that they should be accorded higher priority where possible. Taking into account the recent consultancy study on the Land Administration Office of Lands D, some improvement measures are being considered to further enhance the department's duties as follows -

(a) Rationalising and Streamlining Lands D's work procedures

- Where it is possible to regularize land control and lease enforcement problems, we shall re-engineer our work procedures with a view to speeding up the granting of tenancies and waivers.
- We shall consider deploying more resources to land control and lease enforcement work.
- We shall consider outsourcing some part of our land control and lease enforcement work.
- Team Clean initiatives, Dengue Fever prevention and other public health measures will always be given top priority.

(b) More coordination with relevant departments on enforcement work

- Where more than one department have powers to deal with a particular problem, Lands D will invite those departments to mount joint operations to achieve greater enforcement efficiency. For example, occupation of public pavements by business operators. A pilot scheme is being planned for the removal of unlawful occupation of public pavements at Bowrington Road and Canal Road West, in Wanchai.
- We shall coordinate with concerned departments to deal with common problems with concerted efforts.

(c) Enhancing the efficiency of law enforcement

- We shall step up prosecution and seek wider publicity of the results of prosecution.
- We shall review the provisions of Cap. 28 to ascertain whether changes are required to facilitate more efficient land control work, e.g. to increase the amount of penalty to achieve greater deterrent effects.

(d) Public education and consultation with District Councils

- We shall consider mounting a public education programme.
- We shall consult DCs in the formulation of each district's priority action programme.
- We shall consider putting suitable vacant sites for optimal short term uses by non-governmental organizations.

Lands Department

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