

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

The Court of First Instance of the High Court handed down a judgment today (April 8) on a judicial review of the Small House Policy. The Court ruled that the Free Building Licence (FBL) arrangement under the Small House Policy, being a lawful traditional right and interest of the indigenous inhabitants of the "New Territories" within the meaning of Article 40 of the Basic Law, is lawful and constitutional, while the Private Treaty Grant (PTG) and Land Exchange arrangements under the Policy are not.

The Development Bureau (DEVB) welcomes the Court's ruling on the FBL arrangement as being lawful and constitutional. As for the PTG and Land Exchange arrangements, the DEVB will consider whether to lodge an appeal after studying the judgment in detail and seeking legal advice.

"PTG and Land Exchange arrangements are part of the Small House Policy. During the period when the Government considers whether to lodge an appeal, the Lands Department will suspend the receipt of new applications for building small houses through PTG and Land Exchange, as well as the processing of PTG and Land Exchange applications already received," a spokesperson for the DEVB said.

"As regards small house grants made through PTG and Land Exchange before today, the Court stated in its judgment that a part of the Small House Policy being unlawful does not mean that small house grants made are also unlawful. In other words, these grants remain valid, unless the Court accepts any grounds for setting them aside in the future," the spokesperson added.

The Small House Policy has been implemented since December 1972. The forms of land grants under the Policy include FBL, which allows applicants to build small houses on their private land, and PTG for grant of government land and Land Exchange. FBLs form the majority of grants. In the past 10 years, FBLs constituted around 80 per cent to 90 per cent of all small house grants. This trend persisted in recent years. There were 97 cases of PTG and Land Exchange out of a total of 752 executed small house grants in 2017, and 72 such cases out of a total of 654 executed small house grants in 2018.