

立法會
Legislative Council

LC Paper No. CB(1)1230/09-10
(These minutes have been seen by
the Administration)

Ref : CB1/SS/5/09

**Subcommittee on Land (Compulsory Sale for Redevelopment)
(Specification of Lower Percentage) Notice**

**Minutes of the first meeting held on
Tuesday, 9 February 2010, at 2:30 pm
in Conference Room B of the Legislative Council Building**

- Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Dr Hon Margaret NG
Hon James TO Kun-sun
Hon Miriam LAU Kin-ye, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon WONG Kwok-hing, MH
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king
Hon WONG Kwok-kin, BBS
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
- Member absent** : Hon Audrey EU Yuet-mee, SC, JP
- Public Officers attending** : Agenda item II
Mr Tommy YUEN, JP
Deputy Secretary (Planning and Lands)2
Development Bureau

Mr Laurie LO
Head, Development Opportunities Office
Development Bureau

Ms Winnie SO
Principal Assistant Secretary (Planning and Lands)4
Development Bureau

Ms Francoise LAM
Senior Government Counsel
Department of Justice

Clerk in attendance : Ms Debbie YAU
Chief Council Secretary (1)6

Staff in attendance : Mr Kelvin LEE
Assistant Legal Adviser 1

Ms Angel SHEK
Senior Council Secretary (1)1

Ms Michelle NIEN
Legislative Assistant (1)9

Action

I Election of Chairman

Mr CHAN Kam-lam was elected Chairman of the Subcommittee.

II Meeting with the Administration

(L.N. 6 of 2010

-- Land (Compulsory Sale for
Redevelopment) (Specification of
Lower Percentage) Notice

Ref.: DEVB(PL-UR)70/41/85

-- Legislative Council Brief issued
by the Development Bureau

LC Paper No. LS 39/09-10

-- Legal Service Division Report

LC Paper No. CB(1)1109/09-10(01)

-- Information paper provided by the
Administration

LC Paper Nos. CB(1)1109/09-10(02)
and (03)

-- Assistant Legal Adviser's letter
dated 26 January 2010 to the
Administration and the

Administration's reply dated 27
January 2010

LC Paper No. CB(1)1109/09-10(04) -- Background brief prepared by the
Legislative Council Secretariat)

2. The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

Scrutiny of subsidiary legislation

3. Ms Miriam LAU expressed concern about the tight timeframe for Members to study subsidiary legislation through the negative vetting process, especially those involving controversial issues such as the Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice (the Notice) under study. She requested that in future, the Administration should enable Members to thoroughly consider and discuss controversial subsidiary legislation prior to tabling them before the Council. Sharing her concern, Mr James TO remarked that the proposals to be discussed beforehand should be the same as those to be tabled. The Chairman requested the Administration to take note of members' concern for making improvements in future.

Follow-up actions required to be taken by the Administration

4. The Administration was requested to provide written responses to members' concerns and requests raised at the meeting:

- (a) Information on the outcome of review of the operation of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) (the Ordinance) since its coming into force in 1999, including -
 - (i) considerations given by the Lands Tribunal in granting compulsory land sale orders or otherwise for the 63 past applications it had received up to the end of October 2009;
 - (ii) cases in which the minority owners affected by the application for a compulsory sale order had to bear the legal costs arising from disputes brought before the Lands Tribunal over the value of their properties assessed by the majority owner of the same lot, and the amount of legal costs involved in such cases; and
 - (iii) whether the present mechanism had already facilitated private developers such that minority owners might face hardship in giving up their properties, as according to a submission (CB(1)1126/09-10(01)), the situation would be further aggravated with a lowering of the application threshold to 80%.

- (b) The Administration should consider establishing a mechanism of mediation through an authorized independent body, in order to minimize disputes arising from compulsory sale of land for redevelopment under the Ordinance.
- (c) Information on the overseas experience of urban renewal, including owner participation arrangements in private sector-led redevelopment; and consider making owner participation arrangements to enhance protection of the interests of minority owners in the implementation of the Ordinance.
- (d) In view of the recent collapse of an old building block in the city, the Administration should consider specifying a lower application threshold of 80% for a lot with all buildings aged 30 years or above, instead of 50 years or above, so as to address the problem of building dilapidation in a timely manner.
- (e) The legal justification, with reference to a judgment of the Court of Final Appeal, for not providing an opportunity for concerned property owners to appeal against the reserve price approved by the Lands Tribunal for the auction of the lot.

Extension of scrutiny period

5. Members agreed that the Chairman should move a motion at the Council meeting on 24 February 2010 to extend the scrutiny period of the Notice to 17 March 2010.

Invitation of public views

6. Members agreed to invite deputations to give views to the Subcommittee at the next meeting scheduled for Friday, 19 February 2010 from 2:30 pm to 6:30 pm in the Chamber of the Legislative Council Building. A general notice would be posted on the website of the Legislative Council to invite submissions from the public.

Dates of next meetings

7. The Subcommittee agreed to hold four additional meetings scheduled as follows -

<u>Date</u>	<u>Time</u>
19 February 2010 (Friday)	2:30 pm
23 February 2010 (Tuesday)	10:45 am
25 February 2010 (Thursday)	4:30 pm
1 March 2010 (Monday)	4:30 pm

(Post-meeting note: Members were informed of the meeting arrangements vide LC Paper No. CB(1)1139/09-10 issued on 10 February 2010.)

III Any other business

8. There being no other business, the meeting ended at 4:35 pm.

Council Business Division 1
Legislative Council Secretariat
24 February 2010

**Proceedings of the first meeting of
the Subcommittee on Land (Compulsory Sale for Redevelopment)
(Specification of Lower Percentage) Notice
on Tuesday, 9 February 2010, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action required
000211 – 000320	Mr James TO Mr CHEUNG Hok-ming Prof Patrick LAU Mr CHAN Kam-lam	Election of Chairman	
000321 – 000440	Chairman	Extension of the scrutiny period and invitation of public views	
000441 – 000932	Chairman Ms Miriam LAU Mr James TO	Ms Miriam LAU's concern about the tight timeframe for Members to study those subsidiary legislation involving controversial issues through the negative vetting process. Mr James TO's suggestion that the Land (Compulsory Sale for Redevelopment) Ordinance (the Ordinance) should be amended to stipulate that future amendments to the compulsory sale threshold had to be made through a bill or subsidiary legislation subject to positive vetting. For the present case, if the Subcommittee could not complete study of the Notice within the scrutiny period, the Administration and/or the Subcommittee might consider withdrawing/repealing it.	The Administration to take note as per paragraph 3 of the minutes
000933 – 001538	Chairman Administration	Briefing by the Administration on the Notice (L.N. 6 of 2010, file ref: DEVB(PL-UR)70/41/85 and LC Paper No. CB(1)1109/09-10(01)).	
001539 – 002213	Chairman Mrs Regina IP Administration	Having received many related complaints, Mrs Regina IP's reflection of concerns expressed by minority owners in concerned lots that they were disadvantaged under the existing compulsory sale mechanism because they had to engage independent surveyors and lawyers to come up with a more reasonable valuation of their properties. Her view that given the escalating property price in the market, it was difficult for the affected owners to use the sale proceeds to purchase a flat of similar size in a similar locality. These owners preferred the mode of redevelopment for Lai Shing Court under which flat-for-flat and shop-for-shop arrangements were provided. The Administration's response that – (a) The Urban Renewal Authority (URA) had undertaken redevelopment projects for less than 800 buildings since its establishment in 2001. In view of the slow pace of URA's work in urban renewal, there was a genuine need to facilitate more private sector's redevelopment efforts.	

Time Marker	Speaker	Subject(s)	Action required
		<p>As such, it would not be appropriate to mandate in the legislation the mode of compensation for minority owners. Nevertheless, the feasibility of offering different compensation modes for affected owners in redevelopment projects undertaken by URA was being proactively studied in the Urban Renewal Strategy (URS) Review; and</p> <p>(b) to enhance affected owners' understanding of the legislative provisions, the Hong Kong Housing Society (HKHS) would provide, with professional support mainly from the Hong Kong Institute of Surveyors (HKIS), free information service on the compulsory land sale process, valuation, rights of minority owners etc.</p>	
002214 – 003017	Chairman Mr James TO Administration	<p>Mr James TO's enquiry about the number of bidders in each of the past 20 auctions conducted in accordance with compulsory sale orders made by the Lands Tribunal. His concern that if the majority owner who applied for the compulsory land sale was the only bidder, the auction price might not reflect the market value of the lot and properties therein.</p> <p>The Administration's response that –</p> <p>(a) among the past 20 compulsory land sale auctions, there was more than one bidder in two cases. According to some surveyors' advice, the small number of bidders in the auctions might be due to cash flow consideration. Unlike the majority owner who had already acquired 90% or above of the undivided shares in the concerned lot, the successful bidder had to acquire the entire lot and settle payment with both majority and minority owners; and</p> <p>(b) in approving the reserve price for the auction of the lot, the Lands Tribunal had already taken into consideration the assessed value of the property under the application, as well as the redevelopment value of the lot.</p> <p>Mr TO's doubt about cash flow consideration being the reason for the low participation in the auctions, as the auction prices of these cases involved only little sums when compared to that in the sale of government lots auctioned under the Application List, and his suggestion that the Administration should analyze the past compulsory land sale cases, including reviewing the property market situation when the auctions took place, to see whether the reserve price had been set at a too high level that did not attract bids.</p> <p>The Administration's advice that it would provide, among the four information notes being prepared to facilitate discussion on the Notice, a summary of key issues covered in past Lands Tribunal judgments on applications for compulsory sale</p>	

Time Marker	Speaker	Subject(s)	Action required
		under the Ordinance as soon as possible before the next meeting.	
003018 – 003417	Chairman Prof Patrick LAU Administration	<p>Prof Patrick LAU's reflection of the dissatisfaction of some minority owners about the compulsory land sale process, and their urge for owner participation in the redevelopment of their lots. His enquiry whether an appeal mechanism was in place to deal with dispute over the reserve price approved by the Lands Tribunal for the auction of a lot.</p> <p>The Administration's reiteration that it would not be appropriate to mandate in the legislation the mode of partnership such as owner participation in private sector-led redevelopment. Regarding the reserve price, the Ordinance had conferred upon the Lands Tribunal the power to approve the reserve price. While affected owners might appeal against the judgment of the Lands Tribunal on the ground of a point in law, the Lands Tribunal's decision on the reserve price level was final.</p> <p>Prof LAU's concern that some affected minority owners complained that they had yet to receive their share of the auction proceeds well after the demolition of their properties. The Administration's undertaking to look into the complaint.</p>	
003418 – 003851	Chairman Ms Miriam LAU Administration	<p>In reply to Ms Miriam LAU, the Administration's advice that –</p> <p>(a) the specification of an application threshold of 80% for a lot with units each of which accounted for more than 10% of the undivided shares in the lot was to address deadlock situations where the majority owner(s) could not proceed to a compulsory sale application despite the acquisition of all units but one in the lot where each unit, including the remaining one un-acquired unit, accounted for more than 10% of the undivided shares in the lot; and</p> <p>(b) as "unit" was defined in the Notice as "any premises that are described by reference to a specified number of undivided shares in a lot in any instrument registered in the Land Registry", car parking spaces and rooftops would be units in their own right for the purpose of application under the first specified class of lot, i.e. a lot with units each of which accounted for more than 10% of the undivided shares of the lot. If a car parking space or a rooftop area in a subject lot accounted for less than 10% of the undivided shares, it would not satisfy the requirement of the first specified class for the application of a lower threshold of 80%. For those cases, the existing 90% threshold would apply subject to satisfaction of other requirements for making a compulsory sale application.</p>	

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003852 – 004424	Chairman Mr WONG Kwok-hing Administration	<p>Mr WONG Kwok-hing's suggestion of establishing a mechanism of mediation through an authorized independent body whereby disputes arising from compulsory sale of land for redevelopment under the Ordinance could be minimized.</p> <p>The Administration's response that while it would consider Mr WONG's suggestion, the proposed measures to be taken by HKHS and HKIS to enhance property owners' understanding of the legislation might also help minimize conflicts arising from compulsory sale of land for redevelopment.</p>	The Administration to provide information as required in paragraph 4(b) of the minutes
004425 – 005139	Chairman Dr Margaret NG Administration	<p>Dr Margaret NG's view that the lowering of application threshold from 90% to 80% would shift interests further towards the developer(s), and undermine the bargaining power of the minority owners. Dr NG's concern whether the present mechanism with the 90% application threshold had already facilitated private developers such that minority owners might face hardship in giving up their properties, as according to a submission (LC Paper CB(1)1126/09-10(01)), this might happen upon the adoption of a lower compulsory sale application threshold. Her view that the Administration should provide information on the review of the operation of the Ordinance since its operation in 1999 before the Subcommittee could further consider the lowering of the application threshold.</p> <p>The Administration's emphasis that the compulsory land sale mechanism was meant to balance the interests between majority owner (and not developer) and minority owners of the lot for redevelopment. The application threshold helped protect minority owners' interest and it must be no less than 80% as specified under the Ordinance. The information notes to be provided to the Subcommittee would cover a review of the past cases of compulsory land sale applications, including the number of successful/rejected cases, case analysis and Lands Tribunal judgments etc.</p> <p>Dr NG's consideration that property right was a fundamental right not subject to balance of interests, and property sale should be voluntary transactions agreed by both sides.</p>	The Administration to provide information as required in paragraph 4(a) (iii) of the minutes
005140 – 005413	Chairman Ms Starry LEE Administration	<p>Noting that the Administration had studied the experience of urban renewal in six Asian cities commissioned in 2009 which revealed that there might be different owner participation arrangements in some of these cities (paragraph 5 of DEVB(PL-UR)70/41/85), Ms Starry LEE 's request for the Administration to provide information in this regard.</p> <p>In response to Ms LEE's concern about the measures to protect the interests of minority owners, the Administration's assurance that the Lands Tribunal would continue to exercise a gate-keeping role in considering compulsory land sale applications. To enhance protection of the interests of minority owners, the HKHS and HKIS had been engaged to</p>	The Administration to provide information as required in paragraph 4(c) of the minutes

Time Marker	Speaker	Subject(s)	Action required
		provide free information service to increase their understanding of the relevant legislation.	
005414 – 010309	Chairman Mr Abraham SHEK Administration	<p>Mr Abraham SHEK's remark that urban redevelopment was a matter of public interest, as revealed in the object of the URA Ordinance. The application threshold was meant to protect the interests of minority owners. However, in view of the slow pace of work of URA and the limited number of compulsory land sale applications under the 90% application threshold, there was a need to expedite the redevelopment pace by lowering the threshold. His suggestion that the Administration should consider specifying a lower threshold of 80% for a lot with all buildings aged 30 years or above, instead of 50 years or above, so as to address the problem of building dilapidation in a timely manner. He also echoed that the Administration should explore options, other than auctions, for owner participation in private sector-led redevelopment projects.</p> <p>The Administration's highlight that at present, there were over 3 000 buildings aged 50 years or above and some 580 industrial buildings aged 30 years or above in the city. Even with the relaxation of the application threshold from 90% to 80% for the three specified classes of lot, the number of lots that could subsequently proceed to a compulsory sale application with the lowered threshold would be limited.</p> <p>Mr SHEK's grave concern about the cost-effectiveness of lowering the application threshold to tackle the problem of urban decay if the number of buildings to be relegated under the lowered threshold would be limited.</p>	The Administration to provide information as required in paragraph 4(d) of the minutes
010310 – 010731	Chairman Mr Albert HO Administration	Mr Albert HO's reference to the problematic execution of the Ordinance reflected by Subcommittee members and his urge for the Administration to rectify them before lowering the application threshold. Mr HO's further request for information as listed in paragraph 4(a)(ii) and 4(e) of the minutes.	The Administration to provide information as required
010732 – 011432	Chairman Mr Frederick FUNG Administration	<p>Recalling that he had objected to setting the application threshold at 90%, instead of 100%, before the enactment of the Ordinance, Mr Frederick FUNG's objection to further lower the application threshold from 90% to 80%. His view that –</p> <p>(a) the recognition of property right was fundamental to the capitalist society, and private ownership should not be infringed by way of a majority vote. The legislation would facilitate the transfer of potential benefits from minority owners to developers; and</p> <p>(b) the problem of urban decay laid mainly in the lack of management of old buildings, and removing them indiscriminately would narrow the housing options for the low-income groups who would be left with no</p>	

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		<p>choice but to rent cubicle apartments or partitioned flats which were available in the old districts at high rentals due to keen demand resulting from ongoing redevelopment projects. His request for the Administration to take heed of the more imminent housing problem among the low-income groups instead of pursuing to lower the application threshold .</p> <p>The Administration's reiteration that the legislative intent of the Notice was to facilitate private sector's redevelopment efforts in urban renewal.</p>	
011433 – 011714	Chairman Mrs Regina IP Administration	<p>Mrs Regina IP's sharing members' concerns about the problems in the operation of the Ordinance and its low cost-effectiveness in tackling urban decay and yielding economic benefits, having regard to the small number of successful applications for compulsory land sale, the lack of a reasonable and fair mechanism to address disputes over the assessed value of the property, the expensive legal fees shouldered by minority owners in seeking redress, etc. Her remark that the Administration was being idealistic in claiming that the legislation could balance the interests between the majority and minority owners, ignoring the blatant fact that hardly any cases, apart from the redevelopment of Lai Shing Court, had genuinely protected the minority owners to their advantage and satisfaction. Instead, the mechanism had often been abused by unscrupulous parties and developers using deceptive and scary tactic to pressurize the elderly and disadvantaged groups into relinquishing their properties.</p>	
011715 – 013007	Chairman Mr James TO Administration Mr Abraham SHEK	<p>Mr James TO's view that –</p> <p>(a) although there were some 4 000 old buildings in Hong Kong, some of them could be renewed through proper repair and maintenance and might not warrant redevelopment. In fact, not all majority owners, as in the case of the solely-owned tenement collapsed in Ma Tau Wai Road, contemplated redevelopment of their lots even if they could trigger the 90% application threshold. As such, it might not be justified to lower the application threshold from 90% to 80%; and</p> <p>(b) as the initiation and timing of application for land sale was usually determined by the majority owners, the minority owners might suffer loss in terms of a lower transaction price if the application was made and approved at a time when the property market was at trough. His suggestion of setting the reserve price for auction of a lot based on the average price of comparable lots over a past period.</p> <p>The Administration's response that –</p> <p>(a) while the Administration had not drawn up a target</p>	

Time Marker	Speaker	Subject(s)	Action required
		<p>number of buildings in need of redevelopment, it would provide information, among the proposed further information notes, profile of old buildings in Hong Kong, with breakdown on age and distribution; and</p> <p>(b) changing the mechanism of setting the reserve price for auction of a lot involved amendments to the Ordinance.</p> <p>The Chairman's remark that if the reserve price was set at a level higher than the prevailing market price at the time of auction, it might affect potential bidders' incentive. Mr Abraham SHEK's sharing on different scenarios under which private sector-led redevelopment could proceed.</p>	
013008 – 013227	Chairman Mr Frederick FUNG Administration	Discussion on the age of buildings requiring redevelopment and the lower limit of the application threshold.	
013228 – 014125	Chairman Mr James TO Administration	<p>Mr James TO's reference to section 4(2) of the Ordinance and his concern about the different views among the majority owner, minority owners and the Lands Tribunal on various criteria stated therein, such as the state of repair of the buildings or the cost-effectiveness in restoring them in good state of repair, when justifying the redevelopment of the lot in question.</p> <p>The Administration's advice that the Lands Tribunal had been playing a gatekeeper's role in determining each compulsory sale application under stringent considerations. The information note containing summary of key issues covered in past Lands Tribunal judgments would provide further information in this regard.</p>	
014126 – 015022	Chairman Mr Frederick FUNG Administration Mr Abraham SHEK	<p>Mr Frederick FUNG's consideration that urban renewal should be taken forward in a people-oriented manner whereby affected owners could continue their way of living or conduct business in the same social network. This would not be realized in the current direction of replacing old tenements by high-rise buildings by private-sector redevelopment efforts.</p> <p>Mr Abraham SHEK's different view that people living in these old buildings should be given a chance to improve their living environment through redevelopment.</p> <p>The Administration's advice that matters relating to the way and manner in which urban renewal should be carried out would be studied under the ongoing URS Review.</p>	
015023 – 015109	Chairman Mr WONG Kwok-kin Administration	Members belonging to the Hong Kong Federation of Trade Unions were open to the current provisions in the Notice and would determine its stance having regard to the need of protecting minority owners' interests and public safety.	

Time Marker	Speaker	Subject(s)	Action required
015110 – 015312	Chairman Mr Frederick FUNG Administration	Mr Frederick FUNG's reiteration of the need for the Administration to conclude the URS Review before lowering the application threshold.	
015313 – 015926	Chairman Ms Starry LEE Administration Mr Frederick FUNG	In reply to Ms Starry LEE, the Administration's reiteration that owner participation in public-sector redevelopment would be studied in the URS Review, and the Lands Tribunal had taken into account the redevelopment value of the lot in determining the reserve price for auction, as indicated by the fact that a minority owner had received compensation from auction proceeds more than two times the existing use value of the property in question. Ms LEE's urge for enabling owner participation in private sector-led redevelopment.	
015927 – 020457	Chairman	Dates of next meetings and invitation of public views	