

Legislative Council Panel on Development

Proposal to Facilitate Private Redevelopment

PURPOSE

This paper briefs Members on the results of the public consultation on the proposal to lower the compulsory land sale application threshold under the Land (Compulsory Sale for Redevelopment) Ordinance (LCSRO) for specified classes of lots, and our proposed way forward.

BACKGROUND

2. Under the LCSRO, any person who owns not less than 90% of the total undivided shares of a lot may apply to the Lands Tribunal for an order of compulsory sale of the whole lot. To further facilitate private redevelopment, we issued a public consultation document in 2006 (copy at Annex A) to propose making use of the existing mechanism under the LCSRO¹ to specify the following three classes of lots to be subject to a lower compulsory land sale application threshold of not less than 80% of the undivided shares of a lot (hereafter referred to as “the lower application threshold”) –

- (i) a lot with “all units but one” acquired – to facilitate private redevelopment of buildings with 5 to 9 units² which often comes to a deadlock when only one remaining owner refuses to sell due to various reasons, and the last unit will account for more than 10% of the total undivided shares of this type of buildings;
- (ii) a lot with all building(s) aged 40 or above – to facilitate redevelopment of older buildings. We have proposed this class of lots based on Buildings Department (BD)’s statistics of

¹ Under section 3(5) and (6) of the LCSRO, the Chief Executive in Council may, by notice in the Gazette, specify certain classes of lots for which a lower application threshold of not less than 80% will apply. The Gazette notice is subsidiary legislation.

² For buildings with more than 9 units, the remaining unit will take up 10% or less of the total undivided shares of a building (i.e. the current application threshold of no less than 90% already applicable). For buildings with less than 5 units, the remaining unit will take up more than 20% of the total undivided shares of a building. This is on the assumption that the percentage of the last unit over the total number of units roughly equals to the percentage of the undivided shares attributable to the last unit over the total number of undivided shares.

building repair orders, which show that over one-third of the orders were served on buildings of 40 years or above in recent years; or

- (iii) a lot with missing/untraceable owners – to facilitate private redevelopment when some owners cannot be reached. We have proposed to require that the total undivided shares involving missing/untraceable owners should account for at least 10% of the total undivided shares of the lot, so that an applicant will not be better off when there happens to be a missing/untraceable owner and the applicant would still need to acquire as many interests as possible through negotiation and agreement³.

It was proposed that a lot falling under any one of the above three classes may enjoy the lower application threshold.

RESULTS OF PUBLIC CONSULTATION

3. During the 3-month consultation period, we organized two public forums, two owner group discussion sessions and one focus group discussion session involving academics, owners' representatives and building professionals. The then Panel on Planning, Lands and Works of the Legislative Council, the Land and Building Advisory Committee, as well as the Chairmen and Vice-Chairmen of District Councils (DCs) were also consulted. We attended four briefings/meetings organized by DCs⁴ and an industry forum hosted by the Hong Kong Institute of Surveyors. In addition, we conducted a telephone poll survey on 21 to 30 April 2006 involving over 1,000 respondents, and invited views through the web-based Public Affairs Forum established by the Home Affairs Bureau.

4. The consultation results show that many views supported the general policy direction to lower the compulsory land sale application threshold to facilitate private redevelopment. This is in line with the results of the telephone poll survey, with some 66% of respondents supporting the proposal to facilitate private redevelopment. The consultation results also

³ If the number of units with missing owners only accounts for, say, 2% of the total undivided shares in a lot, designating such lots for a lower compulsory sale threshold will be tantamount to helping an applicant to acquire an additional 8% of undivided shares.

⁴ Including Planning, Transport and Environmental Protection Committee of Wan Chai DC, Eastern DC, Housing Committee of Sham Shui Po DC and Central and Western DC.

show that the community is concerned about measures taken to safeguard the interests of owners of private properties.

5. Nevertheless, unlike the results of the telephone poll survey which showed a clear support for the three proposed classes of lots, the consultation results revealed mixed views in this regard. A statistical summary of views received in respect of our proposal is at Annex B. The results of the telephone poll survey are at Annex C.

DETAILED ANALYSIS

A Lot with “All Units But One” Acquired

6. There were generally no strong concerns expressed on designating this class of lot for a lower application threshold during the consultation period, and only a limited number of responses were received. We therefore propose to designate a lot with “all units but one” acquired for a lower application threshold. Although there is no readily available data of buildings that could benefit from this proposal, over 20,000 private buildings are 9 storeys or less.

7. In preparing for the Gazette notice to designate this class of lots, we will provide a definition of “unit”. It is our intention to regard building parts with undivided shares allotted and not falling within the common parts of a building as a “unit”. However, car parking spaces, roof-top areas, external walls and basements will not be regarded as a “unit” even if they are allotted with undivided shares and do not fall within the common parts. This is to ensure that the applicability of this class of lot will not be unnecessarily constrained⁵. We are seeking relevant professional institutes’ input on how best to define “unit” for this class of lot and welcome views from members.

A Lot with All Building(s) that are Aged 40 or Above

8. During the public forums and owners’ group discussion sessions, many participants who claimed to live in older buildings strongly supported this proposal. They regarded this as an opportunity for them to improve their living environment. Some respondents asked for further lowering the

⁵ The result is that if an applicant succeeds in acquiring more than 80% of the undivided share of that lot but fails to acquire a remaining unit and some car parking spaces, he may still apply to the Lands Tribunal for a compulsory sale at the lower application threshold.

application threshold for buildings aged 50 or above or even younger buildings to 75% or below. The industry also generally supported this class of lot.

9. Nonetheless, a considerable portion of respondents expressed concern that using building age alone might not be sufficient in determining the redevelopment need of a building. They considered that buildings aged 40 or above with good maintenance would not justify early redevelopment.

10. In response to the above concern, we would like to point out that under the LCSRO, a person who has acquired 90% of the lot, or the 80% proposed under the lower application threshold, is not empowered to compel the remaining owner(s) to sell their properties. He may only trigger the mechanism to make an application to the Lands Tribunal and the Lands Tribunal is required to consider, among other factors, the “age or state of repair” of the existing development on the lot when determining whether the redevelopment of the subject lot is justified. In other words, the Lands Tribunal has the role safeguarding the interests of owners. In March 2007, the Lands Tribunal in fact rejected an application for compulsory land sale order concerning two 47 years old six-storey buildings on the grounds that the applicant had failed to satisfy the Lands Tribunal that the intended redevelopment was justified due to the age or state of repair of the relevant buildings. This case clearly illustrates the Lands Tribunal’s role in ensuring that redevelopment is justified having regard to the building conditions before approving an application for compulsory sale.

11. Given that the existing power of the Lands Tribunal under the LCSRO already provides sufficient safeguard, we propose maintaining our proposal of designating this class of lots for a lower application threshold. Doing so could potentially facilitate private redevelopment of the dilapidated buildings within the group of about 9,000 buildings that were 40 years or above as at the end of 2007. This will also help expedite the redevelopment of some old and run-down industrial buildings to suit the changing economic needs of Hong Kong.

A Lot with Missing/Untraceable Owners

12. Many views received expressed various concerns about this class of lots, in particular the definition of “missing/untraceable owners” and the necessary procedures to be taken by the applicants to notify the relevant owners. They were concerned about the possibility of erroneously regarding an owner as “missing or untraceable”, whilst certain steps and procedures

could be taken to trace the owner. They opined that it would be difficult to put in place a notification mechanism that could adequately protect the private property rights of owners who are not accessible due to various reasons.

13. On the other hand, there were also some views, especially from the industry, requesting to remove the proposed requirement that the number of missing/untraceable owners involved should be at least 10% of the total undivided shares of the lot. It was suggested that such requirement would pose unnecessary restrictions, hence defeating the purpose of facilitating private redevelopment.

14. Given that the public and owners are not adequately assured of the impact of the relaxation in respect of “missing or untraceable owners”, and the doubtful effectiveness of this measure under the proposed requirement, we consider it more prudent to drop this class of lots for the time being. However, we could revisit this class of lots in future as necessary with the benefit of actual experience in operating the lower threshold in respect of the other classes of lots.

WAY FORWARD

15. In the light of the results of public consultation and the above analysis, we intend to proceed with designating the following two classes of lots in a Gazette notice for a lower application threshold of not less than 80% –

- (i) a lot with “all units but one” acquired; or
- (ii) a lot with all building(s) aged 40 or above.

We aim to introduce the Gazette notice, which is subsidiary legislation, into the Legislative Council as soon as practicable.

Development Bureau
January 2008

**Proposals to Lower the Compulsory Sale Threshold
for Specified Classes of Lots under
Land (Compulsory Sale for Redevelopment) Ordinance**

PURPOSE

This paper sets out three proposed classes of lots to be designated under section 3(5) and (6) of the Land (Compulsory Sale for Redevelopment) Ordinance (LCSRO) to be subject to a compulsory sale threshold of not less than 80% in order to facilitate redevelopment of these classes of lots.

BACKGROUND

2. The Government is committed to arresting building deterioration. As part of the Government's holistic strategy to tackle the problem, we attach great importance to facilitating private sector's redevelopment efforts.

3. In this regard, the Land (Compulsory Sale for Redevelopment) Ordinance (LCSRO) (Cap. 545) was enacted in 1998 and came into operation in 1999. In a nutshell, the LCSRO provides for a person (other than as a mortgagee) who owns not less than 90% of undivided shares in a lot to apply to the Lands Tribunal for a compulsory sale of the whole lot for the purpose of redevelopment. As at end-2005, there were 19 applications for order for sale under the LCSRO, of which five have been granted by the Lands Tribunal, four are being processed and the others have been discontinued/suspended. The Lands Tribunal does not keep information on the reasons for discontinuation, but our understanding is that some of the cases have been discontinued because agreements for sale of the remaining interests have been reached between the respective owners and the applicants.

4. Noting that a protracted and uncertain acquisition process in redevelopment is one of the major obstacles faced by private developers, we consider there is scope under the existing LCSRO to further facilitate the land assembly process. Section 3(5) and (6) of the LCSRO provides that the Chief Executive in Council may specify by notice in the Gazette certain classes of lots for which a lower threshold of not less than 80% will apply. The Gazette notice is subsidiary legislation and requires the approval of the

Legislative Council. We consider that we could make use of this mechanism to further facilitate redevelopment efforts by the private sector. A copy of the relevant provisions is at the Appendix.

PROPOSED CLASSES OF LOTS

5. In working out our proposals, we are mindful of the need to strike a careful and fine balance between facilitating private redevelopment efforts and protecting individual property rights. In this connection, Article 6 of the Basic Law stipulates that the right of private ownership of property shall be protected in accordance with law.

6. In the light of the above, we have proposed the following classes of lots as possible candidates to be subject to a lower compulsory sale threshold of not less than 80% under the LCSRO –

- (i) a lot with “all units but one” acquired;
- (ii) a lot with building(s) that are aged 40 years or above; or
- (iii) a lot with missing/untraceable owners.

A Lot with “All Units But One” Acquired

7. There have been concerns that private redevelopment of buildings with 5 to 9 units often come to a deadlock when only one remaining owner refuses to sell due to various reasons, as the last unit would account for more than 10% of the total undivided shares of this type of buildings. As such, we propose to designate “a lot with ‘all units but one’ acquired” to enjoy a lower compulsory sale threshold of not less than 80%. This should help the redevelopment of some typical old buildings with 5 to 9 units¹. There is no readily available data on the number of buildings falling under this category. Nonetheless, there are over 20,000 private buildings with 9 storeys or less.

¹ For buildings with more than 9 units, the remaining unit will take up 10% or less of the undivided shares of a building. For buildings with less than 5 units, the remaining unit will take up more than 20% of the undivided shares of a building (this is on the assumption that the percentage of the last unit over the total number of units roughly equals to the percentage of the undivided shares attributable to the last unit over the total number of undivided shares).

A Lot with Building(s) Aged 40 Years or Above

8. In general, the physical conditions of a building will deteriorate with the passage of time although the degree of deterioration depends in turn on the state of maintenance. Given that building components have a definite lifespan, we consider building age an objective starting point for assessing redevelopment need.

9. There are at present over 7,500 private buildings (about 20% of the total number of private buildings) which are aged 40 years or above in Hong Kong. About 40% of the Buildings Department's statutory repair orders² in 2003 and 2004 were issued to these old buildings. While the actual building condition is highly dependent on how well an old building is maintained, the enforcement figures have revealed that dilapidation is more common among these older buildings. It is also likely that 40-year-old buildings fall short of the latest standard of modern buildings in the provision of a comfortable and convenient living environment.

10. Designating buildings aged 40 years or above as a class of lot will also facilitate redevelopment of buildings without basic sanitary facilities as this type of buildings are most likely to be pre-war buildings. Since these buildings fail to provide the most basic hygienic amenity, we consider their early redevelopment to be desirable. Buildings aged 40 years or above which are either monuments or proposed monuments are protected against demolition under the Antiquities and Monuments Ordinance (Cap 53). The Lands Tribunal will play a gatekeeper role and will only make an order for sale if it is satisfied, among other things, that the redevelopment application is justified.

A Lot with Missing/Untraceable Owners

11. Another common difficulty encountered by private developers during land assembly is that the relevant owners cannot be reached. We therefore propose to designate buildings with missing/untraceable owners as a class of lot for a lower compulsory sale threshold of not less than 80%.

² Orders issued under sections 26 and 28 of the Buildings Ordinance (Cap 123) in respect of rectification of dangerous and dilapidated buildings and defective drainage.

12. In this connection, we consider that the minimum percentage of undivided shares involving missing/untraceable owners should be set at 10% so that a majority owner will not be better off just when there happens to be a missing/untraceable owner³ and the majority owner would still need to acquire as many interests as possible through negotiation and agreement.

OTHER SUGGESTIONS RECEIVED REGARDING THE LCSRO

13. We are aware that there are calls, in particular from members of the industry, some professional bodies and individual owners, for more fundamental changes to the LCSRO, including lowering the threshold to not less than 80% across the board and changing the basis for calculation of threshold from a lot basis to a "site/scheme" basis. Nonetheless, we have reservation on these proposed changes given that the Legislative Council came to a consensus on the current 90% threshold on a lot basis in 1998 after very extensive debate. In particular, the proposed "site/scheme" basis may result in undesirable situations where a majority owner is unable to acquire any of the undivided shares in one of the lots in the "site/scheme" notwithstanding his holding of not less than 90% of the aggregate undivided shares. There is a need to strike a careful balance between facilitating redevelopment and protecting private property rights.

14. There are also requests that other than the age or state of repair of the existing development on the lot, the Government should, by way of regulation, specify further grounds on which the Lands Tribunal may take into account when considering whether the redevelopment of a lot under application is justified or not. We believe that such further grounds should be acceptable to the community, relatively objective and practicable. We welcome suggestions in this regard.

WAY FORWARD

15. The Government would like to hear views on the proposals. In particular, we would like to seek the views of the professional bodies and the industry on the practicability of the three proposed classes of lots as set out in

³ If the number of units with missing owners only accounts for, say, 2% of the total undivided shares in a lot, designating such lots for a lower (not less than 80%) compulsory sale threshold will be tantamount to helping a majority owner to acquire an additional 8% of undivided shares.

paragraph 6 above. We will gauge the views of the community through appropriate channels, including holding public forums and group discussions with owners as well as gauging the views of the middle-class through the Government's Public Affairs Forum on the internet. Subject to the community's consensus over the proposed classes of lots, we will proceed with the submission of the necessary legislative proposals to the Legislative Council.

**LAND (COMPULSORY SALE FOR REDEVELOPMENT) ORDINANCE
(Chapter 545)**

Section 3(5), 3(6) and 3(7)

Section 3(5)

Subject to subsection (6), the Chief Executive in Council may, by notice in the Gazette, specify a percentage lower than the percentage mentioned in subsection (1) in respect of a lot belonging to a class of lots specified in the notice and, in any such case, subsection (1) and the other provisions of this Ordinance shall be construed as if, in relation to a lot belonging to that class of lots, that percentage so specified were substituted for the percentage mentioned in subsection (1).

Section 3(6)

No percentage may be specified in a notice under subsection (5) which is less than 80%.

Section 3(7)

It is hereby declared that-

- (a) without prejudice to the generality of the definition of "minority owner" or the operation of subsection (1)(b) or section 4(1)(b)(i), for the purposes of this section, in the calculation of any percentage of undivided shares in a lot owned by a person or persons (and whether or not he is or they are the person or persons referred to in subsection (1)), there shall be disregarded any undivided shares which are undivided shares in respect solely of any common parts of the lot;
- (b) a notice under subsection (5) is subsidiary legislation.

Consultation Results on the Proposal to Lower the Compulsory Land Sale Application Threshold for Three Specified Classes of Lots under the Land (Compulsory Sale for Redevelopment) Ordinance

Proposals Set Out in Consultation Document		Consultation Results¹
<i>General</i>		
1.	Introduction of a proposal to lower the compulsory land sale application threshold for certain classes of lots	<ul style="list-style-type: none"> • 63% (63 responses) support • 31% (31 responses) against • 6% (6 responses) other views <p><i>Total: 100 responses</i></p>
<i>Three Proposed Classes of Lots</i>		
2.	Lots with “all units but one” acquired	<ul style="list-style-type: none"> • 50% (5 responses) support • 40% (4 responses) against • 10% (1 response) other suggestion <p><i>Total: 10 responses</i></p>
3.	Lots with buildings aged 40 or above	<ul style="list-style-type: none"> • 17% (10 responses) support • 55% (33 responses) against² • 28% (17 responses) other suggestions, including: <ul style="list-style-type: none"> ➤ building conditions should be factored in; ➤ different land sale application thresholds should be set for buildings of different ages; and ➤ buildings of younger age should be covered <p><i>Total: 60 responses</i></p>

¹ The percentages indicate the proportion of supporting/opposing/other views on the basis of the number of responses on the particular issue.

² The main reason against the proposal is that buildings aged 40 or above could be well-maintained, and redevelopment of these buildings may not be justified.

Proposals Set Out in Consultation Document		Consultation Results¹
4.	Lots with missing/untraceable owners	<ul style="list-style-type: none"> • 7% (1 response) support • 0% (0 responses) against • 93% (13 responses) other suggestions³ <p><i>Total: 14 responses</i></p>
<i>Principle to Strike a Balance between Facilitating Private Redevelopment and Protection of Private Property Rights</i>		
5.	<ul style="list-style-type: none"> - Support the principle - The proposal reflects the principle - The proposal cannot reflect the principle - Other suggestions to maintain such balance - Government should take measure to safeguard the interest of private owners 	<ul style="list-style-type: none"> • 4% (1 response) • 7% (2 responses) • 30% (8 responses) • 18% (5 responses) • 41% (11 responses) <p><i>Total: 27 responses</i></p>
<i>Other Suggestions</i>		
6.	<ul style="list-style-type: none"> - Lowering the application threshold across-the-board to 80% - Lowering the application threshold across-the-board to a percentage of less than 80% - Changing the basis for calculation of application threshold from a lot basis to a “site/scheme” basis - Other suggestions/comments, e.g. <ul style="list-style-type: none"> ➤ to improve existing mechanism to prevent frauds in acquisition ➤ the Government to provide the property valuation service for minority owners ➤ compulsory land sale application can only be 	<ul style="list-style-type: none"> • 5% (3 responses) • 9% (5 responses) • 16% (9 responses) • 70% (39 responses)

³ Some of the views are concerned about the definition of “missing/untraceable owners”. Some requested the relaxation of the requirement that a minimum of 10% of the total undivided shares should belong to missing/untraceable owners.

Proposals Set Out in Consultation Document		Consultation Results¹
	<p>triggered with the majority consent (80%) of <u>both</u> owners of commercial and domestic units</p> <p>➤ the Government should set out detailed guidelines on the factors to be considered when the Lands Tribunal handles land sale applications</p>	<p><i>Total: 56 responses</i></p>

**Results of Telephone Poll Survey
on the Proposal to Facilitate Private Redevelopment
Conducted on 21 - 30 April 2006**

[Q.1] How old is the building you are living in?

	Percentage (%)
9 years or below	16.8
10 – 19 years	29.9
20 – 29 years	24.7
30 – 39 years	16.4
40 years or above	6.0
No idea	6.1
Decline to respond	0.2
Total	100.0

Note : A total of 1 007 residents living in rented and privately-owned residential units were interviewed in this opinion survey.

[Q.2] Under the prevailing law, private developers must own not less than 90% of the total undivided shares of a lot before applying to the Lands Tribunal for compulsory sale of the whole lot for redevelopment. In the case of a lot with “all units but one” acquired, do you agree that the Government should relax the requirement so that a developer who owns 80% of the total undivided shares of such lot will be allowed to apply for compulsory sale of the whole lot for redevelopment?

	Percentage (%)
Strongly agree	2.3
Agree	45.7
Neutral	3.4
Disagree	27.0
Strongly disagree	1.7
No idea / No comment	19.6
Decline to respond	0.4
Total	100.0

[Q.3] In the case of a lot with all building(s) aged 40 or above, do you agree that the Government should relax the requirement so that a developer who owns 80% of the total undivided shares of such lot will be allowed to apply for compulsory sale of the whole lot for redevelopment?

	Percentage (%)
Strongly agree	2.3
Agree	61.1
Neutral	2.7
Disagree	22.1
Strongly disagree	1.2

No idea / No comment	10.1
Decline to respond	0.5
Total	100.0

[Q.4] In the case of a lot with missing / untraceable owners which account for at least 10% of the total undivided shares of the lot, do you agree that the Government should relax the requirement so that a developer who owns 80% of the total undivided shares of such lot will be allowed to apply for compulsory sale of the whole lot for redevelopment?

	Percentage (%)
Strongly agree	1.5
Agree	61.8
Neutral	2.9
Disagree	20.3
Strongly disagree	1.2
No idea / No comment	12.1
Decline to respond	0.3
Total	100.0

[Q.5] On the whole, do you agree that the Government should relax the compulsory land sale application threshold to facilitate private redevelopment to improve the environment of the old areas?

	Percentage (%)
Strongly agree	2.0
Agree	64.3
Neutral	5.5
Disagree	14.8
Strongly disagree	1.0
No idea / No comment	11.9
Decline to respond	0.5
Total	100.0

Background of respondents

1. Type of residence

	No. of respondents	Percentage (%)
Rented private residential unit	162	16.1
Privately-owned residential unit	845	83.9
Total	1007	100.0

2. Sex

	No. of respondents	Percentage (%)
Male	443	44.0
Female	564	56.0
Total	1007	100.0

3. Age

	No. of respondents	Percentage (%)
18 – 29 years old	177	17.6
30 – 39 years old	212	21.1
40 – 49 years old	298	29.6
50 – 59 years old	176	17.5
60 years old or above	144	14.3
Total	1007	100.0

4. Educational level

	No. of respondents	Percentage (%)
Received no schooling / Kindergarten	23	2.3
Primary	95	9.4
Secondary (Form1 – Form3)	119	11.8
Secondary (Form4 – Form5)	294	29.2
Matriculation (Form6 – Form7)	83	8.2
Tertiary (non-degree)	125	12.4
Tertiary (degree) or above	261	25.9
Decline to respond	7	0.7
Total	1007	100.0

5. Employment

	No. of respondents	Percentage (%)
Employed	582	57.8
Students	75	7.4
Home carers	171	17.0
Retired	140	13.9
Unemployed	32	3.2
Others	5	0.5
Decline to respond	2	0.2
Total	1007	100.0

6. Occupation

	No. of respondents	Percentage (%)
Managers and administrators	145	24.9
Professionals	108	18.6
Associate professionals	57	9.8
Clerks	114	19.6
Service and shop sales workers	67	11.5
Skilled agricultural / fishery workers	1	0.2
Craftsmen and related workers	24	4.1
Plant and machine operators and assemblers	17	2.9
Unskilled workers	16	2.7
Decline to respond	33	5.7
Total	582	100.0

7. Monthly personal income (for the employed only)

	No. of respondents	Percentage (%)
\$4,999 or below	12	2.1
\$5,000 – \$7,999	43	7.4
\$8,000 – \$9,999	50	8.6
\$10,000 – \$14,999	97	16.7
\$15,000 – \$19,999	62	10.7
\$20,000 – \$24,999	67	11.5
\$25,000 – \$29,999	22	3.8
\$30,000 – \$39,999	54	9.3
\$40,000 – \$49,999	18	3.1
\$50,000 or above	50	8.6
Decline to respond	107	18.4
Total	582	100.0

8. The social stratum that the respondents think they belong to

	No. of respondents	Percentage (%)
Lower	147	14.6
Lower middle	234	23.2
Middle	485	48.2
Upper middle	86	8.5
Upper	6	0.6
No idea / No comment	39	3.9
Decline to respond	10	1.0
Total	1007	100.0