

Letterhead of Independent Owners' Association for Fair Treatment

Legislative Council
Panel on Planning, Lands and Works
Legislative Council Building
6 Jackson Road
Central
Hong Kong

28th February, 2001

RE: Submission on Compensation arrangement for owners affected by land resumption for Urban Renewal Authority projects/Proposal ex gratia allowances for property owners and tenants affected by the resumption of land.

Dear Panel members,

Our association is a board-based organization which help analyze redevelopment situations in Hong Kong and how it affects owners, tenants, property rights, the society and their respective rights and help to ease problems related to the redevelopment. We are now submitting our view on the compensation arrangement for owners affected by land resumption for the Urban Renewal Authority including those left unfinished by the Land Development Corporation.

While suggesting solutions to the problems of the bill in its current wordings. We would also analyze problems faced by the LDC, as an authority preceding the URA.

The problems with the '10-years old' package.

1. Let me remind the panel that the LDC had more problems with owners as the "replacement HPA" was reduced to the value of a flat up to 10-years old while previous changes faced less resistance. While compensation were changed from a new flat in pre-1991 to a one to three year old flat replacement (between 1991-June 1997), and from a one to three year old replacement flat to a 10-year old replacement flat starting 1998, the dissatisfaction has increased as such compensation were changed. Listening at the tone of increasing dissatisfied public opinion, looking at the number of Judicial Review of the Planning and Lands Bureau and put them against a time line chart when compensation for resumption one can induce that the latest policy of using a 10-year 'replacement flat' for compensation value fails miserably.

The use of a 5-year old flat would simply a return to a policy closer to the earlier version when there were little or no outcries from the public opinion and owners alike. The previous policies were time-tested up until it's changed to 10-years. A policy using a '7-years old replacement flat or using a 5-year old replacement flat as it would modify the current failed policy. In any event, as part of the unfinished LDC Projects, owners who have not made a final agreement with the LDC or Lands Department should be given the benefit of the doubt and get their compensation based on the final decided HPA/Supplemental Compensation of this bill.

Past (and continuing) unfair acquisition offers of the Land Development Corporation.

2. Apple and Oranges; TST equal Yau Ma Tei

There is still a lack of clear definition of how the "HPA" is being calculated as to what defines a "relatively modern replacement flat of a similar size in the locality of the resumed flat." With the TST Hanoi Road project, the LDC's valuers used Yau Ma Tei and Hung Hom as comparable areas as TST and made a 5% adjustment to it; therefore arriving at a price substantially less than a normal flat of similar size and in the area. A flat with over 1000 Net Square footage is view as the same as a flat with 700 square feet while the 'market' would yield that to be in different categories.

3. Owners are mostly in the dark when changes are made.

Although Legco put public notice to inform citizens as to what changes are being made, the LDC makes their policy in the dark and makes changes to its policies without informing even the affected owners.

In the TST Hanoi Road Project, while owners were inform on June 6,1997 when the project was gazetted with the approval of Governor Patten-in Council, the LDC did not follow their own regulation at of that time. Delays were made with the only reason to make the formal offers after a new policy has been set. While informing owners in a meeting in 1997 that the compensation was going to be a 5-year-olds replacement flat in together with information leaflets which clearly printed in writing, the LDC used the new policy of a 10-years-old flat for valuation of the HPA when the written information to owners indicated otherwise.

The benefit of the doubt should be given to the affected owners when there is a change as owners are not as knowledgeable of the changes of policies made by the authority.

4. Timing of valuation to be decided after the fact!

Owners affected by the re-development are often left with little or no choice but to accept, or eventually accept the offer. Time, however, has been utilized by the current practice of the LDC as a weapon against owners. While owners has no say about when the authority will make an offer on their properties, with the current practice of the LDC, the authority has but all the choice of timing as to when is a good time to make the formal offer to the owners. The LDC did delay for more than 10 months in the TST Hanoi Road project before the offer were made after the approval and presented to owners in June 6,1997. What seems to be a reasonable timing for the LDC to provide the formal offer to maximize profit may not be fair and reasonable to lay persons. In fact, once you receive a notice by the LDC, the owners are left with little choice but to sell eventually. In order to make it fair to owners so that they have not been prejudice upon as to the selection of timing of the offer, we need to find a remedy to correct the problem

5. The problem with valuations, owners' valuers are often ignored

The LDC's practice misuses the law, which required at least 2 surveyors to value the owners' properties and the higher one will be used. It sounds fair and reasonable if one of the surveyors is representing the LDC and the other representing owners. Unfortunately, the way it is practice is that the LDC utilized BOTH surveyors and have not allowed the value proposed by the owners' valuers to be any part of a mechanism to arrive at a comprise.

In the case of TST Hanoi Road project, the LDC has ignored all other valuations provided by 5 different surveyors hired by owners but the LDC insisted on its original value. No compromise was sought by the LDC despite repeated effort by owners to negotiate.

A lot of times, owners, tenants and businesses want to cooperate and often not objecting to the redevelopment. What people need is a picture of what their futures are going to be. Monetary compensation by the LDC or the new authority is only one factor and often not the most important one. By introducing a redevelopment, or should I say the redevelopment in the current practice by the LDC, thousands of residents, owners and businesses are affected in each of the affected areas; their communities and their lives are affected. In an ideal situation, changes of such scale needed to be dealt with by having the communities putting their own destiny together, having the communities be part of the planning team, empower them and involve them.

6. The question is whether the redevelopment is going to eliminate the communities or to help them. The LDC's policy has been to eliminate the communities and replace them by a format liken by major developers in Hong Kong. The "Kai Fong" businesses are being replaced by major brand names that can afford to lease a shop front from the LDC/New World (or another major developer) new indoor shopping mall. The communities which lives on the interrelations of the owners, residents and the small businesses are killed and replaced by chain stores, expansive restaurants, brand names. The multi-ownerships of the older areas are now replaced by single ownership by the LDC, a Joint Venture of the LDC or a major developer. With the new bill, is the Urban Redevelopment Authority going to replace the hundred and thousands of independent owners as the biggest landlord in the redeveloped areas? Is the purpose of the urban Renewal Authority trying to help the communities or to eliminate them?

The LDC's Hanoi Road project is a good example of how the LDC, using the "Owners' Participation Scheme," obtaining 70% of participation by New World or its affiliates, together owning properties by "shell companies" tactfully eliminate the community by putting a 62 story office tower in lieu of the small shops owners and independent owners, allowing one large ownership in lieu of individual ownership.

We, therefore, make the following points in our conclusion:

1. The Compensation Arrangement should be generous to the affected owners as the redevelopment is superimposed upon them.
2. The change of compensation, if any, needs to set a decentralized decision making process, Bodies with the abilities to check-and-balance the centralized decision making process to ensure the needs of the public are met. Such bodies must be able to intervene, if necessary, intervene materially during the execution of the process because it is often during the execution problems arise.
3. The benefit of reasonable doubt should be given to owners. That should include
 - a. The use of a compatible or better area for calculation of a similar 'replacement flat' in the "same locality".
 - b. The timing of the valuation should be clearly defined and be fair and open.
 - c. The size of the compatible flat should be reasonable.
4. Once the project is planned, the owners should have a right to decide when to sell their properties to the authority at any time, therefore reducing their uncertainties of waiting for the URA to provide them with a formal offer.

It is only with a system that is set up correctly that the system will work. Many owners have been negatively affected by centralized redevelopment projects. It is absolutely possible, and actually inevitable that such a good system will smoothen out of the problems we have already learned from the LDC's problems. It is with that sprit that our association submits the above inputs.

We request to be informed of any hearings or any input sessions with enough time notifications so that our members can be informed and be responsive to the further process.

Thank you for the opportunity in providing the inputs.

Sincerely,

David Lai
Chair, IOAFT