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Panel on Home Affairs

**Background brief prepared by Legislative Council Secretariat
for the meeting on 12 May 2006**

Management and resumption of private streets

Purpose

This paper gives an account of the past discussions held by the Panel on Home Affairs on the management and resumption of private streets since the first term of the Legislative Council (LegCo).

Background

2. The Government may acquire private land by resumption for the implementation of public projects such as a road scheme, a public housing development, an urban renewal project, an open space, a drainage improvement project, a new market, a school or any item in the Public Works Programme. According to the purpose of public projects, resumption proceedings may be instituted mainly under the provisions of –

- (a) the Lands Resumption Ordinance (Cap. 124);
- (b) the Land Acquisition (Possessory Title) Ordinance (Cap. 130);
- (c) the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276);
- (d) the Roads (Works, Use and Compensation) Ordinance (Cap. 370);
- (e) the Land Drainage Ordinance (Cap. 446);
- (f) the Railways Ordinance (Cap. 519); and
- (g) the Urban Renewal Authority Ordinance (Cap. 563).

3. When private land is resumed or otherwise adversely affected by the actions of the Government, the Ordinance under which the legal interest is extinguished or affected provides for the payment of compensation. The former owner or persons having an interest in the land such as the tenant, will be entitled to statutory compensation for the value of the land and building (if any) or other land interests resumed in accordance with the provisions of the Ordinance.

4. The Director of Lands is given the authority to implement resumption and compensation provisions of the Ordinances listed in paragraph 2 above.

5. At the LegCo Members' meeting with Kowloon City District Council (DC) members held on 14 March 2002, Kowloon City DC members had expressed concerns about the problems arising from the poor conditions of the eight "Wan" streets in Kowloon City. At the LegCo Members' meeting with Wanchai DC members held on 3 April 2003, Wanchai DC members expressed the view that the existing legislation should be amended to facilitate the resumption of private streets. It was agreed at these meetings that the policy issues relating to the resumption and management of private streets be referred to the Panel on Home Affairs for follow-up.

The Private Street Resumption Programme

6. In 1986, a programme for the resumption and maintenance of private streets was launched under the Roads (Works, Use and Compensation) Ordinance for the purpose of better management and maintenance of these streets (the Resumption Programme). At the same time, the Private Street Resumption Committee (PSRC) was established to coordinate departmental efforts in drawing up the Resumption Programme and overseeing the progress of resumption. The Director of Home Affairs is the chairman of PSRC and its members include representatives from the Buildings Department, Drainage Services Department, Fire Services Department, Highways Department, Housing Department, Lands Department, Leisure and Cultural Services Department, Transport Bureau, and Transport Department.

7. According to the Administration, it is the long-standing policy that public money must not be used for compensating the relevant owners for the resumption of private streets. The PSRC's approach on payment of compensation is that statutory compensation under the Roads (Works, Use and Compensation) Ordinance will only be paid if the claim is unforeseen before the resumption and is subsequently found justifiable. If it is envisaged that the street to be resumed will incur valid compensation claims, it will usually be deleted from the resumption programme.

8. Between 1986 and 1995, 166 private streets in the urban areas were identified and included in the Resumption Programme. The Administration

has subsequently removed 79 private streets (including the eight “Wan” streets in Kowloon City) from the Programme for the following reasons –

- (a) resumption of private streets with protruding balconies would give rise to trespassing problem whereby owners who maintain their balconies after resumption would constitute trespass under law, and it is considered too resource intensive and legally complicated to resolve the problem;
- (b) resumption of some private lanes would incur valid compensation claims from owners because the area of the lane may be included in the site area calculation on redevelopment; and
- (c) some private streets which could only be turned into pedestrian and emergency vehicular access would be closed to normal vehicular access and it would incur valid compensation claims from owners for loss of vehicular access after resumption.

Relevant discussions of the Panel on Home Affairs

9. The Panel on Home Affairs discussed the resumption of private streets at its meeting on 14 February 2000. The issues raised by members are summarised in paragraphs 10 to 12 below.

The option of amending relevant legislation

10. Some members asked whether the relevant legislation should be amended to resolve the trespassing problem arising from resumption of private streets with protruding balconies. The Administration explained that all possible options had been examined but no feasible solution was found. For example, an amendment to the Crown Land Ordinance (Cap. 28) for the deemed granting of statutory licences to ensure no change to the owners’ rights to maintain their protruding balconies over the resumed streets was legally unworkable. The option would be extremely difficult to implement as it would entail the issuance of individual licences to each and every owner affected. An amendment to the Roads (Works, Use and Compensation) Ordinance to enable “strata resumption” so as to exclude the protruding balconies was also considered too resource intensive and legally complicated. The Administration further pointed out that the mandatory requirement for resumption was a 100% agreement by owners. The number involved would be enormous and some owners might be dead or unable to be traced.

Poor conditions of private streets

11. Some members expressed concern about the state of disrepair in private streets and the safety standards of the buildings there. They pointed out that

in case of fire, the fire engines would not be able to access the streets because they were too narrow. These members considered that the Administration should consider introducing legislative and administrative measures to address the various problems in the private streets.

12. The Administration responded that redevelopment would be the answer in the long run and it had approached the Land Development Corporation at that time on the case of the “Wan” streets in Kowloon City. In terms of intermediate solutions, the Home Affairs Department (HAD) had tried to encourage owners to set up mutual aid committees, owners’ corporations or some other forms of organisations so that they could act together to improve the conditions of the streets. HAD had also regularly liaised with the relevant government departments to improve the conditions of the private streets.

Motion on “Resumption of private streets”

13. The motion on “Resumption of private streets” was passed by the Council at its meeting on 11 June 2003. The motion urged the Government to re-formulate the policy direction for private street resumption and amend the relevant legislation, so as to provide the relevant policy bureaux with sufficient powers and resources to effect the expeditious resumption of all the private streets under the original Private Street Resumption Programme.

14. In response to the motion, the Administration provided a progress report in August 2003. According to the progress report, the eight “Wan” streets in Kowloon City had been included in a pilot scheme under phase I of the Team Clean’s work for developing a modus operandi in dealing with similar cases in the future. Team Clean was set up by the Chief Executive in May 2003 to establish and promote a sustainable, cross-sectoral approach to improve environmental hygiene in Hong Kong. Under the pilot scheme, the relevant government departments would take actions of environmental improvement on the basis on “act now, recover cost later” principle.

15. According to a progress report of Team Clean measures submitted by the Administration to the Panel on Home Affairs in August 2005, five modality projects undertaken by Team Clean have been completed and the outstanding one is concerned with the “Wan” Streets which fall within private lots in Kowloon City and improvement work is under way.

16. Members may wish to note that speaking at the motion debate on “Resumption of private streets” at the Council meeting on 11 June 2003, the Secretary for Home Affairs pointed out that the purpose of the Urban Renewal Programme was to ameliorate the aging problem facing urban areas and buildings, not to resolve the private streets problem. The Administration and the Urban Renewal Authority would consider various factors in ascertaining the needs, priority and implementation mode of individual old districts. It was

inappropriate to adopt a broad-brush approach of according priority to the redevelopment of private streets.

17. According to its Urban Renewal Strategy, the Urban Renewal Authority should consider the following factors in determining the priority of individual redevelopment projects –

- (a) whether the proposed project area is old and dilapidated and requires urgent redevelopment;
- (b) whether the buildings lack basic sanitation facilities or are exposed to potential fire risks;
- (c) whether the living conditions of the residents in the proposed project area are satisfactory;
- (d) whether the proposed project will improve the area by replanning and restructuring;
- (e) whether the proposed project area will achieve a better utilisation of land after redevelopment; and
- (f) whether the rehabilitation of buildings in the proposed project area is a practicable and viable option.

Other relevant motion moved and questions raised at Council meetings

18. A motion on “Reviewing the compensation policy on land resumption” was passed by the Council at its meeting on 5 July 2001. Details of the relevant questions raised at Council meetings are in **Appendix I**.

19. The Official Records of Proceedings of relevant Council meetings are available on the LegCo website at <http://www.legco.gov.hk>.

Relevant papers

20. A list of relevant papers and minutes of meetings is in **Appendix II**.

Relevant questions raised at Council meetings

Meeting Date	Question
9.12.98	Hon LEE Cheuk-yan raised a written question on redevelopment of the "Seven streets" in Tsuen Wan by the Land Development Corporation (LDC).
7.7.99	Dr Hon YEUNG Sum raised an oral question on redevelopment projects of LDC and a written question on Kennedy Town "Five Streets" and Tsuen Wan "Seven Streets" redevelopment projects of LDC.
9.1.02	Hon Fred LI raised a written question on the Urban Renewal Authority (URA) required to operate on commercial principles.
6.11.02	Hon LEUNG Yiu-chung raised an oral question on modification of URA's redevelopment projects.
3.12.03	Hon LAU Wong-fat raised an oral question on litigations arising from the acquisition of private land.
24.3.04	Dr Hon LAW Chi-kwong raised a written question on review of the Urban Renewal Strategy.
5.1.05	Hon Alan LEONG Kah-kit raised an oral question on redevelopment of Kwun Tong Town Centre and progress of the five projects announced by LDC in 1998.

Relevant documents on the management and resumption of private streets

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
14.2.00	Panel on Home Affairs	Minutes of meeting	CB(2)1300/99-00 http://www.legco.gov.hk/yr99-00/english/panels/ha/minutes/ha140200.pdf
		Administration's paper on "Resumption and Repair of Private Streets"	CB(2)1034/99-00(01) http://www.legco.gov.hk/yr99-00/english/panels/ha/papers/b1034e01.pdf
14.3.02	Legislative Council Members' meeting with Kowloon City District Council members	Minutes of meeting	CB(2)1702/01-02
3.4.03	Legislative Council Members' meeting with Wan Chai District Council members	Minutes of meeting	CB(3)693/02-03
-	Panel on Home Affairs	Administration's paper on "Progress Report of Team Clean Measures"	CB(2)2456/04-05(01) http://www.legco.gov.hk/yr04-05/english/panels/ha/papers/hacb2-2456-1e.pdf
11.6.03	Council Meeting	Progress report by the Administration on the motion on "Resumption of Private Streets"	CB(3)883/02-03