

Development Bureau responds to judgment of Court of Appeal on judicial review of Small House Policy

The Court of Appeal (the CA) handed down today (January 13) its judgment on the appeals against the Court of First Instance (CFI)'s ruling on the judicial review application challenging the Small House Policy. The CA ruled that all components under the Policy, namely the arrangements of Free Building Licence (FBL), Private Treaty Grant (PTG) and Land Exchange, are lawful traditional rights and interests of the indigenous inhabitants of the New Territories within the meaning of Article 40 of the Basic Law, and hence lawful and constitutional.

"The Government welcomes the CA's judgment," a spokesman for the Development Bureau said.

According to the spokesman, the Government will continue to implement the Policy. In respect of the applications for government land to build small houses through PTG and Land Exchange, which the Government has suspended receiving and processing in the light of the CFI's judgment, the Government will study the CA judgment and arrange to resume the receipt and processing of these two types of applications.

The Small House Policy has been implemented since 1972. The forms of grants under the Policy include FBL which allows applicants to build small houses on their private land, PTG for grant of government land to build small houses, and Land Exchange allowing applicants to build small houses on private land or government land. In its judgment on the judicial review of April 8, 2019, and the subsequent order of April 30, 2019, the CFI ruled that the arrangements to apply for building small houses on private land through FBL and Land Exchange under the Policy, being the lawful traditional rights and interests of the indigenous inhabitants of the New Territories within the meaning of Article 40 of the Basic Law, are lawful and constitutional, while the arrangements to apply for government land for building small houses through PTG and Land Exchange are not. All the parties lodged appeal. The CA ruled today that the Government's appeal was allowed.